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# A BILL FOR AN ACT

RELATING TO THE UNIVERSITY OF HAWAII.

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

1       SECTION 1. Pursuant to the Hawaii Constitution and  
2 statutes of the State of Hawaii, the University of Hawaii is  
3 vested with autonomous authority to control and manage its  
4 educational and proprietary affairs. This authority extends to  
5 the use and oversight of lands and real property owned by the  
6 university or leased, demised, or transferred to the university  
7 from various owners, including state, federal, or private  
8 entities, for the furtherance of the university's educational,  
9 research, and agricultural activities.

10       Such autonomous authority presumably carries with it the  
11 necessary legal means to supervise, oversee, and permit public  
12 activities on lands it leases and controls on Mauna Kea,  
13 including the Mauna Kea Science Reserve, Hale Pohaku, and the  
14 connecting roadway corridor between Hale Pohaku and the Mauna  
15 Kea Science Reserve (collectively the Mauna Kea lands), and may  
16 be implied from the autonomous character of the university.  
17 Nevertheless, the purpose of this Act is to clarify and add



1 certainty to the law relating to the university's authority to  
2 manage and control public activities on the Mauna Kea lands by  
3 granting express authority to the university to adopt rules  
4 pursuant to chapter 91, Hawaii Revised Statutes, relating to  
5 public activities permitted or occurring on the Mauna Kea lands.  
6 In adopting such rules, the university shall address and  
7 reconcile any conflicts with other statutes or rules that are  
8 applicable to the Mauna Kea lands.

9 Administrative rules governing public and commercial  
10 activities on the Mauna Kea lands are necessary to provide  
11 effective protection of cultural and natural resources from  
12 certain public activities, and to help ensure public health and  
13 safety. Administrative rules currently in effect for the  
14 surrounding forest reserve and natural area reserve lands  
15 managed by the department of land and natural resources do not  
16 apply to the Mauna Kea lands. Examples of public and commercial  
17 activities that could be covered by administrative rules  
18 include:

19 (1) General access to sensitive resource areas, such as  
20 specific cultural features and identified natural  
21 resource habitat areas;

22 (2) Traffic and off-road vehicle management and control;



- (3) Alcohol consumption;
- (4) Snow play activities; and
- (5) Commercial tour activities.

Together with the authority to adopt administrative rules with respect to the Mauna Kea lands, the university would also require the ability to enforce such rules, including the authority to assess fines for rule violations. Thus, another purpose of this Act is to grant the university the authority to:

- (1) Create and establish a system for assessing and collecting fines for rule violations; and
- (2) Provide an appeal process, in a manner consistent with the Hawaii Administrative Procedure Act, for those accused of committing one or more violations to contest the allegation or allegations.

Additionally, the university shall:

- (1) Encourage and foster a process of collaboration and involvement between its Mauna Kea lands advisory bodies and community interests to ensure that the process of developing any administrative rules for the Mauna Kea lands is accomplished with community participation and input; and



(2) Accommodate access to the Mauna Kea lands for traditional and customary native Hawaiian cultural and religious purposes.

SECTION 2. Chapter 304A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§304A- Mauna Kea management special fund.** (a) There is established a Mauna Kea management special fund, into which shall be deposited all revenues, rents, fees, charges, assessments, fines, and other moneys collected by the university in connection with overseeing and managing the Mauna Kea lands, including any rents, fees, and charges for the use of land and facilities within the Mauna Kea lands, all moneys collected for violations of administrative rules adopted pursuant to this chapter relating to the Mauna Kea lands, and all revenues, rents, fees, charges, and other moneys collected from entities conducting or receiving moneys attributable to commercial activities within the Mauna Kea lands. The board of regents of the university may establish rents, fees, and charges, including those for the lease or use of university real property and facilities within the Mauna Kea lands; provided that the university shall comply with all statutory requirements in the



disposition of ceded lands. In establishing and amending the rents, fees, and charges payable in connection with the lease or use of the university real property and facilities as related to the oversight and management of the Mauna Kea lands, the board of regents shall be exempt from the public notice, public hearing, and gubernatorial approval requirements of chapter 91.

