

MAR 10 2010

SENATE RESOLUTION

REQUESTING, FOR REVIEW BY THE LEGISLATURE AND THE AUDITOR, AN ACCOUNTING AND REPORT CONCERNING ITEMS OF VALUE, INCLUDING VIEWING TIME ON MAUNA KEA TELESCOPES, PROVIDED TO THE UNIVERSITY OF HAWAII AND ITS INSTITUTE FOR ASTRONOMY FOR THE LEASE OR USE OF FACILITIES ON PUBLIC TRUST LANDS ON THE SUMMIT OF MAUNA KEA.

1 WHEREAS, the lands on the summit of Mauna Kea are public
2 lands returned to Hawaii at Statehood (1959) under section 5(f)
3 of the Admission Act and subject to an express public trust; and
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5 WHEREAS, that trust imposes an express public trust duty
6 and legal restrictions on the State, including a requirement
7 that all revenues derived from the use of the public trust lands
8 must be deposited into the public lands trust fund; and
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10 WHEREAS, under section 171-17, Hawaii Revised Statutes, the
11 State's Board of Land and Natural Resources (BLNR) is required
12 to assess and charge fair-market lease rent for the use of
13 section 5(f) public trust lands (ceded lands); and
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15 WHEREAS, in 1961, the Mauna Kea summit, forestry, and
16 watershed lands were designated for protection and placed in the
17 state Conservation District, pursuant to section 205-2, Hawaii
18 Revised Statutes; and
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20 WHEREAS, in 1968, the BLNR leased approximately 13,320
21 acres of public trust lands on the Mauna Kea summit and slopes
22 to the University of Hawaii and the University of Hawaii's
23 Institute for Astronomy (UH/UHIFA) for "a scientific complex,
24 including without limitation an observatory...." (General Lease
25 No. S-4191); and
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27 WHEREAS, the lease term was sixty-five years until 2033,
28 and the lease rent to the UHIFA was a nominal \$1 per year; and
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30 WHEREAS, the lease or setting aside of public trust lands
31 from BLNR to a state department, agency, or county is often made



1 for nominal or no rent because the entities are sub-units of the
2 State; and

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4 WHEREAS, since 1968, UHIFA has entered into multiple sub-
5 lease and use agreements with private third parties for the
6 development of telescope facilities on Mauna Kea's summit; and

7
8 WHEREAS, in exchange for the sub-lease and use agreements,
9 UHIFA obtained the right to viewing time on each of the
10 telescopes and a formally-established sub-lease rent of a
11 nominal amount; and

12
13 WHEREAS, both UHIFA and BLNR failed to assess, charge, or
14 collect fair-market lease rents from private third parties for
15 the use of the public trust lands on Mauna Kea, and UHIFA
16 obtained a valuable quid pro quo of viewing time which was never
17 monetized or deposited in the public land trust fund pursuant to
18 section 171-18, Hawaii Revised Statutes; and

19
20 WHEREAS, instead of assessing and charging reasonable lease
21 rents pursuant to state law, BLNR has allowed the UHIFA since
22 1968 to negotiate sub-lease agreements with some of the world's
23 wealthiest foreign and domestic entities (corporations and
24 foreign governments) in exchange for \$1 per year and time-in-
25 lieu-of-rent agreements for the use of the Mauna Kea lands; and

26
27 WHEREAS, while state taxpayers face employee layoffs,
28 furloughs, salary cuts, reduced public services, and potential
29 tax increases, the same taxpayers continue to subsidize wealthy
30 foreign and domestic entities' direct use of public trust lands
31 through the failure of BLNR and UHIFA to collect fair-market
32 lease rent for the use of Mauna Kea lands; and

33
34 WHEREAS, from 1968 to 1970, UHIFA built two twenty-four
35 inch (0.6 m) telescopes and UH built an eighty-eight inch
36 (2.2 m) telescope on the summit of Mauna Kea (BLNR 1983
37 documents including sub-lease agreements and Mauna Kea
38 chronology); and

