

JAN 26 2009

A BILL FOR AN ACT

RELATING TO THE UNIVERSITY OF HAWAII.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Pursuant to the Constitution and statutes of
2 the State of Hawaii, the University of Hawaii is vested with
3 autonomous authority to control and manage its educational and
4 proprietary affairs. This authority extends to the use and
5 oversight of lands and real property owned by the university or
6 leased, demised, or transferred to the university from various
7 owners, including state, federal, or private entities, for the
8 furtherance of the university's educational, research, and
9 agricultural activities.

10 Such autonomous authority presumably carries with it the
11 necessary legal means to supervise, oversee, and permit public
12 activities on lands it leases and controls on Mauna Kea,
13 including the Mauna Kea Science Reserve, Hale Pohaku, and the
14 connecting roadway corridor between Hale Pohaku and the Mauna
15 Kea Science Reserve (collectively the Mauna Kea lands), and may
16 be implied from the autonomous character of the university.
17 Nevertheless, the purpose of this measure is to clarify and add
18 certainty to the law relating to the university's authority to

1 manage and control public activities on the Mauna Kea lands by
2 granting express authority to the university to adopt rules
3 pursuant to chapter 91, Hawaii Revised Statutes, relating to
4 public activities permitted or occurring on the Mauna Kea lands.
5 In adopting such rules, the university shall address and
6 reconcile any conflicts with other statutes or rules that are
7 applicable to the Mauna Kea lands.

8 Administrative rules governing public and commercial
9 activities on the Mauna Kea lands are necessary to provide
10 effective protection of cultural and natural resources from
11 certain public activities, and to help ensure public health and
12 safety. Administrative rules currently in effect for the
13 surrounding forest reserve and natural area reserve lands
14 managed by the department of land and natural resources do not
15 apply to the Mauna Kea lands. Examples of public and commercial
16 activities that could be covered by administrative rules
17 include:

- 18 (1) General access to sensitive resource areas, such as
19 specific cultural features and identified natural
20 resource habitat areas;
- 21 (2) Traffic and off-road vehicle management and control;
- 22 (3) Alcohol consumption;

1 (4) Snow play activities; and

2 (5) Commercial tour activities.

3 Access for traditional and customary native Hawaiian cultural
4 and religious purposes will be accommodated.

5 Assuming that the university is authorized to adopt
6 administrative rules with respect to the Mauna Kea lands, the
7 university would also require the ability to enforce such rules,
8 including the authority to assess fines for rule violations.

9 Thus, another purpose of this bill is to grant the university
10 the authority to:

11 (1) Create and establish a system for assessing and
12 collecting fines for rule violations; and

13 (2) Provide an appeal process, in a manner consistent with
14 the Hawaii Administrative Procedure Act, for those
15 accused of committing one or more violations to
16 contest the allegation or allegations.

17 Additionally, the university shall encourage and foster a
18 process of collaboration and involvement between its Mauna Kea
19 lands advisory bodies and community interests to ensure that the
20 process of developing any administrative rules for the Mauna Kea
21 lands is accomplished with community participation and input.

1 SECTION 2. Chapter 304A, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§304A- Mauna Kea management special fund. (a) There
5 is established a University of Hawaii Mauna Kea management
6 special fund into which shall be deposited all revenues, rent,
7 fees, charges, assessments, fines, and other moneys collected by
8 the university in connection with overseeing and managing the
9 Mauna Kea lands, including any fees and charges for the use of
10 land and facilities within the Mauna Kea lands, all moneys
11 collected for violations of administrative rules adopted
12 pursuant to this chapter relating to the Mauna Kea lands, and
13 all revenues, rents, fees, charges, and other moneys collected
14 from entities conducting or receiving moneys attributable to
15 commercial activities within the Mauna Kea lands. The board of
16 regents of the university may establish rents, fees, and
17 charges, including those for the lease or use of university real
18 property and facilities within the Mauna Kea lands; provided
19 that the university shall comply with all statutory requirements
20 in the disposition of ceded lands. In establishing and amending
21 the rents, fees, and charges payable in connection with the
22 lease or use of the university real property and facilities, and

1 the oversight and management of the Mauna Kea lands, the board
2 of regents shall be exempt from the public notice, public
3 hearing, and gubernatorial approval requirements of chapter 91.
4 The rents, fees, and charges payable in connection with the
5 lease or use of the university real property and facilities, and
6 the oversight and management of the Mauna Kea lands, shall be
7 established at an open public meeting subject to the
8 requirements of chapter 92; provided that a copy of the schedule
9 of the rents, fees, and charges is filed in the office of the
10 lieutenant governor prior to taking effect. The university may
11 establish separate accounts within the special fund for major
12 program activities. The board of regents, or its designated
13 representative or representatives, may expend the moneys
14 deposited in the Mauna Kea management special fund for:

15 (1) Enforcement of the administrative rules adopted
16 pursuant to this chapter relating to the Mauna Kea
17 lands; and

18 (2) Oversight and management of the Mauna Kea lands,
19 including maintenance, administrative expenses,
20 salaries, wages, and benefits of employees, contractor
21 services, supplies, security, furnishings, equipment,

1 janitorial services, insurance, utilities, and other
2 operational expenses.

3 All expenditures from this special fund shall be subject to
4 legislative appropriation.

5 (b) Moneys deposited into the Mauna Kea management special
6 fund shall not be used as a basis for reducing any current or
7 future budget request or allotment to the university unless the
8 university requests such a reduction.

9 (c) For purposes of this section, "maintenance" includes
10 repairs, replacement, renewals, operation, and administration.

