
A BILL FOR AN ACT

RELATING TO MAUNA KEA.

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

PART I

SECTION 1. The legislature finds that Mauna a Wākea serves as an important cultural and genealogical site to the people of Hawaii, particularly to Native Hawaiians. The summit region of Mauna a Wākea is a spiritual and special place of significance that is home to cultural landscapes, fragile habitats, and historical and archaeological artifacts. Due to its topographical prominence, Mauna a Wākea is also a highly valued site for astronomical study, which produce many significant discoveries that contribute to humanity's study and understanding of the universe. However, in recent years, Mauna a Wākea has come to symbolize a rigid dichotomy between culture and science, often leading to polarization between stakeholders on Mauna a Wākea and local communities. Therefore, resolving the management issues of Mauna a Wākea is an issue of the highest priority in the State.



1 The legislature further finds that on March 4, 2021, the
2 Hawaii house of representatives adopted House Resolution No. 33,
3 H.D. 1, Regular Session of 2021, to reconcile this
4 mismanagement, mistrust, and polarization by convening a working
5 group to develop recommendations, building on the findings of
6 the Independent Evaluation of the Implementation of the Mauna
7 Kea Comprehensive Management Plan, for a new governance and
8 management structure for Mauna a Wākea that collaboratively
9 engages with all stakeholders, particularly the Native Hawaiian
10 community.

11 The legislature also finds that there are four Kumu
12 Kānāwai, or laws of nature, that guide the care of Mauna a Wākea
13 and provide foundational principles for this Act. These are:

14 (1) Ho'okikī Kānāwai is the edict of continuum, in which
15 flows of magma move; water basins flow; clouds move;
16 air and ocean currents are active; and islands
17 continue to be shaped, formed, and conditioned
18 naturally;

19 (2) Kua'ā Kānāwai is the edict of gestating landscapes, in
20 which craters erupt; marshes are active; coral heads
21 are in season; and wet forest produces;



1 (3) Kai'okia Kānāwai is the edict of natural boundaries,
2 including the path of the sun, moon, and stars from
3 north, south, east, and west; and vertical and
4 horizontal divisions of land, ocean, and space above;
5 and

6 (4) Kīho'iho'i Kānāwai is the edict of regeneration, that
7 nature will fix itself, including immediate
8 restoration of landscape after a flood, lava flow,
9 windstorm, and fire.

10 Based upon the recommendations of the working group and the
11 four Kumu Kānāwai, the purpose of this Act is to establish the
12 Mauna a Wākea stewardship authority.

13 SECTION 2. The Hawaii Revised Statutes is amended by
14 adding a new chapter to be appropriately designated and to read
15 as follows:

16 **"CHAPTER**

17 **MAUNA A WĀKEA STEWARDSHIP AUTHORITY**

18 § -1 **Definitions.** As used in this chapter, unless the
19 context otherwise requires:

20 "Authority" means the Mauna a Wākea stewardship authority.



1 "Chairperson" means the chairperson of the Mauna a Wākea
2 stewardship authority.

3 "Executive director" means the executive director of the
4 Mauna a Wākea stewardship authority.

5 "Land" includes all interests therein and natural resources
6 including water, minerals, and all things connected with land,
7 unless expressly provided otherwise.

8 "Lease" means the right to possess and use land for a term
9 of years.

10 "Mauna a Wākea" means all real property that is situated on
11 the mountain on the island of Hawaii known variously as Mauna
12 Kea, Maunakea, Mauna O Wakea, Ka Mauna a Kea, or Mauna Akea.

13 "Mauna a Wākea lands" means all lands held in trust or
14 otherwise controlled by the Mauna a Wākea stewardship authority.

15 "Person" includes an individual, a partnership, a
16 corporation, or an association, except as otherwise defined in
17 this chapter.

18 **§ -2 Mauna a Wākea stewardship authority; established;**
19 **guiding operational values and principles.** (a) There is
20 established the Mauna a Wākea stewardship authority, which shall
21 be a body corporate and a public instrumentality of the State



1 for the purpose of implementing this chapter. The authority
2 shall be placed within the department of land and natural
3 resources for administrative purposes.

4 (b) The authority shall consist of ten voting members:
5 seven members who shall be appointed by the governor subject to
6 section 26-34 and three ex officio members. The members shall
7 include:

- 8 (1) The chairperson of the board of land and natural
9 resources, or the chairperson's designee;
- 10 (2) The chairperson of the board of trustees of the office
11 of Hawaiian affairs, or the chairperson's designee;
- 12 (3) The president of the University of Hawaii, or the
13 president's designee;
- 14 (4) An individual with 'āina resource management expertise
15 and a track record of Hawaii island-based management,
16 nominated by the nominating committee;
- 17 (5) An individual with infrastructure and land management
18 experience and a track record of Hawaii island-based
19 management, nominated by the nominating committee;
- 20 (6) An individual with educational expertise in p-12
21 public education; community, culture, and Hawaiian



