



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Higher Education
on

February 13, 2018 at 2:05 p.m.

by

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SB 757 Proposed SD1 – RELATING TO THE UNIVERSITY OF HAWAII

SCR 29 – REQUESTING THE STATE AUDITOR TO CONDUCT A FORENSIC FINANCIAL AUDIT OF THE UNIVERSITY OF HAWAII'S ACTIVITIES RELATED TO MAUNA KEA.

Chair Kahele, Vice Chair Kim, and members of the committee:

The University of Hawai'i (UH) appreciates the intent behind SB 757 proposed 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. And the University thanks the committee for the opportunity to discuss the activities involved and the costs incurred in maintaining astronomy as a valuable economic and research engine for the Island of Hawai'i, while preserving access for members of the public, including cultural practitioners, and balancing that access with protection of natural and cultural resources on Maunakea.

The University believes the intent of this bill and resolution is to encourage transparency around the financial costs and aspects of operations of all parts and functions of the University involved with Maunakea, including but not limited to astronomy. We would 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 also commission annual external financial audits of both UH and the Research Corporation of the University of Hawai'i (RCUH), which provides administrative support services for the Maunakea Observatories Support Services (MKSS) program. We welcome the opportunity to supplement and update information already requested and provided.

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>.

Recognizing the desire for updated financial information, the University administration has gathered basic information about both UH and RCUH programs relating to Maunakea. In addition, we have initiated a request to the Board of Regents (BOR) that the UH Internal Auditor, who reports directly to the Board, prepare an audit of these programs for review by the BOR Independent Audit Committee.

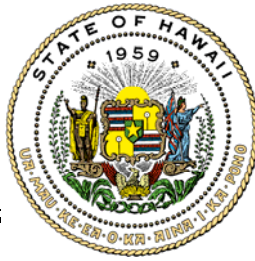
As we have in the past, we will share the results of that financial audit with the Legislature and the Legislative Auditor if so desired. And again, the University is always willing to provide additional or specific information upon request.

The Committee should consider the University's audit to be pursued before the State embarks on the costly and time-consuming "forensic" audit called for in this bill and resolution. The scope of the "forensic" audit, undefined, is overly broad, given that it effectively seeks a review of "all financial expenditures" without limitation.

In that vein, the University cannot support SB 757 SD1 as proposed, since it is overly broad, would be expensive, and unnecessary considering the annual audits that are already conducted and the likely UH Regents audit.

The University can **support SCR No. 29 if it is amended to request that the State Auditor review the University's Internal Audit of the University's and RCUH's programs relating to Maunakea following the acceptance of that report by the BOR Independent Audit Committee.**

Thank you for this opportunity to submit testimony.



SENATE COMMITTEE ON HIGHER EDUCATION
The Honorable Kaiali'i Kahele, Chair
The Honorable Donna Mercado Kim, Vice Chair

**S.C.R. NO. 29, REQUESTING THE STATE AUDITOR TO CONDUCT A
FORENSIC FINANCIAL AUDIT OF THE UNIVERSITY OF HAWAII'S
ACTIVITIES RELATED TO MAUNA KEA**

Hearing: Tuesday, February 13, 2018, 2:05 p.m.

The Office of the Auditor **has no position** regarding S.C.R. No. 29, which requires the auditor to conduct a "forensic 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 "forensic financial audit" required by S.B. No. 757 (SD 1 Proposed), *Relating to the University of Hawaii*, and requested in the resolution is beyond our expertise. A forensic audit, generally, is to examine issues of fraud, embezzlement, or other financial misconduct. If the legislature intends the required audit to assess those types of issues and to do so with respect to each of the listed offices and activities, we request an appropriation of no less than \$300,000 to retain a consultant or consultants to perform the audit.

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.

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.

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

If the intent of S.C.R. No. 29 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 "forensic 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 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.C.R. No. 29.



SB757 Proposed SD1
RELATING TO UNIVERSITY OF HAWAI'I
SCR29

REQUESTING THE AUDITOR TO CONDUCT A FORENSIVE FINANCIAL AUDIT OF THE
UNIVERSITY OF HAWAI'I'S ACTIVITIES RELATED TO MAUNA KEA
Senate Committee on Higher Education

February 13, 2018

2:05 p.m.

Room 224

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on the Proposed SD1 of SB757 and SCR29, which respectively requires and requests the auditor to conduct a forensic 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 offers the following recommendations to better realize the full value that such an audit may provide, with regards to UH's obligations under the public trust.**

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. **While OHA does not have a comment on the "forensic" character of the proposed audits envisioned by the proposed SD1 of SB757 and SCR29, OHA does therefore respectfully suggest that the audits include an examination of 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.

OHA believes that shedding light on the above 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 to identify potential first steps to restoring balance in the management and stewardship of Maunakea.

Mahalo nui for the opportunity to testify on these measures.

