

---

---

## A BILL FOR AN ACT

RELATING TO MAUNA KEA.

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

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

4           "§304A-       Report to the legislature. The board of  
5 regents shall submit an annual report to the legislature on the  
6 fair market lease rates under section 304A-1902(b) and the  
7 revenues transferred to the public land trust fund under section  
8 304A-2170(b) (3)."

9           SECTION 2. Section 304A-1902, Hawaii Revised Statutes, is  
10 amended by amending subsection (b) to read as follows:

11           "(b) The board of regents may enter into lease agreements  
12 for the Mauna Kea lands; provided that the University of Hawaii  
13 shall comply with all statutory requirements in the disposition  
14 of ceded lands[-]; provided further that when the board of  
15 regents calculates the pro rata share of ceded land revenues to  
16 be transferred to the office of Hawaiian Affairs for the lease  
17 of Mauna Kea lands, the amount to be transferred shall be based



1 upon the fair market value of using Mauna Kea lands or of using  
2 facilities and programs related to the Mauna Kea lands."

3 SECTION 3. Section 304A-2170, Hawaii Revised Statutes, is  
4 amended by amending as follows:

5 1. By amending subsection (b) to read:

6 "(b) The proceeds of the special fund shall be used for:

7 (1) Managing the Mauna Kea lands, including maintenance,  
8 administrative expenses, salaries and benefits of  
9 employees, contractor services, supplies, security,  
10 equipment, janitorial services, insurance, utilities,  
11 and other operational expenses; [~~and~~]

12 (2) Enforcing administrative rules adopted relating to the  
13 Mauna Kea lands[~~-~~]; and

14 (3) Transferring for deposit into the public land trust  
15 fund at least twenty per cent of the lease revenues  
16 derived under section 304A-1902(b) as the portion of  
17 revenues subject to section 10-13.5; provided that the  
18 lease revenue calculation shall not include any offset  
19 for the provision of in-kind services."

20 2. By amending subsection (e) to read:

21 "(e) All expenditures from the special fund shall be  
22 subject to legislative appropriation[~~-~~], except for the



# H.B. NO. 1689

1 transfers of lease revenues to the public land trust fund under  
2 subsection (b) (3)."

3 SECTION 4. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 5. This Act shall take effect on July 1, 2014.

6

INTRODUCED BY:

Cindy Evans

Hakshoma

Ray Hanter

Nick E. Lowe

Richard Cruz

R. D. O. J.

JAN 14 2014



# H.B. NO. 1689

**Report Title:**

UH; Mauna Kea; Lease Revenues: Public Land Trust Fund

**Description:**

Requires UH to use a fair market value rate for the lease of its Mauna Kea lands when calculating the 20% pro rata share of lease revenues to the public land trust fund in fulfillment of the university's pro rata share of ceded land revenues owed to the office of Hawaiian affairs. Requires reports to the legislature.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*





# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

Testimony Presented Before the  
House Committee on Higher Education  
January 30, 2014 at 2:15 p.m.

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

HB 1689 – RELATING TO MAUNA KEA

Chair Choy, Vice Chair Ichiyama and Members of the Committee:

Thank you for the opportunity to submit testimony on HB 1689, which requires the University of Hawai'i (UH) to use a fair market value rate for the lease of its Mauna Kea lands when it calculates the pro rata share of ceded land revenues to be transferred to the Office of Hawaiian Affairs (OHA).

UH is committed to charging substantial rent for all new astronomy subleases on Mauna Kea and to paying OHA its 20% share of those rents. UH currently pays OHA 20% of revenues collected from tour operations licensed by the Office of Mauna Kea Management on the mountain and has paid nearly \$500,000 to date.

The first opportunity to apply the new paradigm created by the Legislature with the passage of Act 132 in 2009 will be the sublease for the Thirty Meter Telescope (TMT), which is currently under negotiation and is expected to be finalized this spring. That sublease will include the payment of substantial rent, of which 20% will be paid to OHA. The remaining rent from TMT will be used to fund the management of the university's 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 also 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 to 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. If a standard of this nature is needed, UH suggests that a more appropriate measure would be one that divides the costs of appropriate 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.



**HB1689**  
**RELATING TO MAUNA KEA**  
House Committee on Higher Education

January 30, 2013

2:15 p.m.

Room 309

The Beneficiary Advocacy and Empowerment Committee of the Office of Hawaiian Affairs (OHA) provides the following **COMMENTS** on HB1689.