- 1 language medium-based education; or post-secondary
2 education, nominated by the nominating committee;
- 3 (7) An individual with business and finance experience,
4 nominated by the nominating committee;
- 5 (8) A Native Hawaiian individual who is a lineal
6 descendent of a practitioner of Native Hawaiian
7 traditional and customary practices associated with
8 Mauna a Wākea, nominated by the office of Hawaiian
9 affairs, in coordination with the Edith Kanaka'ole
10 Foundation and I Ola Hāloa Hawaiian studies program at
11 Hawaii community college;
- 12 (9) A Native Hawaiian individual who is a recognized
13 practitioner of Native Hawaiian traditional and
14 customary practices associated with Mauna a Wākea,
15 nominated by the office of Hawaiian affairs, in
16 coordination with the Edith Kanaka'ole Foundation and I
17 Ola Hāloa Hawaiian studies program at Hawaii community
18 college; and
- 19 (10) A Native Hawaiian individual with expertise in Native
20 Hawaiian traditional and customary practices,
21 nominated by the office of Hawaiian affairs, in



1 coordination with the Edith Kanaka'ole Foundation and I
2 Ola Hāloa Hawaiian studies program at Hawaii community
3 college;

4 provided that four of the seven non-ex officio members of the
5 authority shall be Native Hawaiian residents of the county of
6 Hawaii, with a preference for Native Hawaiian residents of the
7 county of Hawaii for all seven non-ex officio members.

8 A majority of all members shall constitute a quorum to do
9 business, and the concurrence of a majority of all members shall
10 be necessary to make any action of the authority valid. All
11 members shall continue in office until their respective
12 successors have been selected, or appointed and confirmed.

13 (c) The authority shall elect the chairperson from among
14 its non-ex officio members; provided that the chairperson shall
15 not be the executive director.

16 (d) The members of the authority shall serve for a term of
17 four years and shall not serve more than two terms; provided
18 that the initial terms shall be staggered, as determined by the
19 governor.



1 (e) The authority's day-to-day operations shall be led by
2 the executive director, who shall serve as the authority's chief
3 executive officer.

4 (f) The authority shall determine its administration
5 organizational structure and expertise needs, including but not
6 limited to employing rangers to serve as education, general
7 safety, and outreach resources.

8 (g) The authority shall establish its offices in the
9 county of Hawaii.

10 (h) The authority shall adopt and follow the following
11 guiding operational values and principles:

12 (1) Mauna Aloha - We understand the reciprocal value of
13 the mauna and a long-term commitment to maintaining
14 the integrity of Mauna a Wākea;

15 (2) 'Ōpū Kupuna - We understand and embrace a duty and
16 accountability to Mauna a Wākea, the natural
17 environment, and to perpetuate the Hawaiian cultural
18 values embedded in the sacred landscape of the mauna;
19 and

20 (3) Holomua 'Oi Kelakela - We are driven by creativity and
21 innovation, constantly challenging the status quo,



1 with a stewardship of Mauna a Wākea that is informed
2 based on existing knowledge and traditions, as well as
3 on new and expanding knowledge. We are mindful and
4 observant of needs, trends, and opportunities and seek
5 new knowledge and opportunities in ways that enhance
6 the ability to serve as stewards without jeopardizing
7 the foundation of 'āina aloha.

8 **§ -3 Nomination process; nominating committee; office of**
9 **Hawaiian affairs.** (a) There shall be established a nominating
10 committee composed of three members. One member shall be
11 appointed by the speaker of the house of representatives; one
12 member shall be appointed by the president of the senate; and
13 one member shall be appointed by the chairperson of the board of
14 trustees of the office of Hawaiian affairs, or the chairperson's
15 designee; provided that consideration shall be given to
16 residents of the county of Hawaii.

17 (b) Prior to developing a list of nominees, the nominating
18 committee shall provide adequate public notice to ensure that
19 the public is aware that applications are being accepted for
20 nominees. The nominating committee shall develop a list of
21 three nominees for each vacancy for a position identified in



1 section -2(b)(4), (5), (6), or (7). The nominating committee
2 shall submit the list of nominees for each vacancy to the
3 governor for consideration for appointment, and all nominees
4 submitted to the governor for appointment shall be made public
5 at the time their names are submitted to the governor.

6 (c) The office of Hawaiian affairs, in coordination with
7 the Edith Kanaka'ole Foundation and I Ola Hāloa Hawaiian studies
8 program at Hawaii community college, shall develop a list of at
9 least two nominees for each vacancy for a position identified in
10 section -2(b)(8), (9), or (10). In developing the list of
11 nominees, the office of Hawaiian affairs shall seek input from
12 the Native Hawaiian community and work in coordination with the
13 Edith Kanaka'ole Foundation and I Ola Hāloa Hawaiian studies
14 program at Hawaii community college, using the existing
15 selection process for island burial council candidates as a
16 model. The office of Hawaiian affairs shall submit the list of
17 nominees for each vacancy to the governor for consideration for
18 appointment, and all nominees submitted to the governor for
19 appointment shall be made public at the time their names are
20 submitted to the governor.



1 **§ -4 Powers and responsibilities; generally.** (a) Upon
2 transfer of the lands to the authority pursuant to section
3 -8, the authority shall hold title to the lands situated on
4 Mauna a Wākea as identified in section -7 and shall establish
5 access, stewardship, and management policies for Mauna a Wākea
6 lands, including but not limited to policies pertaining to the
7 protection of natural and cultural resources, all recreational
8 activities, and all commercial uses.

