



SB757 SD1
RELATING TO THE UNIVERSITY OF HAWAI'I
Senate Committee on Ways and Means

February 28, 2018

11:00 a.m.

Room 211

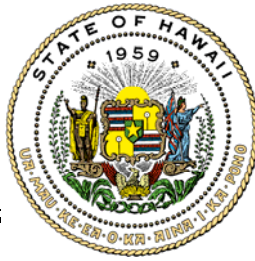
The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on SB757 SD1, which would require the auditor to conduct a financial audit of the University of Hawai'i's (UH's) activities related to Maunakea. **OHA appreciates and supports the recognition of a need to more closely examine the stewardship of Maunakea – a singularly unique place of tremendous environmental, cultural, and spiritual significance – and to better account for UH's public trust obligations in its management of Maunakea's lands.**

As a preliminary matter, OHA re-emphasizes the litany of historical and ongoing failures of UH in its management of Maunakea. These include, but are not limited to: the failure to budget and fund proper management of UH's Maunakea lands; the failure to prudently negotiate sublease terms, allowing for gratis or nominal rents for multi-million dollar development projects; the failure to adequately implement a decade-old Comprehensive Management Plan, including 32 of its 54 management actions specifically affecting Native Hawaiians; the failure to meaningfully consult with OHA, Kahu Kū Mauna, and other cultural stakeholders on management policies and rules; the failure to maintain an environment that appropriately respects Maunakea's cultural landscape and singular cultural significance, including through the protection of Native Hawaiian traditional and customary rights and practices; the failure to manage public access and highly inappropriate and/or unsafe activities, which have led to numerous vehicular accidents and fires, deaths and bodily injuries, and spills of highly hazardous waste; and the failure to enforce lease and sublease terms and otherwise manage observatory development and decommissioning. **Insofar as these failings, and others, have persisted for over a generation, including through four state audits and multiple lawsuits spanning two decades, OHA appreciates these measures' recognition of a need to examine more closely the operations and activities of the University of Hawai'i as they pertain to Maunakea.**

Notably, as a state agency, UH has constitutional and fiduciary obligations under the public trust, to public lands and resources under its administration and control. The immense environmental, cultural, and spiritual value of Maunakea's public trust lands counsel an especially heightened level of care in fulfilling these obligations, including the obligation to conserve and protect natural and cultural resources for present and future generations. Unfortunately, it is clear that UH has not lived up to these obligations, and has instead continuously pushed for more and greater observatory development on

Maunakea's summit, at the expense of the lands, resources, and beneficiaries of the public trust. **Accordingly, OHA believes that an audit, particularly with regards to the items found on page 2, line 10 thru page 4, line 16, would shed valuable light on areas of longstanding concern, would provide critical information necessary to understand how and why UH has continuously failed to properly manage the public trust resources under its control, and would help to identify potential first steps to restoring balance in the management and stewardship of Maunakea.**

Mahalo nui for the opportunity to testify on this measure.



SENATE COMMITTEE ON WAYS AND MEANS
The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair

S.B. NO. 757, S.D. 1, RELATING TO THE UNIVERSITY OF HAWAII

Hearing: Wednesday, February 28, 2018, 11:00 a.m.

The Office of the Auditor **has no position** regarding S.B. No. 757, S.D. 1, which requires the auditor to conduct a financial audit of the University of Hawai‘i’s activities related to Mauna Kea. **However, we have the following comments and requests for clarification.**

Initially, we note that the University of Hawai‘i undergoes an annual audit of its financial statements by an independent CPA firm, which assesses whether the University of Hawai‘i’s financial statements are presented fairly and in accordance with generally accepted accounting principles. The most recent financial audit, which is for the fiscal year ending June 30, 2016, is accessible through our website.¹ The audit of the University of Hawai‘i required by the proposed draft appears to duplicate that audit, at least in part.

The audits that we regularly perform of State agencies are “performance audits,” which generally assess specific agency programs or activities. Among other things, we examine how the agency is performing its statutory duties; evaluate whether the agency is using public resources, both financial and personnel, responsibly, effectively, and efficiently; and report our findings, which include recommendations intended to help the agency address any issue in its performance that we have identified during our audit.

The audits of the management of Mauna Kea and the Mauna Kea Science Reserve that we conducted in 1998 (Report No. 98-6, *Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve*) and again in 2005 (Report No. 05-13, *Follow-up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve*), were performance audits.

