



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Water and Land and
House Committee on Ocean, Marine Resources, and Hawaiian Affairs
Wednesday, February 12, 2014 at 8:00 a.m.

by
Donald O. Straney
Chancellor, University of Hawai'i at Hilo

HB 1689 HD1 – RELATING TO MAUNA KEA

Chairs Evans and Hanohano, Vice Chairs Lowen and Cullen, and Members of the Committees:

Thank you for the opportunity to submit testimony on HB 1689 HD1. This bill relates to the use of a fair market valuation for subleases of Mauna Kea lands when the University calculates the pro rata share of ceded land revenues to be transferred to the Office of Hawaiian Affairs (OHA).

The University has heard the community's concern about the need to charge substantial rent for astronomy use on Mauna Kea. In response, the University has committed that any new sublease on Mauna Kea will include substantial rent that will be used to appropriately manage the Mauna Kea lands. The University is also fully committed to paying OHA its 20% share of revenues generated from ceded lands on Mauna Kea, and has paid nearly \$500,000 from tour operator fees.

In 2009, this Legislature passed Act 132, which formally establishes a mechanism that requires sublease rents and fees charged on Mauna Kea to be placed into the Mauna Kea Lands Management Special Fund (MKLMSF), which can only be used for the management of Mauna Kea. The funds deposited into the MKLMSF are subject to Act 178 (2006), which statutorily requires the State to make payments collected for all of its agencies to OHA according to a prescribed schedule and rate. The University is also bound by the Board of Land and Natural Resources, which has included conditions requiring payment of substantial sublease rent in its most recent Conservation District Use Permit. This sublease rent is distinct from the sharing of construction and operating costs of the telescope facilities among universities and other scientific partners, which are substantial, but which do not generate revenue for UH or any other participant.

The sublease for the Thirty Meter Telescope (TMT) will be the first under the new paradigm and will require the payment of substantial rent. The rent paid under this sublease, which is currently under negotiation and is expected to be finalized this spring, will be subject to the 20% payment to OHA. The remaining rent from TMT will be used to fund the management of the Mauna Kea lands. UH believes this process should be allowed to come to fruition before revisiting the structure of Act 132.

Existing subleases on Mauna Kea run through 2033 and do not provide for the payment of rent. The language of this bill would appear to require UH to pay OHA 20% of "fair market value of using Mauna Kea lands" for those subleases even though no revenue is actually being received. UH is committed to paying OHA its 20% share of revenues received, but opposes any requirement to pay when no actual revenue exists. UH is not aware of any other situation in which

an agency is required to make payments in the absence of actual revenue from ceded lands.

UH has concerns about applying the concept of "fair market value" to the unique situation of astronomy on Mauna Kea. UH is committed to charging substantial rents on all new subleases, which will be dedicated to stewardship of the mountain, as required by law. However, there is no established rental market for astronomy sites or the Mauna Kea summit, so a standard based on "fair market value" would be difficult to apply.

UH also has concerns about the wording in the bill suggesting that "fair market value" should include the value of using "facilities and programs relating to the Mauna Kea lands", which would appear to go well beyond valuation methodologies generally applied to leases of raw land. UH is unaware of any other state land lease involving rental payments that take into account the value of improvements constructed or programs conducted by lessees or sublessees, and is concerned that such an approach could negatively impact State leases.

If the Legislature determines that a statutory standard for the amount of rent is needed, UH suggests that a more appropriate measure would be one that divides the costs of stewardship among astronomy facilities on the mountain, to be phased in over time as the TMT sublease and any future sublease renegotiations are completed.

Thank you for the opportunity to provide testimony.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:

H.B. NO. 1689, H.D. 1, RELATING TO MAUNA KEA.

BEFORE THE:

HOUSE COMMITTEES ON WATER AND LAND AND ON
OCEAN, MARINE RESOURCES, AND HAWAIIAN AFFAIRS

DATE: Wednesday, February 12, 2014 **TIME:** 8:00 a.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Charleen M. Aina, Deputy Attorney General

Chairs Evans and Hanohano, and Members of the Committees:

The Attorney General is concerned that passage of this measure may fracture the coordinated process the Legislature established in Act 178, Session Laws of Hawaii 2006, to implement section 5(f) of the Admission Act, and article XII, section 6, of the State Constitution, and assure that the Office of Hawaiian Affairs' (OHA) receives a share of the annual income and proceeds derived from or generated by the ceded lands.

Under Act 178, Executive Order No. 06-06, and the supervision of Department of Budget and Finance, state agencies that collect receipts for the use of ceded lands are required to deposit 20 percent of the ceded land receipts into holding accounts, so that \$3.775 million from those receipts or a total of \$15.1 million a year, can be transferred to OHA, at the close of each fiscal quarter. Because more than 20 different agencies collect and account for receipts, at different intervals and varying frequencies, from fees for services, rents for one-time, limited- or long-term use of state land and facilities, concession agreements, development agreements, rights of entry, and licenses, it is important that there be a single process for accumulating and transferring \$15.1 million to OHA. The Legislature recognized this and enacted Act 178 and authorized the Governor to issue an executive order to establish and detail how that single mechanism was to accomplish this.

This bill directs the University of Hawaii to transfer to OHA an amount equal to 20 percent of the annual fair market value rent for each parcel of land on Mauna Kea the University leases, from its Mauna Kea lands management special fund. The University does not receive any

moneys from these lessees because the form of the rent specified in the leases is not cash but educational services in the form of telescope time for its students, researchers, and faculty.

The bill further directs that the funds from the Mauna Kea lands management special fund are to be deposited into the “public land trust fund.” However, this bill does not include any reference to Act 178 or Executive Order No. 06-06, and the “public land trust fund” is not a fund into which ceded land receipts are deposited for purposes of transfer to OHA under Act 178 or the executive order. Critically, it is not clear whether the funds required to be deposited into the “public land trust fund” for transfer to OHA under this bill are in addition to, or part of OHA’s annual share of ceded land receipts of \$15.1 million under Act 178.

In Section 1 of Act 178, the Legislature wrote:

The legislature also finds that information pertaining to revenue generated by the public land trust should be consolidated within a single state department or agency. In prior years, it has been difficult to account for revenues generated by the public land trust because basic revenue-generating data was and is dispersed among multiple state agencies. A single state department should be responsible for compiling and providing an accounting of such information.

Accordingly, the specific purposes of this Act are to:

- (1) Provide interim measures to ensure that an adequate amount of income and proceeds is made available to the office of Hawaiian affairs from the pro rata portion of the public land trust, **for the betterment of the conditions of native Hawaiians**; and
- (2) Identify revenue-generating public trust lands and the amounts derived from those lands by requiring that the department of land and natural resources provide an annual accounting to the legislature.

(Emphasis added.)

Because the provisions of this bill appear to frustrate the above noted objectives, and risks severing the Legislature’s express effort to base OHA’s share of the ceded land revenues upon section 5(f) of the Admission Act, the Attorney General respectfully requests that the bill be held.