SCR-29

Submitted on: 2/12/2018 1:53:08 PM

Testimony for HRE on 2/13/2018 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying on behalf of OCC Legislative Priorities Committee	Support	No

Comments:

SCR-29

Submitted on: 2/11/2018 9:25:00 PM

Testimony for HRE on 2/13/2018 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Theodora Akau Gaspar	Individual	Support	No

Comments:

SCR-29

Submitted on: 2/11/2018 10:03:16 PM

Testimony for HRE on 2/13/2018 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Wai'ala Ahn	Individual	Support	No

Comments:

We support SB 757 D1 and SCR 29 relating to the University of Hawai'i Forensic Financial Audit as it relates to Mauna Kea.

We request the following amendments to be made:

SB 757 SD1 need to be amended to include the RCUH (with regard to the international Observatories revenues generating activities on "Ceded Lands"). The nexus for the amendment is two fold:

(1) the International Observatories must comply with their sublease agreements which require all them to comply with Hawai'i State Law. State law under HRS 171 requires that "fair market lease rent" for use of MK lands be accessed, charged and deposited into the State's general Fund.

(2) the the Audit should include the review and determination of all patents held by University of Hawai'i and the International Observatories (including the Universities associated with said Observatories).

All patents that are revenue generating must be accessed, charge and the funds deposited into the States general fund. Such revenue is not showing up on the public ledger now. The Audit therefore must be amended to include the above language and also any and all revenues generated for the commercial use of the lands of Mauna Kea.

Aloha and Mahalo for your consideration.

SUPPORT SB 757 D1 and SCR 29

Aloha, Chair Kahele and members of the Senate committees,

My name is Deborah J Ward, and I have been devoted to the protection of the natural resources of Mauna Kea since the 1970's. Over the course of the last fifty years, the DLNR and the University have failed our people in managing the public trust, resulting in cumulative impact to the natural and cultural resources of Mauna Kea has been significant, adverse and substantial. Instead of defending the constitutional rights of the people and maintaining the protection of the resources, the inconsistent management has allowed the gradual unmitigated diminishment of the very resources the trustees are charged to protect. Before we can effectively address the deficiencies in management, we must make the expenditures by the taxpayers of Hawaii on behalf of the University of Hawaii in its pursuit of industrial astronomy, with a focus on Mauna Kea since the 1998 Legislative Audit in 1998.

For this reason, I support SB 757 D1 and SCR 29 relating to the University of Hawai'i Forensic Financial Audit as it relates to Mauna Kea. I suggest the following amendments to SB 757 SD1:

Please specify an investigation of all expenditures related to the University's use of internal and external legal and planning services for the defense of Keck Outrigger, Comprehensive Management plan, TMT, and General Lease Extension.

SB 757 SD1 needs to expand the RCUH inquiry (with regard to the international Observatories revenues generating activities on "Ceded Lands"). (1) the International Observatories must comply with their sublease agreements which require all them to comply with Hawai'i State Law. State law under HRS 171 requires that "fair market lease rent" for use of MK lands be accessed, charged and deposited into the State's general Fund.

(2) the Audit should include the review and determination of all patents held by University of Hawaii and the International Observatories (including the Universities associated with said Observatories).

All patents that are revenue generating must be accessed, charge and the funds deposited into the State's general fund. Such revenue is not showing up on the public ledger now. The Audit therefore must be amended to include the above language and also any and all revenues generated for the commercial use of the lands of Mauna Kea.

Aloha and Mahalo for your consideration.

Deborah J Ward P.O.Box 918 Kurtistown HI 96760

SCR-29

Submitted on: 2/12/2018 8:33:43 AM

Testimony for HRE on 2/13/2018 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
keomailani von gogh	Individual	Support	No

Comments:

I SUPPORT this audit as long as it stays in its current form including audit of Research Corporation Of the University of Hawaii (RCUH).

Mahalo for your time,

Keomailani Von Gogh

SCR-29

Submitted on: 2/12/2018 9:05:34 AM

Testimony for HRE on 2/13/2018 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Clarence Ching	Individual	Support	Yes

Comments:

I support SB 757.

I would suggest, however, that the period of time over which the audit will be held be upped to Fiscal Year 2017/2018 - the one that is ending this year.

The reason for this suggestion is to reflect "real time." If not, areas presently in non-compliance can and will be repaired before a later audit period commences, repairs made, and the "real" situation to become non-apparent. The numbers being presently generated should be the un-tainted numbers - the genuine numbers that should be looked at. I believe that a "real time" period is to be preferred.

For example, regarding the THINK Fund - there are actual examples of students that are anti-TMT who have been disqualified from participation because of their anti-TMT positions. One student I know of even responded to her rejection by considering suicide. This is totally unfair and unethical. However, if the audit period is assigned to be the 2018/2019 fiscal year, then such irregular practices may be cured in the meantime, knowledge of the practice will be swept under the rug, and the audit outcome will be tainted, and an apparent criminal practice will never be discovered.

These are the departments that should be examined with special emphasis and the possible reasons why.

1. RCUH - What are the incomes from astronomy- and science- related patents? What is the justification to surcharge all grants entering the university system to carry out litigation to defend the application processes of foreign national astronomical projects (like the TMT)?