If the intent of S.B. No. 757, S.D. 1 is to have us conduct a performance audit of the management of Mauna Kea and the Mauna Kea Science Reserve, we would suggest that the term “financial” be deleted. We also request that the committee significantly narrow the scope of the requested audit, both the list of offices to be audited as well as the activities to be assessed. We suggest that the committee determine and identify the specific aspects of the University of Hawai‘i’s activities related to Mauna Kea that it is interested in having us examine, and that the bill and resolution be amended to specifically reflect only those areas.

Thank you for considering our testimony regarding S.B. No. 757, S.D. 1.

¹ <http://files.hawaii.gov/auditor/Reports/2016/UHFinancialAuditReport2016.pdf>



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Ways and Means
February 28, 2018 at 11:00 a.m.

by
Kalbert K. Young
Vice President for Budget and Finance/Chief Financial Officer
and
Carrie K. S. Okinaga
Vice President for Legal Affairs/University General Counsel
University of Hawai'i

SB 757 SD1 – RELATING TO THE UNIVERSITY OF HAWAII

Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the committee:

The University of Hawai'i (UH) appreciates the intent behind SB 757 SD1 (and SCR 29), and thanks the committee for acknowledging the significant changes the University has made over the years in improving its stewardship on Maunakea.

While the University appreciates efforts in SD1 to narrow the definition and scope of the audit, we cannot support SB 757 SD1 as written.

First, in Sections 1(a)(10)-(15), SD1 incorporates wholesale the accusations-phrased-as-questions of the Office of Hawaiian Affairs (OHA) which sued both the State of Hawai'i and the UH regarding the exact same subject matter. For example, section 1(a)(14) states that the University is to be audited on the value of "damage" and "opportunity costs" "that can be reasonably attributed to the failure of the University of Hawai'i to adequately balance observatory development with its public trust obligations." **It is wholly inappropriate for the legislature to insert itself as judge and jury in making conclusions of law, in law, while litigation is pending**, especially where one State agency has sued the State of Hawai'i itself, as well as the UH. We would respectfully note that validating OHA's (repeat) conduct in suing other State agencies would result in additional government-to-government litigation which is typically regarded by the public as a waste of taxpayer dollars. **Sections 1(a)(10)-(15) of SD1, as adopted from OHA testimony, should be stricken**; OHA has chosen to litigate, so it should be held to litigate these questions in a court of law. The substantive financial information being "requested" by OHA is covered by the earlier provisions in SD1.

Second, the scope of the audit is still overly broad. There are no time limitations provided, and the University does not maintain records for the duration of its activities on Maunakea.

Finally, the audit is duplicative and as the Legislative Auditor testified, it will be expensive. Recognizing the desire for updated financial information, the University administration has gathered basic information about both UH and Research Corporation of the University of Hawai'i (RCUH) programs relating to Maunakea. In addition, the Board of Regents (BOR) has adopted the attached Resolution Requesting Financial Management Audit of Maunakea Activities at its February 22, 2018 BOR Meeting which was held in Hilo. The Resolution calls for the Office of Internal Audit, which reports to the BOR and its Internal Audit Committee, to conduct an audit that **shall be completed by September 30, 2018**, and shall:

- (1) Study all university funds, lease payments, and any external funds that are received and used in the support of stewardship, management, education, and other activities related to Maunakea; and
- (2) Review transfers of funds between entities including both the UH and RCUH, and payments made to university-related support programs by Maunakea observatories or other third parties.

The Committee should consider the University's audit to be pursued before the State embarks on the costly and time-consuming audit called for in this bill. As the Legislative Auditor testified at the Higher Education Committee meeting, the cost of the audit proposed in a prior proposed SD1 could be as high as \$300,000. Again, we would also point the committee to the Annual Reports on the Mauna Kea Lands filed every year, as required by Hawai'i Revised Statutes Section 304A-1905¹, and to the multiple audits already performed by the State Auditor². We welcome the opportunity to supplement and update information already requested and provided.

In that vein, the University cannot support SB 757 SD1, since it inappropriately adopts wholesale the deposition-like "questions" posed by OHA, which are pending in current litigation which OHA chose to bring, it is overly broad in duration, and it is expensive and unnecessary considering the annual audits that are already conducted and the contemplated UH Regents audit.