39
40 WHEREAS, in 1979, BLNR and UH negotiated the first sub-
41 lease agreement with foreign entities (France and Canada) for
42 the construction of the Canada-France-Hawaii Telescopes on the
43 summit of Mauna Kea; and

44



1 WHEREAS, subsequently, several more foreign entities
2 entered into sub-lease agreements with the BLNR and UH for the
3 use of public trust lands on the summit including, but not
4 limited to; Canada, France, the United Kingdom, the Netherlands,
5 Japan and the Mitsubishi Corporation, Australia, Taiwan, Brazil,
6 Chile and Argentina; and
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8 WHEREAS, BLNR and UH negotiated sub-leases with out-of-
9 state public and private universities and institutions,
10 including but not limited to the California Institute of
11 Technology, the University of California institutions including
12 Berkeley, the California Association of Research in Astronomy,
13 and the W.M. Keck Foundation; and
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15 WHEREAS, BLNR and UHIFA required these wealthy foreign and
16 out-of-state entities to pay only \$1 per year in lease rent and
17 to provide ten to twenty per cent of the viewing time on each
18 facility to the UHIFA in lieu of charging fair-market lease rent
19 as required by law; and
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21 WHEREAS, BLNR and UH negotiated and are currently
22 negotiating lease agreements with private asset-rich
23 organizations including the W.M. Keck Foundation and the Gordon
24 and Betty Moore Foundation; and
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26 WHEREAS, the summit of Mauna Kea is an important community
27 resource; and
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29 WHEREAS, the world astronomy community ranks the summit of
30 Mauna Kea as one of the best sites in the world for conducting
31 world class astronomy, and the University of Hawaii has long
32 claimed that Mauna Kea's rarified atmosphere and excellent
33 viewing conditions make it one of the premier astronomical sites
34 in the world; and
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36 WHEREAS, the lands of Mauna Kea are host to unique and
37 fragile ecosystems and threatened and endangered plant and
38 animal species found nowhere else on Earth; and
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40 WHEREAS, the conservation district of Mauna Kea encompasses
41 critical watershed and forestry lands; and
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1 WHEREAS, the Mauna Kea aquifer is the principal freshwater
2 aquifer for the island of Hawaii and provides Hawaii island
3 residents with drinking water; and
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5 WHEREAS, Mauna Kea is considered one of the most sacred
6 places in Hawaii and native Hawaiians continue to revere it as a
7 sacred burial ground and wahi pana; and
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9 WHEREAS, Mauna Kea is home to unique cultural and historic
10 resources that have been designated as a National Historical
11 Landmark and granted protection under state and national
12 historic preservation laws; and
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14 WHEREAS, Mauna Kea summit lands and Lake Waiau contain
15 unique geological characteristics that have contributed to
16 geological knowledge regarding glaciers and glaciations of the
17 last ice age; and
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19 WHEREAS, viewing time is very valuable as astronomy is a
20 competitive industry and many institutions are willing to pay
21 extraordinary hourly rates for time on the astronomical
22 facilities on Mauna Kea; and
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24 WHEREAS, under the time-in-lieu-of-rent agreements, each
25 astronomical facility is required to give the UHIFA
26 approximately thirty-six to fifty-four observing nights per
27 year; and
28

29 WHEREAS, in 2009, Yale University agreed to pay \$12,000,000
30 for fifteen observing nights per year for ten years on the
31 William M. Keck Observatory, which is \$1,200,000 per year for
32 fifteen nights or \$80,000 per night; and
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34 WHEREAS, the W.M. Keck Foundation owns and operates the
35 William M. Keck Observatory on Mauna Kea; and
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37 WHEREAS, the W.M. Keck Foundation website reports assets in
38 excess of \$1,000,000,000; and
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40 WHEREAS, the UHIFA is unilaterally appropriating value from
41 the use of public lands by private third parties (in lieu of
42 lease rent) for UHIFA's exclusive benefit without legislative
43 appropriation or approval and without any public accounting to
44 the residents and taxpayers of Hawaii; and



