

JAN 23 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. (a) Pursuant to the constitution and statutes
2 of 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 of
6 Hawaii or leased, demised, or transferred to the University of
7 Hawaii from various owners, including state, federal, or private
8 entities, for the furtherance of the University of Hawaii's
9 educational, research, and 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 of
17 Hawaii. Nevertheless, the purpose of this Act is to clarify and



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

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

19 (1) General access to sensitive resource areas, such as
20 specific cultural features and identified natural
21 resource habitat areas;

22 (2) Traffic and off-road vehicle management and control;



- 1 (3) Alcohol consumption;
- 2 (4) Snow play activities; and
- 3 (5) Commercial tour activities.

4 Access for traditional and customary native Hawaiian
5 cultural and religious purposes shall be accommodated. The
6 University of Hawaii shall encourage and foster a process of
7 collaboration and involvement with the Mauna Kea lands advisory
8 bodies and community interests to ensure that the process of
9 developing administrative rules is accomplished with community
10 participation and input.

11 (b) The purpose of this Act is to:

12 (1) Authorize the board of regents of the University of
13 Hawaii to manage and control public and commercial
14 activities on Mauna Kea lands; and

15 (2) Establish a Mauna Kea lands management special fund to
16 assist the University of Hawaii in its task of
17 regulating the use of the Mauna Kea lands.

18 SECTION 2. Chapter 304A, part IV, Hawaii Revised Statutes,
19 is amended by adding a new subpart to be appropriately
20 designated and to read as follows:

21 " . Mauna Kea Lands

22 §304A-A Definitions. As used in this subpart:



1 "Board of Regents" means the board of regents of the
2 University of Hawaii.

3 "Fees" includes rents on leases of Mauna Kea lands, moneys
4 received for use of Mauna Kea lands, moneys attributable to
5 commercial activities on Mauna Kea lands, and moneys received
6 for the use of facilities and programs on Mauna Kea lands.

7 "Mauna Kea lands" means the lands that the University of
8 Hawaii is leasing from the board of land and natural resources,
9 including the Mauna Kea Science Reserve, Hale Pohaku, the
10 connecting roadway corridor between Hale Pohaku and the Mauna
11 Kea Science Reserve, and any other lands on Mauna Kea that the
12 University of Hawaii leases or over which the University of
13 Hawaii acquires control or jurisdiction.

14 §304A-B Mauna Kea lands; fees; lease agreements. (a) The
15 board of regents may charge a fee for use of the Mauna Kea lands
16 and for the use of facilities and programs related to the Mauna
17 Kea lands.

18 (b) The board of regents may enter into lease agreements
19 for the Mauna Kea lands; provided that the University of Hawaii
20 shall comply with all statutory requirements in the disposition
21 of ceded lands.



1 (c) In establishing the fees, the board of regents shall
2 be exempt from the public notice, public hearing, and
3 gubernatorial approval requirements of chapter 91; provided that
4 the fees shall be established at an open public meeting subject
5 to the requirements of chapter 92. The fees shall be deposited
6 into the Mauna Kea lands management special fund established
7 under section 304A- .

8 §304A-C Mauna Kea lands rules. The board of regents may
9 adopt rules pursuant to chapter 91 to regulate public and
10 commercial activities on Mauna Kea lands.

11 §304A-D Violations; penalties; costs; collection. (a)
12 The board of regents may set and provide for the assessment and
13 collection of administrative fines for violations; provided that
14 the fines shall be set as follows:

- 15 (1) For the first violation, not more than \$2,500;
- 16 (2) For the second violation within five years of a
17 previous violation, not more than \$5,000;
- 18 (3) For the third violation and any subsequent violation
19 within five years of a prior violation, not more than
20 \$10,000.

21 (b) Each day that the violation continues shall constitute
22 a separate offense.



1 (c) The costs of any enforcement proceedings, including
2 the costs of contested case proceedings, may be assessed against
3 a party found to be in violation.

4 (d) Any action taken to impose or collect the penalty
5 provided for in this section shall be considered a civil
6 action."

7 SECTION 3. Chapter 304A, part V, Hawaii Revised Statutes,
8 is amended by adding a new section to be appropriately
9 designated and to read as follows:

10 "§304A- Mauna Kea lands management special fund. (a)
11 There is established the Mauna Kea lands management special
12 fund. The proceeds of the special fund shall be used for the
13 following purposes:

14 (1) Managing the Mauna Kea lands including maintenance,
15 administrative expenses, salaries and benefits of
16 employees, contractor services, supplies, security,
17 equipment, janitorial services, insurance, utilities,
18 and other operational expenses; and

19 (2) Enforcement of the administrative rules adopted
20 relating to the Mauna Kea lands.

21 (b) The following shall be deposited into the special
22 fund:



1 (1) Appropriations by the legislature to the special fund;

2 (2) All net rents from leases, licenses, and permits,
3 including fees and charges for the use of land and
4 facilities within the Mauna Kea lands;

5 (3) All moneys collected for violations of subpart ;
6 and

7 (4) Interest earned or accrued on moneys in the special
8 fund.

9 (c) No moneys deposited into the Mauna Kea lands
10 management special fund may be used by the governor or the
11 director of finance as a justification for reducing any budget
12 request or allotment to the University of Hawaii unless the
13 University of Hawaii requests the reduction.

14 (d) The University of Hawaii may establish separate
15 accounts within the special fund for major program activities.

16 (e) All expenditures from this special fund shall be
17 subject to legislative appropriation.

18 (f) For the purposes of this section, "Mauna Kea lands"
19 means the same as defined in section 304A-A."

20 SECTION 4. In codifying this Act, the revisor of statutes
21 shall substitute appropriate section numbers for the section
22 designations used in this Act.



1 SECTION 5. New statutory material is underscored.

2 SECTION 6. This Act shall take effect upon its approval.

3

INTRODUCED BY:



Report Title:

University of Hawaii; Mauna Kea Management; Special Fund

Description:

Authorizes the board of regents to adopt rules to manage activities of Mauna Kea lands; establishes a special fund for the University of Hawaii to manage Mauna Kea lands.

