



**COMMENTS OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

S.B. NO. 3090, PROPOSED S.D. 1, RELATING TO GOVERNMENT.

LATE

BEFORE THE:

SENATE COMMITTEES ON WATER AND LAND AND ON HIGHER EDUCATION

DATE: Wednesday, February 14, 2018 **TIME:** 4:00 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): WRITTEN COMMENTS ONLY. For more information, call
Bill Wynhoff, Deputy Attorney General

Chairs Rhoads and Kahele and Members of the Committees:

The Department of the Attorney General has the following comments on this bill.

The bill transfers authority over land on Mauna Kea to the newly established Mauna Kea Management Authority and establishes various requirements and powers for management of the land.

§ -39. Article VII, section 4, of the Hawaii Constitution states that “No public money shall be expended except pursuant to appropriations made by law.” There needs to be an appropriation for the Mauna Kea Management Authority to expend funds. We suggest consideration of the following language:

There is appropriated out of the Mauna Kea management revolving fund the sum of \$ or so much thereof as may be necessary for fiscal year 2018-2019 for the purpose of administration, capital improvement projects, and other puposes pursuant to this chapter.

The sum appropriated shall be expended by the authority for the purposes of this Act.

§ -40: If the telescope subleases are transferred to the Mauna Kea Management Authority, the Authority will have all of the obligations that University of Hawaii has under the subleases. The subleases should be reviewed to determine whether any of them impose a duty on the sublessor that is onerous or one that only the

University can perform. Failure to comply with the sublessor's duties under the leases could expose the Authority to liability, including and not limited to breach of contract.

§ -47 and § -48: The Office of Hawaiian Affairs has its own request for additional ceded land revenues in S.B. No. 2136 and H.B. No. 1747. Consideration should be given as to how these sections relate to other OHA revenue and the issue clarified in the bill.

Portions of this bill have been taken from HRS chapter 171. We recommend that the following changes be made so that the bill is internally consistent:

1. In § -2, include a definition for "Executive director." Also, "Holder of record having a security interest" should refer not to "section 171-21" but to "§ -10."

2. The authority will not be issuing patents, so delete "or patent" from § -6.

3. In § -7(c), "and dispositions of remnants" should be deleted because the authority is not being authorized to dispose of remnants.

4. In § -8(d)(1), the reference to the "department" should be to the "authority."

5. In § -9, references to "section 171-21" should be to "§ -10." The end of the final sentence starting with "provided that for the purposes of this section..." can be deleted. Also, any reference to a "patent" can be deleted.

6. In § -10(1), "the special land and development fund" should be replaced with "the Mauna Kea management revolving fund."

7. In § -11, the second paragraph should be deleted because (we assume) there will be no "leases or sales for residential purposes."

8. In § -12(a), "and setting aside of lands by executive orders," and in § -12(b), "executive order," should be deleted because the authority is not being given this power.

9. In § -16(a)(2), there will be no residential leases, so everything after "No lease shall be for a longer term than sixty-five years" should be deleted.

10. § -16(c) should be deleted because there will be no "agricultural, aquaculture, or mariculture lease."

11. § -19(1) should be deleted because there will be no crops.

12. § -22, as drafted, is not applicable because no Mauna Kea lands are classified as commercial or industrial. All Mauna Kea lands are conservation lands. To fix this, § -22(a) needs to be revised to only refer to lessees of Mauna Kea lands and § -22(b)(2)(C) needs to be revised to state that lands are classified “as conservation lands.”

13. § -25 “board” should be “authority.”

We respectfully ask the Committees to consider revisions to this bill.