Thank you for this opportunity to submit testimony.

¹ The most recent Annual Report is dated November 2017, and is found at http://www.hawaii.edu/govrel/docs/reports/2018/hrs304a-1905_2018_maunakea-lands_annual-report.pdf.

² See, e.g., 2014 Follow-Up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve, Exhibit 1.7 (Office of Mauna Kea Management Allocations, Revenues, and Expenditures, FY2009-FY2013), at p. 11; link provided here <http://files.hawaii.gov/auditor/Reports/2014/14-07.pdf>.

RESOLUTION

Requesting Financial Management Audit of Maunakea Activities

WHEREAS, the University of Hawai‘i (“university”) recognizes its kuleana and role in the responsible management and stewardship of Maunakea across multiple dimensions; and

WHEREAS, in 1968, the State Department of Land and Natural Resources (“DLNR”) issued a 65-year lease to the university, as lessee, for approximately 13,321 acres situated atop Maunakea for use as a science reserve; and

WHEREAS, in 1998, by mutual agreement approximately 2,033 acres were withdrawn from the lease, leaving an area of approximately 11,288 acres at the summit of Maunakea under the management of the university; and

WHEREAS, in 1999, DLNR conveyed to the university a 55-year lease for approximately 19.26 acres at Hale Pohaku – mid-level support facilities and visitor center; and

WHEREAS, pursuant to a non-exclusive easement with DLNR, the university also manages a portion of the Summit Access Road between Hale Pohaku and the university-managed summit area (the total acreage of the summit area, Hale Pohaku mid-level facilities area, and Summit Access Road easement area under university management is hereinafter referred to as “Science Reserve”); and

WHEREAS, in April 2009, a Comprehensive Management Plan that had been developed by the university and approved by the Board of Regents was adopted by the State Board of Land and Natural Resources (“BLNR”) to provide a management framework to address existing and future uses and activities within the Science Reserve; and

WHEREAS, on March 25, 2010, the BLNR approved four sub-plans that had been developed by the university and approved by the Board of Regents addressing public access, cultural resources management, natural resources management, and decommissioning, which were incorporated into the Comprehensive Management Plan (hereinafter collectively referred to as “CMP”); and

WHEREAS, public concerns have emerged and been made known to the Board of Regents and university administration regarding the university’s operational and financial management of the Science Reserve through various university-related entities including but not limited to the Office of Maunakea Management, Institute for Astronomy, and Maunakea Observatories Support Services, which receives administrative support through the Research Corporation of the University of Hawai‘i (RCUH); and

WHEREAS, the Board of Regents desires that these public concerns be objectively studied and properly addressed; and

University of Hawai‘i Board of Regents

R E S O L U T I O N

WHEREAS, the State Auditor has conducted several audits of the management of Maunakea and the Science Reserve and has published several follow-up recommendations to those management audits, as recently as July 2017 (Report No. 17-06); and

WHEREAS, the audits conducted by the State Auditor were management and compliance audits and did not include a financial management audit.

NOW, THEREFORE, BE IT RESOLVED that the Board of Regents hereby requests, in conjunction with the university administration, that the University of Hawai‘i Office of Internal Audit perform a financial management audit of the relevant university-related entities engaged in Maunakea stewardship and management; and

BE IT FURTHER RESOLVED that the audit shall:

- (1) Study all university funds, lease payments, and any external funds that are received and used in the support of stewardship, management, education, and other activities related to Maunakea; and
- (2) Review transfers of funds between entities including both the university and RCUH, and payments made to university-related support programs by Maunakea observatories or other third parties; and

BE IT FURTHER RESOLVED that the Board of Regents requests that this audit be commenced no later than March 1, 2018, and a report made to the Board of Regents no later than September 30, 2018; the final audit report shall summarize findings and shall also contain specific recommendations on improvements to existing practices or procedures.

Adopted by the Board of Regents
University of Hawai‘i
February 22, 2018

SB-757-SD-1

Submitted on: 2/27/2018 8:19:22 AM

Testimony for WAM on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for OCC Legislative Priorities Committee, Democratic Party of Hawai'i	Support	No

Comments:

**PRESENTATION OF THE
OAHU COUNTY COMMITTEE ON LEGISLATIVE PRIORITIES
DEMOCRATIC PARTY OF HAWAI'I**

TO THE COMMITTEE ON WAYS AND MEANS

THE SENATE

TWENTY-NINTH LEGISLATURE

REGULAR SESSION OF 2018

Wednesday, February 28, 2018

11:00 A.M.