11 (d) For purposes of this section and section 304A-105,
12 "Mauna Kea lands" means the lands that the university is leasing
13 from the board of land and natural resources, including the
14 Mauna Kea Science Reserve, Hale Pohaku, the connecting roadway
15 corridor between Hale Pohaku and the Mauna Kea Science Reserve,
16 and any other lands on Mauna Kea that the university leases or
17 over which the university acquires control or jurisdiction."

18 SECTION 3. Section 304A-105, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) The board of regents shall have management and
21 control of the general affairs, and exclusive jurisdiction over

1 the internal structure, management, and operation of the
2 university. The board may:

- 3 (1) Appoint a treasurer and other officers as it deems
4 necessary;
- 5 (2) Authorize any officer, elected or appointed by it, to
6 approve and sign on its behalf any voucher or other
7 document that the board may approve and sign;
- 8 (3) Delegate to the president or the president's designee
9 the authority to render the final decision in
10 contested case proceedings subject to chapter 91, as
11 it deems appropriate;
- 12 (4) Purchase or otherwise acquire lands, buildings,
13 appliances, and other property for the purposes of the
14 university; and
- 15 (5) Expend any sums of money as, from time to time, may be
16 placed at the disposal of the university from whatever
17 source; provided that notwithstanding any other law to
18 the contrary, all documents regarding expenditures and
19 changes thereto, made by the board shall be disclosed
20 in open meetings for the purpose of public comment;
21 provided further that all expenditure requests,
22 proposals, and any other budgetary documents used by

1 the board at an open meeting shall be made available
2 to the public at least six calendar days before the
3 meeting.

4 All lands, buildings, appliances, and other property so
5 purchased or acquired shall be and remain the property of the
6 university to be used in perpetuity for the benefit of the
7 university. The board, in accordance with this section and
8 other law, shall manage the inventory, equipment, surplus
9 property, and expenditures of the university and, subject to
10 chapter 91, may adopt rules, further controlling and regulating
11 the same. The board of regents may also adopt rules, subject to
12 chapter 91, to regulate activities at and within the Mauna Kea
13 lands. Through rulemaking consistent with chapter 91, the board
14 may set and provide for the assessment and collection of
15 administrative fines for violations of any administrative rule
16 adopted pursuant to chapter 91 relating to the Mauna Kea lands.
17 The board shall provide for procedures for the purpose of
18 enforcing its rules relating to the Mauna Kea lands. Fines for
19 violation of rules relating to the Mauna Kea lands shall be
20 established as follows:

- 21 (1) For the first violation, an administrative fine of not
22 more than \$2,500;

Report Title:

University of Hawaii; Financial Administration

Description:

Grants authority to the University of Hawaii to adopt administrative rules to help manage and regulate public activity on lands it leases and controls on Mauna Kea, including the Mauna Kea Science Reserve, Hale Pohaku, and the connecting roadway corridor. Allows the University to assess and collect administrative fines and to deposit such fines into a newly established Mauna Kea Management Special Fund.

SB 992

JUSTIFICATION SHEET

DEPARTMENT: University of Hawaii

TITLE: A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII.

PURPOSE: To grant the University of Hawaii (University) express statutory authority to adopt administrative rules pursuant to chapter 91, Hawaii Revised Statutes, to manage and regulate public activity on lands it leases and controls on Mauna Kea, including the Mauna Kea Science Reserve, Hale Pohaku, and the connecting roadway corridor between Hale Pohaku and the Mauna Kea Science Reserve (collectively the Mauna Kea lands), and allow the University to assess and collect administrative fines pursuant to such rules and to deposit such fines into the Mauna Kea Management Special Fund to be expended in accordance with the purposes provided and as specifically authorized by law. Currently, the law lists only inventory, equipment, surplus property, and expenditures as possible subject matters for University rules.

MEANS: Add a new section to chapter 304A, Hawaii Revised Statutes, and amend section 304A-105(a), Hawaii Revised Statutes.

JUSTIFICATION: The University receives land or interests in land from various sources, such as private donors and state or federal government entities, and by various means, including long term leases, executive orders, and deeds. The University is presently leasing the Mauna Kea lands from the Board of Land and Natural Resources (BLNR). Often, within the context of its primary mission as the sole public institution for higher education in the State, limited public and commercial activity is permitted on or within the Mauna Kea lands. It could be argued that the

University has the implied authority to adopt administrative rules regulating public or commercial activity occurring on or within the Mauna Kea lands. Nevertheless, to eliminate any ambiguity and uncertainty, the University seeks express statutory authority to adopt such administrative rules.

The authority to adopt administrative rules is expected to help the University more effectively and efficiently carry out its management obligations under the BLNR's lease of the Mauna Kea lands to the University. The University is preparing a Comprehensive Management Plan (CMP) that is designed to protect and preserve the natural and cultural resources on and within the Mauna Kea lands. The University will be seeking BLNR approval for the CMP, which will require the University to carry out a variety of oversight and management functions and responsibilities. Having rulemaking authority will enable the University to more efficiently carry out these CMP functions and responsibilities.

Granting the University the authority to assess and collect administrative fines should enable the University to more effectively enforce such rules. In adopting such rules, the University will be required to address and resolve any conflicts with other applicable statutes or rules.

Impact on the public: This measure will grant to the University express statutory authority to adopt rules to manage and regulate public activities on or within the Mauna Kea lands. Such rules are expected to impact the public to the extent necessary to preserve and protect: (a) significant and unique cultural and natural resources and (b) the public health and safety.

Impact on the department and other agencies: This express grant of statutory rulemaking

authority to the University is expected to enhance the University's ability to carry out its management responsibilities and functions as required under the BLNR lease and the CMP. The University will need to coordinate its management and enforcement efforts with the State Department of Land and Natural Resources and various County of Hawaii agencies and departments.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: UOH-900

OTHER AFFECTED
AGENCIES: Department of Land and Natural Resources.

EFFECTIVE DATE: Upon approval.