2. THINK Fund - see above.

3. IFA - With approximately 50, mostly PHDs, on staff, plus approximately 50 engineers, but no planners, and a department head whose annual paycheck closely approximating a half million dollars of taxpayer funds - What is the Mission of this department? Should this department's objectives include supporting foreign observatories' applications to operate on Mauna Kea?

4. The Mauna Kea Observatories - Shouldn't they pay "fair market" rents as required by statute (for leases)? And why isn't the University non-compliant in charging "fair market" sublease rents? In other words, are "subleases" exempt from state statutes that require "fair market" value rents from general leases? And why doesn't the Subaru (Japan National Observatory) pay any money, not even \$1, for sublease rent? Should these "foreign" observatories be enabled to create windfall incomes from their rental activities (such as Keck that rents its facility out at \$80,000 a night), and continue to pay \$1 for annual sublease rent? And should the TMT be able to create windfall profits by renting out its facilities to more than cover its sublease rent? Something here doesn't compute.

5. OMKM and MK Support Services - Should these 2 be funded to violate cultural practices - as regards such incidents as removing the ahu near mile marker 3.5? Or to block the Access Road, such as on July 5, 2015, with armed guards on a fake emergency rule that lasted for a number of weeks? Or to close the Visitors Center - forcing visitors to the Mountain to use the Visitors Center area as a public restroom? Or should they be able to make up rules without being compliant to official rule-making statutes and rules? Or should OMKM/MKSS be able to close a public road in which it has a non-exclusive easement for fake "safety" issues? Why should OMKM/MKSS be able to shut the public out from using the Access Road for fake "safety" issues, and, at the same time, allow astronomers up the same road? Should OMKM and/or MKSS get away with committing "crimes against humanity?" Or be able to get away with being non-compliant to rule-making statutes and rules, by making them up willy-nilly from time to time?

Because of all these (and more) questions, I support SB 757.

SCR-29

Submitted on: 2/12/2018 9:50:38 AM

Testimony for HRE on 2/13/2018 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dr. William H. Wilson	Individual	Support	Yes

Comments:

I strongly support an audit of work on Maunakea and propose that the audit include the IFA and the level of support of Hawaiian language and culture in 'Imiloa and at Ka Haka 'Ula O Ke'elikÅ• Iani College of Hawaiian Language.

I am a professor of Hawaiian Studies, Hawaiian Language, and Linguistics at UH Hilo. I worked as co-chair of the committee that developed the plan for Maunakea with an understanding that the UH system wished to bring together the IFA, Hawaiian culture concerns and the larger community of the Island of Hawai'i. I was very much disappointed by the attitudes toward the work of our diverse community by the overall University system and IFA. With the other committee members I eventually resigned when our work ran into barriers from the IFA and administration. Later much of our work was adopted by the BOR.

I then worked on a committee that planned the center Senator Inouye envisioned to bring astronomy and Hawaiian culture together - a center that became 'Imiloa. After the plan was completed and Senator Inouye procured funding, I was shocked by the manner in which the university administration and IFA failed to advocate for support for Hawaiian culture in that center and diverted funding away from Hawaiian cultural concerns. Our UH Hilo Hawaiian Studies program had to push for inclusion of Hawaiian cultural content and language signage. Our program actually funded some of the work on 'Imiloa due to the federally designated funds for the center diverted away from Hawaiian concerns.

I have heard reports of continued improprieties regarding finances relating to Maunakea and support an audit. I further believe that included in the audit should be the amount to support for Hawaiian language and culture study at the Hawaiian language colllege at UH Hilo and at 'Imiloa. There is a narrative presented to the public that astronomy and Hawaiian language/culture concerns are seen as coexisting partners on Maunakea and that both are highly supported by the University. An audit would clarify whether such a narrative has any basis in fact.

SCR-29

Submitted on: 2/12/2018 12:14:38 PM

Testimony for HRE on 2/13/2018 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Veronica Ohara	Individual	Oppose	No

Comments:

Dear Legislators of the State of Hawaii,

I am opposed to SCR29 because it's another witch hunt for astronomy and observatories on Maunakea. A forensic audit is a step towards taking an individual or a group of persons to court. The astronomy community has been continually bullied by those who hope to gain favor in future elections and sadly by the UH Hawaiian /Ethnic Studies departments. The conflation of the Sovereignty movement is taking its toll on education and having grave economic consequences in the State of Hawaii.

Therefore I urge to to oppose this SCR29.

Respectfully submitted,

Veronica Ohara

SCR-29

Submitted on: 2/12/2018 1:16:31 PM

Testimony for HRE on 2/13/2018 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Roberta Chu	Individual	Oppose	No

Comments:

Other than an overly broad audit of every entity ever associated with Mauna Kea, the Senate Bill and the Senate Continuing Resolution are a waste of taxpayer's money for an expensive exercise for which there is no rational basis, purpose of time frame. I am opposed to this resolution.

SCR-29

Submitted on: 2/12/2018 1:51:17 PM

Testimony for HRE on 2/13/2018 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Alexis Acohido	Individual	Oppose	No

Comments: