

JAN 19 2024

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# A BILL FOR AN ACT

RELATING TO THE MAUNA KEA STEWARDSHIP AND OVERSIGHT AUTHORITY.

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

1           SECTION 1. The legislature finds that Mauna Kea serves as  
2 an important cultural and genealogical site to the people of  
3 Hawaii, particularly to Native Hawaiians. The summit region of  
4 Mauna Kea is a spiritual and special place of significance that  
5 is home to cultural landscapes, fragile habitats, and historical  
6 and archaeological artifacts. Due to its topographical  
7 prominence, Mauna Kea is also a highly valued site for  
8 astronomical study, which has produced many significant  
9 discoveries that contribute to humanity's study and  
10 understanding of the universe.

11           However, in recent years Mauna Kea has symbolized a rigid  
12 dichotomy between culture and science, often leading to  
13 polarization between Mauna Kea stakeholders. Many people  
14 perceived that Mauna Kea was being managed without sufficient  
15 and genuine consultation with the Native Hawaiian community,  
16 which had the cumulative effect of degrading trust between the  
17 community and those entrusted with managing Mauna Kea.



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1           Accordingly, the legislature enacted Act 255, Session Laws  
2 of Hawaii 2022 (Act 255), which established the Mauna Kea  
3 stewardship and oversight authority to overcome this dichotomy  
4 and facilitate a more harmonious coexistence of activities atop  
5 Mauna Kea in a culturally sensitive manner. The major reforms  
6 offered by Act 255 were intended to be a step toward changing  
7 the status quo and restoring trust and balance in the  
8 stewardship of Mauna Kea.

9           The legislature recognizes that the Mauna Kea stewardship  
10 and oversight authority has been asked to help a very diverse  
11 group of stakeholders overcome decades of distrust to find  
12 solutions to very difficult and complex issues. The legislature  
13 believes that to promote trust and engagement from the Native  
14 Hawaiian community, the use of traditional and customary Native  
15 Hawaiian practices, such as ho`oponopono, may be an effective  
16 way for the authority to find solutions to the difficult matters  
17 it faces.

18           Ho`oponopono, which is a method of conflict resolution that  
19 can be traced back to Hawaii's pre-Western contact period,  
20 involves parties acknowledging and taking responsibility for  
21 their own actions and the impacts of those actions on others,



1 admitting fault, making amends, asking for forgiveness, letting  
2 go of resentment or negative emotions towards others, and  
3 focusing on love and positive intentions. Ho`oponopono has been  
4 successfully deployed in many state programs, including those of  
5 the Hawaii state judiciary and department of health.

6 The practice of ho`oponopono requires participants to have  
7 frank and open discussions to reach an understanding. The task  
8 of crafting reconciliation will likely require countless hours  
9 of open discussion and education. However, the legislature  
10 recognizes that it may be difficult for authority members to  
11 conduct these activities within the inflexible confines of the  
12 State's public agency meeting laws. The legislature also  
13 recognizes that the authority has a limited amount of time to  
14 resolve the issues before it: section 195H-6, Hawaii Revised  
15 Statutes, provides for a transition period of five years, during  
16 which the authority must develop detailed management and  
17 financial plans, establish a framework for astronomy-related  
18 development, adopt administrative rules, and prepare to assume  
19 full management of Mauna Kea.

20 Accordingly, this Act provides the authority with some  
21 flexibility during the transition period to meet in settings



1 conducive for the practice of ho`oponopono. This flexibility is  
2 narrowly tailored to allow authority members to discuss  
3 challenging issues in a culturally sensitive manner. Public  
4 transparency and accountability will be maintained by  
5 prohibiting the authority from taking any decision-making  
6 actions at these types of meetings.

7       The legislature also finds that because the Mauna Kea  
8 stewardship and oversight authority is an arm of the State, it  
9 should have the same sovereign immunity available to other  
10 administratively-attached state agencies. Accordingly, this Act  
11 explicitly makes section 26-35(b), Hawaii Revised Statutes,  
12 applicable to the authority to clarify that the authority is  
13 subject to state sovereign immunity.

14       When the legislature enacted Act 255, it recognized that  
15 many principles and details would yet need to be addressed.  
16 Act 255 specifically stated that "amendments and additions will  
17 need to be made in future legislative sessions to ensure a  
18 mutually beneficial balance is always maintained for Mauna Kea  
19 and the people of Hawaii." Accordingly, this Act makes those  
20 first necessary amendments to ensure that a mutually beneficial  
21 balance for Mauna Kea and the people of Hawaii is maintained.



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1 The purpose of this Act is to:

2 (1) Authorize two or more members of the Mauna Kea  
3 stewardship and oversight authority, including a  
4 number of members that would constitute a quorum, to  
5 meet during the transition period; provided that:

6 (A) No commitment to vote is made or sought; and

7 (B) Decision-making, if any, occurs only at a duly  
8 noticed meeting of the authority; and

9 (2) Clarify that the authority is subject to state  
10 sovereign immunity.

11 SECTION 2. Chapter 195H, Hawaii Revised Statutes, is  
12 amended by adding a new section to be appropriately designated  
13 and to read as follows:

14 "§195H- Transition period; authority meetings;  
15 permitted interactions; restrictions. (a) Notwithstanding  
16 section 92-2.5(b) or any other law to the contrary, two or more  
17 members of the authority, including a number of members that  
18 would constitute a quorum of the authority, may meet during the  
19 transition period described in section 195H-6 regarding any  
20 matter relating to the authority's business; provided that:

21 (1) No commitment to vote is made or sought; and



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1        (2) Decision-making, if any, shall occur at a duly noticed  
2                    meeting of the authority held pursuant to chapter 91.

3        (b) An interaction of authority members described in  
4 subsection (a) shall not constitute a meeting for the purposes  
5 of part I of chapter 92."

6            SECTION 3. Section 195H-3, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8            "(a) There is established the Mauna Kea stewardship and  
9 oversight authority, which shall be a body corporate and a  
10 public instrumentality of the State for the purpose of  
11 implementing this chapter. The authority shall serve jointly  
12 with the University of Hawaii in fulfilling the obligations and  
13 duties under the state lease for a period of five years as  
14 established in section 195H-6. The authority shall be placed  
15 within the department of land and natural resources for  
16 administrative purposes; provided that section [~~26-35~~] 26-35(a)  
17 shall not apply to the authority."

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



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1 SECTION 5. This Act shall take effect upon its approval;  
2 provided that section 2 shall be repealed on June 30, 2028.

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INTRODUCED BY: *James Mercede K...*



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**Report Title:**

Mauna Kea Stewardship and Oversight Authority; Governance;  
Sunshine Law; Sovereign Immunity

**Description:**

Authorizes 2 or more members of the Mauna Kea Stewardship and Oversight Authority to meet during the transition period described in section 195H-6, HRS, regarding any matter relating to the Authority's business; provided that no commitment to vote is made or sought and no decision-making action is taken. Clarifies that the Authority is subject to state sovereign immunity.

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