9 Except as otherwise limited by this chapter, the authority
10 may:

- 11 (1) Sue and be sued;
- 12 (2) Have a seal and alter the same at its pleasure;
- 13 (3) Make and execute contracts, leases, and all other
14 instruments necessary or convenient for the exercise
15 of its powers and functions under this chapter;
- 16 (4) Make and alter bylaws for its organization and
17 internal management;
- 18 (5) Adopt rules pursuant to chapter 91 for the purposes of
19 this chapter;



- 1 (6) Appoint officers, agents, and employees, prescribe
2 their duties and qualifications, and fix their
3 salaries, subject to chapters 76 and 89;
- 4 (7) Provide advisory, consultative, training, and
5 educational services; technical assistance; and advice
6 to any person, partnership, or corporation, either
7 public or private, to carry out the purposes of this
8 chapter, and engage the services of consultants on a
9 contractual basis for rendering professional and
10 technical assistance and advice;
- 11 (8) Procure insurance against any loss in connection with
12 its property and other assets and operations in
13 amounts and from insurers as it deems desirable;
- 14 (9) Contract for and accept gifts or grants in any form
15 from any public agency or from any other source;
- 16 (10) Adopt rules governing the procurement and purchase of
17 goods, services, and construction, subject to the
18 requirements of chapter 103D;
- 19 (11) Prevent trespassing and other illegal activities on
20 Mauna a Wākea lands;



- 1 (12) Cause all persons trespassing on or unlawfully
2 occupying Mauna a Wākea lands, and their effects, and
3 all unauthorized animals to be removed therefrom and
4 be impounded according to law;
- 5 (13) Enter any Mauna a Wākea lands in order to take
6 possession thereof, and to resume possession of any
7 Mauna a Wākea lands in case of surrender, forfeiture,
8 or escheat;
- 9 (14) Enforce contracts respecting leases, licenses,
10 permits, or other disposition of Mauna a Wākea lands;
- 11 (15) Recover money due the authority for damage done to any
12 Mauna a Wākea lands by wrongful entry and occupation
13 or by wrongful removal therefrom or destruction of any
14 property;
- 15 (16) Bring actions and proceedings as may be necessary to
16 carry out the powers and duties of the authority in
17 the name of the State and to defend actions brought
18 against the State as may be authorized;
- 19 (17) Enforce laws and rules within all Mauna a Wākea lands;
20 and



- 1 (18) Do any and all things necessary to carry out its
2 purposes and exercise the powers granted in this
3 chapter.
- 4 (b) Notwithstanding any other law to the contrary, the
5 authority shall:
- 6 (1) Be the sole authority for the management of state-
7 managed lands on Mauna a Wākea under its jurisdiction,
8 as identified pursuant to section -7;
- 9 (2) Protect traditional and customary native Hawaiian
10 rights, as set forth in the Hawaii State Constitution,
11 and not unduly burden individuals exercising such
12 rights;
- 13 (3) Provide a specific process that ensures transparency,
14 analysis, and justification for lease terms;
- 15 (4) Be prohibited from selling, gifting, transferring, or
16 exchanging its land;
- 17 (5) Engage in community dialogue, outreach, engagement,
18 and consultation processes, as appropriate, on
19 significant matters on at least an annual basis and
20 more frequently, as needed;



- 1 (6) Be subject to chapters 91, 92, 103D, 183C, 205, 205A,
2 and 343;
- 3 (7) Work with the department of land and natural
4 resources' conservation and resources enforcement
5 program and Hawaii county police's enforcement
6 structure to enforce rules and monitor public safety
7 through cooperative agreement;
- 8 (8) Create operational procedures that are informed by its
9 guiding operational values and principles and
10 implemented by enforcement partners;
- 11 (9) Consider various supplemental revenue sources to be
12 deposited into the Mauna a Wākea management special
13 fund pursuant to section -14, including but not
14 limited to, to the extent allowed by law:
 - 15 (A) Renegotiated lease terms and fees;
 - 16 (B) Astronomical observatory use fees;
 - 17 (C) Common area maintenance;
 - 18 (D) Toll fees;
 - 19 (E) General funds;
 - 20 (F) Ecosystem service fees;
 - 21 (G) User fees;



- 1 (H) Other surcharges or fee structures; and
2 (I) State, county, or federal funding; and
3 (10) Adopt rules that establish requirements for new or
4 renegotiated leases for astronomical observatories
5 that are in addition to the lease requirements under
6 sections -18, -19, and -20.

7 **§ -5 Transition; management plan.** (a) The authority
8 shall have a transition period of three years after the
9 effective date of this Act to assume management of its
10 designated Mauna a Wākea lands.

11 (b) The authority shall develop a single plan that
12 dictates the management of land uses; human activities, uses,
13 and access, including permitted uses for frequent and seasonal
14 users; stewardship; education; research; disposition; and
15 overall operations. The plan shall:

- 16 (1) Be developed during the transition period;
17 (2) Be finalized, approved, and operational by the end of
18 the transition period;
19 (3) Be updated every ten years with a focus on long-term,
20 comprehensive, coordinated planning for all of the
21 Mauna a Wākea lands;



- 1 (4) Consider the State's energy and sustainability goals,
2 as well as impacts to climate change, including
3 adapting to climate change and developing mitigation
4 measures to climate change;
- 5 (5) Incorporate indigenous management and cultural
6 processes and values; and
- 7 (6) Include an aspirational statement to acknowledge and
8 contextualize unresolved social justice issues that
9 underpin Mauna a Wākea.

10 **§ -6 Astronomy development; framework.** The authority
11 shall develop a framework to limit astronomy development on
12 Mauna a Wākea that may include limitations on the number of
13 astronomy facilities or an astronomy facility footprint
14 limitation; provided that in establishing a framework to limit
15 astronomy development on Mauna a Wākea, the authority shall
16 establish a plan to return the mauna above the nine thousand two
17 hundred feet elevation line to its natural state when ground-
18 based observatories are rendered obsolete due to developments in
19 space-based astronomical technology.

20 **§ -7 Jurisdiction.** (a) The authority shall have
21 jurisdiction over Mauna a Wākea lands that are state-managed



1 lands above the six thousand five hundred foot elevation line,
2 inclusive of Pu'u Huluhulu to the summit of Mauna a Wākea.

3 (b) For lands outside of the authority's jurisdiction on
4 Mauna a Wākea above the six thousand five hundred foot elevation
5 line, the authority shall enter into cooperative agreements, as
6 necessary, with the department of Hawaiian home lands, county of
7 Hawaii, and private landowners whose lands are within the
8 jurisdictional boundaries.

9 § -8 **Transfer.** The department of land and natural
10 resources shall transfer to the authority the title to the lands
11 described in section -7(a), together with all existing
12 encumbrances. The lands under the jurisdiction of the authority
13 shall be held in trust as part of the public land trust;
14 provided that the lands under the jurisdiction of the authority
15 shall not be deemed public lands as defined in section 171-2;
16 provided further that the State shall transfer management and
17 control of the lands to a sovereign Native Hawaiian entity upon
18 its recognition by the United States and the State of Hawaii.

19 § -9 **Advisory groups; astronomy; native Hawaiian**
20 **culture.** (a) The authority may establish advisory groups to
21 advise the authority in its management of Mauna a Wākea;



1 provided that the authority shall establish an astronomy
2 advisory group and native Hawaiian advisory group, with
3 preference for Hawaii island resident participation, to provide
4 advice and guidance to the authority on their respective subject
5 matters.

6 (b) Any advisory groups established pursuant to this
7 section shall convene regularly and be consulted on a broad
8 range of issues relating to their respective purview.

9 § -10 **Annual report.** The authority shall submit an
10 annual report to the legislature at least twenty days prior to
11 the convening of each regular session. The report shall
12 include:

- 13 (1) A review of the authority's management actions;
14 (2) A review of the implementation of all legislatively
15 required plans, including financial and management
16 plans;
17 (3) A review of the impacts of human uses on the natural
18 and cultural resources of Mauna a Wākea;
19 (4) An assessment of cumulative impacts to Mauna a Wākea;
20 and



1 (5) A review of all community dialogue, outreach,
2 engagement, and consultation.

3 **§ -11 Access and use; restrictions; orientation;**
4 **entryway.** (a) The authority may prohibit commercial use and
5 activities, except for astronomy use and activities, above Hale
6 Pōhaku and adopt rules to designate areas for permissible use;
7 provided that the authority's rules shall define "commercial
8 use".

9 (b) The authority shall require an application for all
10 recreational uses, including fees; consider restrictions on
11 Mauna a Wākea to ensure user compliance; and create guidelines
12 on limits by monitoring the impacts of recreational use over
13 time.

14 (c) The authority shall require all individuals accessing
15 Mauna a Wākea to undergo an annual orientation anchored by the
16 authority's guiding operational values and principles; provided
17 that all employees, contractors, leaseholders, and others who
18 regularly access Mauna a Wākea shall have more extensive and
19 frequent training on the authority's guiding operational values
20 and principles.



1 (d) The authority shall determine an appropriate site for
2 an entryway to Mauna a Wākea as a way to capture information
3 about users, establish an education outreach post, collect fees,
4 and close access to Mauna a Wākea in case of an emergency.

5 § -12 **Lease provisions; generally.** Every lease issued
6 by the authority shall contain:

- 7 (1) The specific use or uses to which the land is to be
8 employed;
- 9 (2) The improvements required; provided that a minimum
10 reasonable time be allowed for the completion of the
11 improvements;
- 12 (3) Restrictions against alienation as set forth in
13 section -13;
- 14 (4) The rent, as established by the authority or at public
15 auction, which shall be payable no more than one year
16 in advance, in monthly, quarterly, semiannual, or
17 annual payments;
- 18 (5) Where applicable, adequate protection of forests,
19 watershed areas, game management areas, wildlife
20 sanctuaries, and public hunting areas, reservation of
21 rights-of-way and access to other public lands, public



1 hunting areas, game management areas, or public
2 beaches, and prevention of nuisance and waste; and
3 (6) Such other terms and conditions as the authority deems
4 advisable to more nearly effectuate the purposes of
5 the state constitution and of this chapter.

6 **§ -13 Lease restrictions; generally.** (a) Except as
7 otherwise provided, the following restrictions shall apply to
8 all leases:

- 9 (1) Options for renewal of terms are prohibited;
- 10 (2) No lease shall be for a longer term than sixty-five
11 years;
- 12 (3) No lease shall be made for any land under a lease that
13 has more than two years to run;
- 14 (4) No lease shall be made to any person who is in arrears
15 in the payment of taxes, rents, or other obligations
16 owed to the State or any county;
- 17 (5) No lease shall be transferable or assignable, except
18 by devise, bequest, or intestate succession; provided
19 that with the approval of the authority, the
20 assignment and transfer of a lease or unit thereof may
21 be made in accordance with current industry standards,



1 as determined by the authority; provided further that
2 prior to the approval of any assignment of lease, the
3 authority shall have the right to review and approve
4 the consideration to be paid by the assignee and may
5 condition its consent to the assignment of the lease
6 on payment by the lessee of a premium based on the
7 amount by which the consideration for the assignment,
8 whether by cash, credit, or otherwise, exceeds the
9 depreciated cost of improvements and trade fixtures
10 being transferred to the assignee; provided further
11 that with respect to state agricultural leases, in the
12 event of foreclosure, the premium, if any, shall be
13 assessed only after the encumbrances of record and any
14 other advances made by the holder of a security
15 interest are paid;