**OHA appreciates and supports the intent of HB1689.** This bill requires the University of Hawai'i to use the fair market value for the lease of lands on Mauna Kea, when calculating the amount of funds that it must transfer to the public land trust fund, as part of OHA's pro-rata share of revenues generated from the use of public land trust lands.

HB1689 seeks to ensure that OHA receives adequate compensation for future subleases of lands on Mauna Kea. The 11,300 acres of land in the Mauna Kea Science Reserve are public land trust lands classified under section 5(b) of the Admissions Act, the revenues from which must be dedicated to specific purposes including the betterment of Native Hawaiians.

Until this time Mauna Kea lands have been managed in a manner unfairly detrimental to Native Hawaiian public land trust beneficiaries; namely, by allowing sacred cultural lands to be industrially developed without any payment or clear benefit to Native Hawaiians. At the same time, UH has been receiving a substantial benefit from its lessees in the form of telescope time, which has been valued in some cases at more than \$100,000 a night. This benefit has largely flowed solely to the astronomy program at UH; since none of this value is realized as sublessee rent, OHA and its Native Hawaiian beneficiaries (in addition to the BLNR) have received no share of this substantial benefit. In other words, UH's purported benefit from the lease and its subleases has exclusively favored a small group at the significant expense of others. This practice raises questions with regards to whether the University of Hawai'i has been fulfilling its affirmative trust obligations under the public land trust. As we articulated to the Board of Land and Natural Resources, adequate rental rates may prove helpful in funding the appropriate management and stewardship of Mauna Kea, as well as provide clear benefits to the public trust beneficiaries for the use of these ecologically, culturally, and financially invaluable public land trust lands.

To avoid possible fiscal impacts to the University of Hawai'i's educational mission, OHA refers to our testimony made to the BLNR on UH's proposed mutual cancellation and the issuance of a new direct lease to UH for Mauna Kea and Hale Pohaku on November 8, 2013. In our testimony, we noted that any proposed general lease for Mauna Kea lands should include conditions requiring the University of Hawai'i to charge more appropriate rent for the sublease or use of such lands. Such conditions may better ensure that OHA and the state receive appropriate compensation for the use of these public land trust lands, while also ensuring that the University of Hawai'i itself receives adequate revenues to support its broader educational mission. **Under this measure, the University of Hawai'i may continue to charge nominal rent rates for the use of Mauna Kea, and the pro rata share required to be transferred to the public lands trust fund may have to be borne out of other University of Hawai'i funds.**

Finally, OHA notes that it is in the process of conducting a financial review of all public land trust revenue. The financial review will help to identify gaps in revenue from public land trust lands, as well as provide more clarity into the revenues that may be generated from specific lands, such as Mauna Kea. OHA looks forward to working with this committee to identify opportunities to ensure more appropriate benefits flow to public trust beneficiaries for the use of this sacred and unique cultural resource.

Mahalo for the opportunity to testify on this important measure.

TESTIMONY IN SUPPORT OF HB 1689

**LATE**

Thank you to Reps. Evans, Hanohano, and Lowen for introducing this bill.

As a UH Student and as a Kanaka Maoli, I do not agree with the State's position that would affirm a new lease extension on Mauna Kea for the Thirty Meter Telescope. I firmly disagree with the unbalanced, full throttle development and desecration of a sacred place that I can only describe as the equivalent to a church to those who don't understand.

*However*, since Governor Abercrombie has expressed supportive rhetoric which would give this place over to the development of the Thirty Meter Telescope even though there are many telescope already up there, this bill, HB 1689 is vital to keep a check on absolute power.

I don't understand how these plans to extend the lease are moving forward even though we have not determined what the fair market value rent even is? Isn't that irresponsible financial planning?

We do have some perspective on the range we should be negotiating for though. In 2009, for instance, Keck Observatory entered in to an agreement with Yale University in which their researchers would pay \$12 million to use the observatory for 15 nights for 10 years. That's nearly \$80,000 per night! These private telescope operators aren't going to get hurt if we up the ante even just a little bit. But if our sacred space is going to be desecrated, don't insult our intelligence by charging these guys only \$1 in rent. There has to be a balance here. Mauna Kea belongs to the people of Hawaii, and with that comes the right to care for that sacred place and use our resources to manage it respectfully.

Set an example for the student of UH by showing that it is important to plan financially and responsibly. This bill is just one step in the direction to help stopping the University's mismanagement Mauna Kea.

Mahalo,

Megan K. Moniz

3<sup>rd</sup> Year Law Student, William S. Richardson School of Law



January 29, 2014

**LATE**

Shae Kamaka'ala  
P.O. Box 570  
Ka'a'awa, Hawai'i 96730  
[shaelene@hawaii.edu](mailto:shaelene@hawaii.edu)

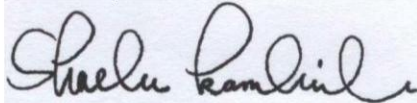
Dear Chair Isaac W. Choy, Vice-Chair Linda Ichiyama, and Higher Education Committee Members,

My name is Shae Kamaka'ala and I am a Native Hawaiian and a law student of the William S. Richardson School of Law and would like to thank the committee the opportunity to provide comments in support of HB 1689, "Relating to Mauna Kea."

The only major concern I have over HB 1689 is whether or not the current language of this bill sufficiently encompasses the University of Hawai'i's sub-leases of Mauna Kea lands to various telescope corporations and entities. This bill provides much needed direction for the University's use of Mauna Kea's ceded lands, and as a stakeholder, I would like to ensure that there will no longer be any loopholes. Besides this concern, I stand in strong support of HB1689.

Mahalo for your time and consideration.

Sincerely,



Shae Kamaka'ala  
[shaelene@hawaii.edu](mailto:shaelene@hawaii.edu)



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

---

**ON THE FOLLOWING MEASURE:**  
H.B. NO. 1689, RELATING TO MAUNA KEA.

**BEFORE THE:**  
HOUSE COMMITTEE ON HIGHER EDUCATION

**LATE**

**DATE:** Thursday, January 30, 2014                      **TIME:** 2:15 p.m.

**LOCATION:** State Capitol, Room 309

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

---

Chair Choy and Members of the Committee:

The Attorney General is concerned that passage of this measure may unnecessarily complicate and create legal issues around the 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.

## ichiyama2-Fern

---

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, January 30, 2014 1:54 PM  
**To:** HEDtestimony  
**Cc:** jmmorgan@hawaii.edu  
**Subject:** Submitted testimony for HB1689 on Jan 30, 2014 14:15PM

**LATE**

### **HB1689**

Submitted on: 1/30/2014

Testimony for HED on Jan 30, 2014 14:15PM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Julia Morgan	KAHEA: The Hawaiian-Environmental Alliance	Comments Only	No

Comments: Aloha mai kakou, KAHEA: The Hawaiian-Environmental Alliance is a Hawai'i community based nonprofit organization with over 12,000 supporters for our work to protect Hawai'i's public trust resources and the communities that thrive in them. We are writing in qualified support of HB1689. KAHEA objects to any new development on Mauna Kea, especially under current development plans. UH has been a poor steward of the natural and cultural resources on Mauna Kea. In the words of KAHEA's Vice President, Jonathan Osorio: "The concern we hold in common is this: the construction and activities around the telescopes already on the summit have contributed, as a previous environmental review has concluded, to "substantial, adverse and significant" impacts to the biological and cultural resources of the mountain's summit areas." KAHEA has significant and valid concerns regarding UH's commitment to protection and preservation, especially in light of UH's attitude that "new damage to that environment is unimportant." Accordingly, we seek the reduction of the number of telescopes and the cessation of any new construction until the impacts can be understood. The Mauna Kea summit is ceded land and Kanaka Maoli and Hawaiian agencies have a claim to those lands and a responsibility to and for them. That being said, KAHEA recognizes that adequate and fair rental rates may assist UH in carrying out its responsibilities to properly manage and preserve the summit area. Moreover, the state, as trustees of this land, does have a duty to ensure that use of the lands benefit all Kanaka Maoli. Therefore, while KAHEA does not support new and continued development on Mauna Kea, and while KAHEA has grave concerns with any attempt to place a monetary or use value on land in general, it does support this bill that would require UH to charge fair market value for the subleases (contrary to the bill's summary, these lands are not "UH lands"), with a portion of such rent to be used to properly manage and preserve the summit and a portion to go to OHA to benefit the Kanaka Maoli, whose land it is. KAHEA also welcomes the additional legislative oversight of UH, which this bill would require. Thank you for the opportunity to submit this testimony. Should you have any questions, please do not hesitate to contact us. Me ke aloha KAHEA Board and Staff

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)