1
2 WHEREAS, public/private sector patent-leasing agreements
3 are valuable; and
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5 WHEREAS, since at least 1968, the UHIFA has come before
6 state lawmakers seeking moneys from the general fund to support
7 UHIFA and astronomy development in general on both Mauna Kea and
8 Haleakala; and
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10 WHEREAS, in 2001, UHIFA sought the Legislature's approval
11 of approximately \$709,000 in public funds and in 2010, the UHIFA
12 requested \$2,100,000 in public funds to secure the bid for the
13 Thirty Meter Telescope to be built on Mauna Kea; and
14

15 WHEREAS, UHIFA claims it holds numerous patents on various
16 technologies that were developed and tested on the astronomical
17 facilities on Mauna Kea and Haleakala, and the patents are often
18 leased to private high tech companies for substantial monetary
19 value; and
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21 WHEREAS, in 2001, UHIFA claimed it had patent leasing
22 contracts worth approximately \$14,000,000; and
23

24 WHEREAS, there has been no public accounting of the patent-
25 leasing contracts that are held by foreign and out-of-state
26 entities using Mauna Kea and Haleakala, and UHIFA has not
27 explained why these patent lease revenues were never recorded as
28 public revenues on the public ledger; and
29

30 WHEREAS, the existence of public-private agreements in
31 which public tax dollars are taken from the general fund, used
32 for initial research and development, and then patented and sold
33 for profit implies that Hawaii taxpayers could be subsidizing
34 out-of-state and foreign private profit; and
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36 WHEREAS, contracts held by out-of-state and foreign
37 entities that benefit from Hawaii public taxpayer support should
38 be publically assessed and accounted for; now, therefore,
39

40 BE IT RESOLVED by the Senate of the Twenty-fifth
41 Legislature of the State of Hawaii, Regular Session of 2010,
42 that UH and UHIFA are requested to provide a written accounting
43 and report to the Legislature within fourteen calendar days of



1 the effective date of this Resolution setting forth the
2 following information:

- 3
- 4 (1) A list of the total viewing time provided to UH,
5 UHIFA, their employees, agents, faculty, researchers,
6 affiliates, graduate students, visiting scientists,
7 and all those operating under or in association with
8 UH or UHIFA, without exception, for each telescope or
9 astronomical facility on Mauna Kea by year since 1968;
- 10
- 11 (2) A determination of the financial value by night or by
12 hour of the viewing time for each facility for each
13 year since 1968 for all of the viewing time set forth
14 in paragraph (1);
- 15
- 16 (3) A list of all value (viewing time, financial, quid pro
17 quo exchanges, and any and every other benefit)
18 received by the UH or UHIFA in relation to each
19 facility on Mauna Kea (or the sponsor) by year since
20 1968; and
- 21
- 22 (4) A list and copy of every contract or working agreement
23 or any other agreement UH or UHIFA has entered into
24 for the use of any facility on Mauna Kea by year since
25 1968; and

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27 BE IT FURTHER RESOLVED that the Auditor is directed to
28 conduct a review of the UH and UHIFA written report and make a
29 separate written report to the Legislature within thirty days
30 following receipt of the UH and UHIFA report by the Legislature;
31 and

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33 BE IT FURTHER RESOLVED that certified copies of this
34 Resolution be transmitted to the President of the University of
35 Hawaii, the Executive Director of the University of Hawaii
36 Institute for Astronomy, the Chair of the Board of Regents of
37 the University of Hawaii, the Chair of the Board of Land and
38 Natural Resources, the Director of Commerce and Consumer
39 Affairs, and the Auditor.

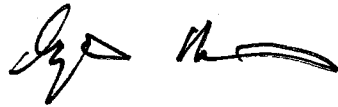
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42 OFFERED BY:

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S.R. NO. 118

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By 

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