- 16 (6) The lessee shall not sublet the whole or any part of
17 the demised premises, except with the approval of the
18 authority; provided that prior to the approval, the
19 authority shall have the right to review and approve
20 the rent to be charged to the sublessee; provided
21 further that in the case where the lessee is required



1 to pay rent based on a percentage of its gross
2 receipts, the receipts of the sublessee shall be
3 included as part of the lessee's gross receipts;
4 provided further that the authority shall have the
5 right to review and, if necessary, revise the rent of
6 the demised premises based upon the rental rate
7 charged to the sublessee, including the percentage
8 rent, if applicable, and provided that the rent may
9 not be revised downward;

10 (7) The lease shall be for a specific use or uses and
11 shall not include waste lands, unless it is
12 impractical to provide otherwise; and

13 (8) Mineral and metallic rights and surface and ground
14 water shall be reserved to the State.

15 (b) The authority, from time to time, upon the issuance or
16 during the term of any intensive agricultural, aquaculture,
17 commercial, mariculture, special livestock, pasture, or
18 industrial lease, may:

19 (1) Modify or eliminate any of the restrictions specified
20 in subsection (a);



1 (2) Extend or modify the fixed rental period of the lease;
2 provided that the aggregate of the initial term and
3 any extension granted shall not exceed sixty-five
4 years; or

5 (3) Extend the term of the lease,
6 to the extent necessary to qualify the lease for mortgage
7 lending or guaranty purposes with any federal mortgage lending
8 agency, to qualify the lessee for any state or private lending
9 institution loan, private loan guaranteed by the State, or any
10 loan in which the State and any private lender participates, or
11 to amortize the cost of substantial improvements to the demised
12 premises that are paid for by the lessee without institutional
13 financing.

14 (c) Any extension authorized pursuant to subsection (b)
15 shall be based on the economic life of the improvements as
16 determined by the authority or an independent appraiser;
17 provided that the approval of any extension shall be subject to
18 the following:

19 (1) The demised premises have been used substantially for
20 the purpose for which they were originally leased;



- 1 (2) The aggregate of the initial term and any extension
- 2 granted shall not be for more than sixty-five years;
- 3 (3) In the event of a reopening, the rental for any
- 4 ensuing period shall be the fair market rental at the
- 5 time of reopening;
- 6 (4) Any federal or private lending institution shall be
- 7 qualified to do business in the State;
- 8 (5) Proceeds of any mortgage or loan shall be used solely
- 9 for the operations or improvements on the demised
- 10 premises;
- 11 (6) Where improvements are financed by the lessee, the
- 12 lessee shall submit receipts of expenditures within a
- 13 time period specified by the authority or else the
- 14 lease extension shall be canceled; and
- 15 (7) The rules of the authority setting forth any
- 16 additional terms and conditions, which shall ensure
- 17 and promote the purposes of the demised lands.
- 18 (d) The authority, at any time during the term of any
- 19 intensive agricultural, aquaculture, or mariculture lease and
- 20 when justified by sound economic practices or other
- 21 circumstances, may permit an alternative agricultural,



1 aquaculture, or mariculture use or uses for any portion or
2 portions of the land demised. As a condition to permitting
3 alternative uses, the authority may require any other
4 modifications, including rental adjustments or changes in the
5 lease, as may be necessary to effect or accommodate the
6 alternative use or uses. An alternative use or uses may be
7 allowed by the authority upon:

- 8 (1) The application of the lessee;
9 (2) Consent of each holder of record having a security
10 interest in the leasehold; and
11 (3) A finding by the authority that the alternative use or
12 uses are in the public interest.

13 (e) The authority, from time to time during the term of
14 any agriculture, intensive agriculture, aquaculture, commercial,
15 mariculture, special livestock, pasture, or industrial lease,
16 may modify or eliminate any of the restrictions specified in
17 subsection (a), extend or modify the fixed rental period of the
18 lease, or extend the term of the lease upon a showing of
19 significant economic hardship directly caused by:

- 20 (1) State disaster, pursuant to chapter 209, including
21 seismic or tidal wave, tsunami, hurricane, volcanic



1 eruption, typhoon, earthquake, flood, or severe
2 drought; or
3 (2) A taking of a portion of the area of the lease by
4 government action by eminent domain, withdrawal, or
5 conservation easement; provided that the portion taken
6 shall not be less than ten per cent of the entire
7 leased area unless otherwise approved by the
8 authority; provided that the authority determines that
9 the lessee will not be adequately compensated pursuant
10 to the lease provisions.
11 (f) The approval of any extension granted pursuant to
12 subsection (e) shall be subject to the following:
13 (1) The demised premises have been used substantially for
14 the purposes for which they were originally leased;
15 (2) The aggregate of the initial term and any extension
16 granted shall not be for more than fifty-five years;
17 (3) The rental shall not be less than the rental for the
18 preceding term;
19 (4) The rules of the authority setting forth any
20 additional terms and conditions, which shall ensure
21 and promote the purposes of the demised lands; and



1 (5) The length of the extension shall not exceed a
2 reasonable length of time for the purpose of providing
3 relief and shall in no case exceed five years.

4 § -14 **Astronomical observatory lease provisions;**
5 **generally; decommissioning costs.** (a) Any lease issued by the
6 authority for the purposes of an astronomical observatory shall
7 ensure that the astronomical observatory shall plan for and
8 finance its decommissioning process on Mauna a Wākea and return
9 and restore the impacted areas, to the greatest extent possible,
10 to their pre-construction condition; provided that the authority
11 shall determine what site restoration shall be based on,
12 including but not limited to the protection of the natural and
13 cultural resources on Mauna a Wākea and in accordance with the
14 authority's guiding operational values and principles.

15 (b) The authority shall develop a process to enforce
16 compliance with lease requirements, including but not limited to
17 establishing fines.

18 (c) The authority shall establish a trust fund, special
19 fund, or other funding mechanism designated for decommissioning
20 costs that the astronomical observatories shall be required to



1 contribute toward as a condition of their leases; provided that
2 the authority shall determine the required contribution.

3 **§ -15 Auction.** Except as otherwise specifically
4 provided, all disposition of lands to which the authority holds
5 title shall be made at public auction after public notice as
6 provided in section 171-16. All such auctions shall be held at
7 the door of the office of the authority or at such other place
8 as is convenient in the district in which the land is located,
9 and shall be conducted by the authority or by any other
10 authorized employee of the authority under the direction of the
11 authority, all of whom shall perform this service without extra
12 compensation.

13 **§ -16 Appraisals.** (a) The appraisal of lands to which
14 the authority holds title for lease at public auction for the
15 determination of the upset price may be performed by an employee
16 of the authority qualified to appraise lands, or by one but not
17 more than three disinterested appraisers whose services shall be
18 contracted for by the authority; provided that the upset rental
19 shall be determined by disinterested appraisal whenever prudent
20 management so dictates. No such lands shall be leased for a sum
21 less than the value fixed by appraisal; provided that for any



1 lease at public auction, the authority may establish the upset
2 rental price at less than the appraisal value set by an employee
3 of the authority and the land may be leased at that price. The
4 authority shall be reimbursed by the lessee for the cost of any
5 appraisal required to be made by a disinterested appraiser or
6 appraisers contracted for by the authority.

7 (b) The lease rental of lands to be disposed of by drawing
8 or by negotiation shall be no less than the value determined by:

9 (1) An employee of the authority qualified to appraise
10 lands; or

11 (2) A disinterested appraiser or appraisers whose services
12 shall be contracted for by the authority, and the
13 appraisal, and any further appraisal with the approval
14 of the authority, shall be at the cost of the lessee;

15 provided that the lease rental shall be determined by
16 disinterested appraisal whenever prudent management so dictates;
17 provided further that if the lessee does not agree upon the
18 lease rental price, the lessee may appoint an appraiser who
19 shall conduct an appraisal on behalf of the lessee. If, after
20 the lessee's appraisal, the authority and the lessee do not
21 agree on the lease rental price, the parties shall make a good



1 faith effort to resolve the dispute through nonbinding mediation
2 by a single mediator, appointed by mutual agreement of the
3 parties. The cost of mediation shall be borne equally by the
4 parties. If mediation does not resolve the dispute, the
5 lessee's appraiser together with the authority's appraiser shall
6 appoint a third appraiser, and the lease rental price shall be
7 determined by arbitration as provided for in chapter 658A, which
8 shall be final and binding. The lessee shall pay for all
9 appraisal costs, except that the cost of the third appraiser
10 shall be borne equally by the lessee and the authority.

11 (c) If a reopening of the rental to be paid on a lease
12 occurs, the rental for any ensuing period shall be the fair
13 market rental at the time of reopening. At least six months
14 prior to the time of reopening, the fair market rental shall be
15 determined by:

16 (1) An employee of the authority qualified to appraise
17 lands; or

18 (2) A disinterested appraiser whose services shall be
19 contracted for by the authority;

20 and the lessee shall be promptly notified of the determination
21 and provided with the complete appraisal prepared by the



1 authority or the authority's appraiser; provided that if the
2 lessee does not agree upon the fair market rental, the lessee
3 may appoint the lessee's own appraiser and the lessee shall
4 provide the authority with the complete appraisal prepared by
5 the lessee's appraiser. Each party shall pay for its own
6 appraiser. If the authority's and the lessee's appraisers do
7 not agree upon the lease rental, the lessee and the authority
8 shall in good faith attempt to resolve the dispute by nonbinding
9 mediation by a single mediator mutually agreed upon by the
10 parties. If the dispute is not resolved by the mediation, the
11 fair market rental shall be determined by arbitration as
12 provided in chapter 658A, which shall be final and binding.
13 Either the authority or the lessee may initiate arbitration by a
14 written demand to the other party. The arbitration shall be
15 conducted by a single arbitrator, who shall be an attorney
16 licensed in the State, a person with experience in contracts and
17 real estate valuation, or another qualified person, who shall be
18 mutually agreed upon by the parties. If an arbitrator is not
19 selected within fifteen days of the demand for arbitration,
20 appointment of an arbitrator may be requested by either party by
21 motion made to the circuit court in the circuit in which the



1 land is located. The cost of mediation or arbitration shall be
2 borne equally by the lessee and the authority. Any language in
3 present leases to the contrary notwithstanding, the provisions
4 of this subsection, when possible and notwithstanding the six-
5 month notice required, shall apply to leases with original lease
6 rental reopening dates effective before and after July 1, 1996.

7 (d) Complete appraisal reports, including all comparables
8 relied upon in the appraisal reports, shall be available for
9 study by the public. All complete appraisal reports shall be
10 provided to the opposing party prior to the commencement of
11 mediation or arbitration, if applicable, of the valuation
12 dispute.

13 § -17 **Planning; generally.** Prior to any notice of
14 intended disposition, the authority shall:

- 15 (1) Determine the specific use or uses for which the
16 disposition is intended;
- 17 (2) Parcel land into units of minimum size areas related
18 to the intended specific use or uses and sufficient
19 for an economic operation, hereinafter called an
20 "economic unit";



- 1 (3) Determine the upset price or lease rental, based upon
2 the fair market value of the land employed to the
3 specific use or uses for which the disposition is
4 being made, with due consideration for all of the
5 terms and conditions of the disposition;
- 6 (4) Determine the necessary conditions of disposition
7 which will discourage speculation;
- 8 (5) In the case of leases, determine the minimum tenure
9 necessary to support the intended use or uses and the
10 necessity for periodic rent openings in long-term
11 leases to assure the State a fair return;
- 12 (6) Prepare the proposed documents and make them available
13 for public inspection; and
- 14 (7) Determine, two years before the expiration of the term
15 of any lease, whether the premises are to be demised
16 for the same use or uses under a new lease or whether
17 all or any part thereof is to be reserved for other
18 use or uses and then promptly notify the lessee of the
19 determination.

20 § -18 **Lease to eleemosynary organizations.** The
21 authority may lease, at a nominal consideration, by direct



1 negotiation and without recourse to public auction, lands to
2 which it holds title to an eleemosynary organization that has
3 been certified to be tax exempt under section 501(c)(1) or
4 501(c)(3) of the Internal Revenue Code of 1986, as amended. The
5 lands shall be used by such eleemosynary organizations for the
6 purposes for which their charter was issued and for which they
7 were certified by the Internal Revenue Service.

8 **§ -19 Lease to state and federal agencies.**

9 Notwithstanding any limitations to the contrary, the authority
10 may, with the prior approval of the governor, lease lands to
11 which it holds title without recourse to public auction to state
12 and federal agencies. The manner of disposition and the terms
13 and conditions thereto shall be in accordance with sections
14 -12, -13, and -17.

15 **§ -20 Lease to foreign governments.** Notwithstanding any
16 limitations to the contrary, the authority may, with the prior
17 approval of the governor, lease lands to which it holds title
18 for consulate purposes without recourse to public auction to
19 foreign governments. The manner of disposition and the terms
20 and conditions thereto shall be in accordance with sections
21 -12, -13, and -17.



1 **§ -21 Reservation of rights to prehistoric and historic**
2 **remains on leased public lands.** The authority shall, in leases
3 of lands to which it holds title, retain the rights to all
4 prehistoric and historic remains found on such lands.

5 **§ -22 Rules.** (a) The authority shall, to the extent
6 possible, expedite the adoption of rules pursuant to chapter 91
7 on the management, stewardship, and protection of lands and
8 cultural resources. The rules adopted under this section shall
9 following existing laws, rules, ordinances, and regulations as
10 closely as is consistent with standards to meet minimum
11 requirements of good design, health, safety, and coordinated
12 development.

13 (b) On the effective date of the initial rules adopted
14 pursuant to this section, all rules pertaining to Mauna a Wākea
15 lands established by the University of Hawaii, including but not
16 limited to the office of Mauna Kea management, Mauna Kea
17 management board, and Kahu Kū Mauna, shall be void.

18 **§ -23 Mauna a Wākea management special fund.** (a) There
19 is established the Mauna a Wākea management special fund into
20 which shall be deposited:

21 (1) Appropriations from the legislature;



1 (2) Moneys from supplemental sources as considered by the
2 authority pursuant to section -4(b)(10);

3 (3) Any grant or donation made to the special fund; and

4 (4) Any interest earned on the balance of the special
5 fund.

6 (b) Proceeds from the special fund shall be used for
7 administration, capital improvement projects, and other purposes
8 pursuant to this chapter.

9 § -24 **Issuance of bonds.** The director of finance may,
10 from time to time, issue general obligation bonds pursuant to
11 chapter 39 in amounts authorized by the legislature for the
12 purposes of this chapter."

13 SECTION 3. Section 171-2, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§171-2 **Definition of public lands.** "Public lands" means
16 all lands or interest therein in the State classed as government
17 or crown lands previous to August 15, 1895, or acquired or
18 reserved by the government upon or subsequent to that date by
19 purchase, exchange, escheat, or the exercise of the right of
20 eminent domain, or in any other manner; including lands accreted
21 after May 20, 2003, and not otherwise awarded, submerged lands,



1 and lands beneath tidal waters that are suitable for
2 reclamation, together with reclaimed lands that have been given
3 the status of public lands under this chapter, except:

4 (1) Lands designated in section 203 of the Hawaiian Homes
5 Commission Act, 1920, as amended;

6 (2) Lands set aside pursuant to law for the use of the
7 United States;

8 (3) Lands being used for roads and streets;

9 (4) Lands to which the United States relinquished the
10 absolute fee and ownership under section 91 of the
11 Hawaiian Organic Act prior to the admission of Hawaii
12 as a state of the United States unless subsequently
13 placed under the control of the board of land and
14 natural resources and given the status of public lands
15 in accordance with the state constitution, the
16 Hawaiian Homes Commission Act, 1920, as amended, or
17 other laws;