Hawaii State Capitol, Conference Room 211

RE: Testimony in Support of **SB757 SD1**, RELATING TO THE UNIVERSITY OF HAWAII

To the Honorable Donovan M. Dela Cruz, Chair; the Honorable Gilbert S.C. Keith-Agaran, Vice-Chair, and Members of the Committee on Finance:

Good morning, my name is Melodie Aduja. I serve as Chair of the Oahu County Committee ("OCC") Legislative Priorities Committee of the Democratic Party of Hawaii. Thank you for the opportunity to provide written testimony on Senate Bill No. **757 SD1**, relating to the University of Hawaii; Mauna Kea; Audit; and an appropriation.

The OCC Legislative Priorities Committee is in favor of Senate Bill No. **757 SD1** and support its passage.

Senate Bill No. **757 SD1**, is in accord with the Platform of the Democratic Party of Hawai'i ("DPH"), 2016, as it requires the auditor to conduct a financial audit of the University of Hawaii's activities related to Mauna Kea; requires the auditor to submit a report to the legislature; and appropriates funds.

Specifically, the DPH Platform states, "Native Hawaiians are the indigenous people of Hawai'i and deserve a just relationship with the state and federal governments. . . . We support recognition of Native Hawaiians as indigenous people as provided by the U.S. Constitution; such recognition will add to the process of Native Hawaiian self-determination. We also support the international rights of the Native Hawaiian people.

We support the continued engagement and empowerment of the Native Hawaiian community in decisions related to county and state affairs.

We support the growth of Native Hawaiian farming, agricultural and healing practices. We value and wish to foster the preservation of our host culture." (Platform of the DPH, P. 4, Lines 204-214 (2016)).

In addition, the Democratic Party of Hawaii favors technology as its Platform provides, "We recognize that the responsible use and development of technology in all its manifestations offers immense potential for our community, government, including institutions of higher education and business sectors. We encourage synergistic research, development, commercialization and educational programs to promote technological proficiency and innovation. In particular we support Science, Technology, Engineering and Math (STEM) initiatives in our public, private and charter schools as these prepare the next generation to address the needs of our state. We also support programs that facilitate incubator, i.e. start-up, opportunities for new and promising technologies, and encourage the local retention of our intellectual resources." (Platform of the DPH, P. 4, Lines 204-214 (2016)).

Given that Senate Bill No. **757 SD1** requires the auditor to conduct a financial audit of the University of Hawaii's activities related to Mauna Kea; requires the auditor to submit a report to the legislature; and appropriates funds, it is the position of the OCC Legislative Committee to support this measure.

Thank you very much for your kind consideration.

Sincerely yours,

/s/ Melodie Aduja

Melodie Aduja, Chair, OCC Legislative Priorities Committee

Email: legislativepriorities@gmail.com, Tel.: (808) 258-8889

SB-757-SD-1

Submitted on: 2/23/2018 1:36:42 PM

Testimony for WAM on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments:

I support a forensic audit and request it include the following:

1. Whether and to what extent UH has meaningfully calculated the cost of implementing, in a timely and ongoing manner, the 2009 Comprehensive Management Plan for Maunakea and its sub-plans;
2. Whether and to what extent UH has sought to identify revenue sources and ensure sufficient funding and other resources, to implement the 2009 Comprehensive Management Plan and sub-plans in a timely manner;
3. Whether and to what extent UH has worked to establish and implement policies for leases, subleases, and permits, including through the proportional capture of the monetized value of benefits realized by lessees, sublessee, and permittees, to generate sufficient revenues to implement the 2009 Comprehensive Management Plan and sub-plans, and to ensure that trust benefits flow equally to all beneficiaries of the public trust;
4. Whether and to what extent UH has sought to ensure a transparent and fair negotiation process for telescope subleases and commercial permittees, that allows for meaningful public review and input into the proposed use of public trust resources on Maunakea;
5. The value of the opportunity costs, including the value of foregone revenue-generating opportunities as well as the value of natural and cultural resources damaged, substantial bodily injury and/or death, and property damage that can be reasonably attributed to the failure of UH to adequately balance observatory development with its public trust obligations;
6. A breakdown of where UH has obtained funding for its activities relating to Maunakea, including a list of internal funding sources such as its research and training revolving fund, and how UH has specifically expended such funding and dedicated other resources on activities relating to Maunakea, including but not limited to litigation, sublease solicitation and negotiation, other personnel and contractor costs, and the implementation of specific action items in the 2009 Comprehensive Management Plan and sub-plans.

Thank you. Please pass SB757SD1.

SB-757-SD-1

Submitted on: 2/24/2018 7:35:22 PM

Testimony for WAM on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl	Individual	Support	No

Comments:

I support the audit and hope that the legislature will begin to understand the importance of Mauna Kea for all of our islands. Desecration and misuse have to stop.

SB-757-SD-1

Submitted on: 2/22/2018 8:51:18 PM

Testimony for WAM on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Gordon Takaki	Individual	Oppose	No

Comments:

I am strongly opposed to SB757 as it is not necessary and I believe it is being introduced to weaken the Office of Maunakea Management so The Maunakea Management Authority (SB3090) has a better chance of passing. I am also opposed to SB3090 and have submitted written testimony.

I would support SB757 if SB3090 did not exist or was deferred.

Jan Naoe Sullivan

February 28, 2018

The Honorable Donovan Dela Cruz, Chair
and members of the Committee on Ways & Means

Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the Committee:

Subject: S.B. No. 757, S.D. 1 (Relating to the University of Hawaii)

I offer **comments** on S.B. No. 757, S.D. 1, which requires the State Auditor to conduct a financial audit of the University of Hawaii's activities related to Maunakea. Although I am a member of the Board of Regents, this testimony is submitted only on behalf of myself. The Board as a body has not had the opportunity to discuss whether to take a position on S.B. No. 757, S.D. 1.

On February 22, 2018, the Board adopted a resolution requesting the University of Hawaii Office of Internal Audit, which reports directly to the Board, to perform a financial management audit of Maunakea activities. More specifically, the resolution requires the audit to:

- Study University funds, lease payments, and external funds that are received and used in the support of stewardship, management, education, and other activities; and
- Review transfers of funds between entities including the University and Research Corporation of the University of Hawaii and payments made to University-related support programs by Maunakea observatories or other third parties.

As background, the Board's Independent Audit Committee was statutorily established in 2013 and codified in section 304A-321, Hawaii Revised Statutes. As such, the Board, via the Independent Audit Committee, has a statutory responsibility to review and oversee the financial operations of the University, including requiring audits via the Internal Auditor or through an external auditor. Because the Board has begun the process of conducting a financial management audit, the audit called for in this bill is duplicative and therefore unnecessary.

Mahalo for your consideration.

RESOLUTION

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WHEREAS, in 1998, by mutual agreement approximately 2,033 acres were withdrawn from the lease, leaving an area of approximately 11,288 acres at the summit of Maunakea under the management of the university; and

WHEREAS, in 1999, DLNR conveyed to the university a 55-year lease for approximately 19.26 acres at Hale Pohaku – mid-level support facilities and visitor center; and

WHEREAS, pursuant to a non-exclusive easement with DLNR, the university also manages a portion of the Summit Access Road between Hale Pohaku and the university-managed summit area (the total acreage of the summit area, Hale Pohaku mid-level facilities area and Summit Access Road easement area under university management is hereinafter referred to as “Science Reserve”); and

WHEREAS, on April 2009, a Comprehensive Management Plan that had been developed by the university and approved by the Board of Regents was adopted by the State Board of Land and Natural Resources (“BLNR”) to provide a management framework to address existing and future uses and activities within the Science Reserve; and

WHEREAS, on March 25, 2010, the BLNR approved four sub-plans that had been developed by the university and approved by the Board of Regents addressing public access, cultural resources management, natural resources management, and decommissioning, which were incorporated into the Comprehensive Management Plan (hereinafter collectively referred to as “CMP”); and

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WHEREAS, the Board of Regents desires that these public concerns be objectively studied and properly addressed; and

University of Hawai‘i Board of Regents

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WHEREAS, the audits conducted by the State Auditor were management and compliance audits and did not include a financial management audit.

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Adopted by the Board of Regents
University of Hawai‘i
February 22, 2018