18 (5) Lands to which the University of Hawaii holds title;

19 (6) Lands to which the Hawaii housing finance and
20 development corporation in its corporate capacity
21 holds title;



- 1 (7) Lands to which the Hawaii community development
2 authority in its corporate capacity holds title;
- 3 (8) Lands set aside by the governor to the Hawaii public
4 housing authority or lands to which the Hawaii public
5 housing authority in its corporate capacity holds
6 title;
- 7 (9) Lands to which the department of agriculture holds
8 title by way of foreclosure, voluntary surrender, or
9 otherwise, to recover moneys loaned or to recover
10 debts otherwise owed the department under chapter 167;
- 11 (10) Lands that are set aside by the governor to the Aloha
12 Tower development corporation, lands leased to the
13 Aloha Tower development corporation by any department
14 or agency of the State, or lands to which the Aloha
15 Tower development corporation holds title in its
16 corporate capacity;
- 17 (11) Lands that are set aside by the governor to the
18 agribusiness development corporation, lands leased to
19 the agribusiness development corporation by any
20 department or agency of the State, or lands to which



1 the agribusiness development corporation in its
2 corporate capacity holds title;

3 (12) Lands to which the Hawaii technology development
4 corporation in its corporate capacity holds title;

5 (13) Lands to which the department of education holds
6 title;

7 (14) Lands to which the stadium authority holds title;
8 [~~and~~]

9 [+](15)[+] Lands to which the school facilities authority
10 holds title; and

11 (16) Lands under the jurisdiction of the Mauna a Wākea
12 stewardship authority pursuant to section -7 to
13 which the authority holds title pursuant to section
14 -8;

15 provided that, except as otherwise limited under federal law and
16 except for state land used as an airport as defined in section
17 262-1, public lands shall include the air rights over any
18 portion of state land upon which a county mass transit project
19 is developed after July 11, 2005; provided further that if the
20 lands pursuant to paragraph (14) are no longer needed for the
21 stadium development district or related purposes, the lands



1 shall be returned to the public land trust administered by the
2 department."

3 SECTION 4. Chapter 304A, part IV, subpart O, Hawaii
4 Revised Statutes, is repealed.

5 SECTION 5. Section 304A-2170, Hawaii Revised Statutes, is
6 repealed.

7 ~~["**§304A-2170** Mauna Kea lands management special fund.~~

8 ~~(a) There is established the Mauna Kea lands management special
9 fund, into which shall be deposited:~~

10 ~~(1) Appropriations by the legislature;~~

11 ~~(2) All net rents from leases, licenses, and permits,
12 including fees and charges for the use of land and
13 facilities within the Mauna Kea lands;~~

14 ~~(3) All moneys collected for violations of subpart O of
15 part IV; and~~

16 ~~(4) Interest earned or accrued on moneys in the special
17 fund.~~

18 ~~(b) The proceeds of the special fund shall be used for:~~

19 ~~(1) Managing the Mauna Kea lands, including maintenance,
20 administrative expenses, salaries and benefits of
21 employees, contractor services, supplies, security,~~



1 ~~equipment, janitorial services, insurance, utilities,~~
2 ~~and other operational expenses; and~~

3 ~~(2) Enforcing administrative rules adopted relating to the~~
4 ~~Mauna Kea lands.~~

5 ~~(c) No moneys deposited into the Mauna Kea lands~~
6 ~~management special fund may be used by the governor or the~~
7 ~~director of finance as a justification for reducing any budget~~
8 ~~request or allotment to the University of Hawaii unless the~~
9 ~~University of Hawaii requests the reduction.~~

10 ~~(d) The University of Hawaii may establish separate~~
11 ~~accounts within the special fund for major program activities.~~

12 ~~(e) All expenditures from the special fund shall be~~
13 ~~subject to legislative appropriation.~~

14 ~~(f) For the purposes of this section, "Mauna Kea lands"~~
15 ~~shall mean the same as defined in section 304A-1901.]~~

16 SECTION 6. All moneys in the Mauna Kea lands management
17 special fund established pursuant to section 304A-2170, Hawaii
18 Revised Statutes, shall be deposited in the Mauna a Wākea
19 management special fund established pursuant to section -23,
20 Hawaii Revised Statutes, in section 2 of this Act.

21 PART II



1 SECTION 7. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$ or so
3 much thereof as may be necessary for fiscal year 2022-2023 for
4 startup costs for the Mauna a Wākea stewardship authority.

5 The sum appropriated shall be expended by the Mauna a Wākea
6 stewardship authority for the purposes of this Act.

7 PART III

8 SECTION 8. The revisor of statutes shall insert the
9 effective date of this Act in the appropriate location in
10 section 2 of this Act.

11 SECTION 9. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 10. This Act shall take effect on July 1, 3000.

14



Report Title:

Mauna a Wākea Stewardship Authority; Established; Appropriation

Description:

Establishes the Mauna a Wākea stewardship authority as the sole authority for management of state-managed lands on Mauna a Wākea. Requires the authority to develop a single plan that dictates the management of land uses; human activities, uses, and access; stewardship; education; research; disposition; and overall operations. Requires the authority to develop a framework to limit astronomy development on Mauna a Wākea. Allows the authority to prohibit certain commercial use and activities on Mauna a Wākea. Requires an application and fee for all recreational users of Mauna a Wākea. Establishes the Mauna a Wākea management special fund. Repeals the Mauna Kea lands management special fund. Appropriates funds. Effective 7/1/3000. (HD1)

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