The rents, fees, and charges payable in connection with the lease or use of the university real property and facilities, and the oversight and management of the Mauna Kea lands, shall be established at an open public meeting subject to the requirements of chapter 92; provided that a copy of the schedule of the rents, fees, and charges is filed in the office of the lieutenant governor prior to taking effect. The university may establish separate accounts within the special fund for major program activities. The board of regents, or its designated representative or representatives, may expend the moneys deposited in the Mauna Kea management special fund for:

(1) Enforcement of the administrative rules adopted pursuant to this chapter relating to the Mauna Kea lands; and

(2) Oversight and management of the Mauna Kea lands, including maintenance, administrative expenses,



1 salaries, wages, and benefits of employees, contractor  
2 services, supplies, security, furnishings, equipment,  
3 janitorial services, insurance, utilities, and other  
4 operational expenses.

5 All expenditures from the special fund shall be subject to  
6 legislative appropriation.

7 (b) Moneys deposited into the Mauna Kea management special  
8 fund shall not be used as a basis for reducing any current or  
9 future budget request or allotment to the university unless the  
10 university requests such a reduction.

11 (c) For purposes of this section, "maintenance" includes  
12 repairs and replacement of equipment, furnishings, and  
13 facilities.

14 (d) For purposes of this section and section 304A-105,  
15 "Mauna Kea lands" means the lands that the university is leasing  
16 from the board of land and natural resources, including the  
17 Mauna Kea Science Reserve, Hale Pohaku, the connecting roadway  
18 corridor between Hale Pohaku and the Mauna Kea Science Reserve,  
19 and any other lands on Mauna Kea that the university leases or  
20 over which the university acquires control or jurisdiction."

21 SECTION 3. Section 304A-105, Hawaii Revised Statutes, is  
22 amended by amending subsection (a) to read as follows:



1       "(a) The board of regents shall have management and  
2 control of the general affairs, and exclusive jurisdiction over  
3 the internal structure, management, and operation of the  
4 university. The board may:

5       (1) Appoint a treasurer and other officers as it deems  
6 necessary;

7       (2) Authorize any officer, elected or appointed by it, to  
8 approve and sign on its behalf any voucher or other  
9 document that the board may approve and sign;

10       (3) Delegate to the president or the president's designee  
11 the authority to render the final decision in  
12 contested case proceedings subject to chapter 91, as  
13 it deems appropriate;

14       (4) Purchase or otherwise acquire lands, buildings,  
15 appliances, and other property for the purposes of the  
16 university; and

17       (5) Expend any sums of money as, from time to time, may be  
18 placed at the disposal of the university from whatever  
19 source; provided that notwithstanding any other law to  
20 the contrary, all documents regarding expenditures and  
21 changes thereto, made by the board shall be disclosed  
22 in open meetings for the purpose of public comment;



1 provided further that all expenditure requests,  
2 proposals, and any other budgetary documents used by  
3 the board at an open meeting shall be made available  
4 to the public at least six calendar days before the  
5 meeting.

6 All lands, buildings, appliances, and other property so  
7 purchased or acquired shall be and remain the property of the  
8 university to be used in perpetuity for the benefit of the  
9 university. The board, in accordance with this section and  
10 other law, shall manage the inventory, equipment, surplus  
11 property, and expenditures of the university and, subject to  
12 chapter 91, may adopt rules, further controlling and regulating  
13 the same. The board may also adopt rules, subject to chapter  
14 91, to regulate activities at and within the Mauna Kea lands, as  
15 identified in section 304A- , except as provided for in  
16 section 304A- , relating to rents, fees, and charges. Through  
17 rulemaking consistent with chapter 91, the board may set and  
18 provide for the assessment and collection of administrative  
19 finances for violations of any administrative rule adopted pursuant  
20 to chapter 91 relating to the Mauna Kea lands. The board shall  
21 provide for procedures for the purpose of enforcing its rules





1 relating to the Mauna Kea lands. Fines for violation of rules  
2 relating to the Mauna Kea lands shall be established as follows:

3 (1) For the first violation, an administrative fine of not  
4 more than \$2,500;

5 (2) For the second violation within five years of a  
6 previous violation, an administrative fine of not more  
7 than \$5,000; and

8 (3) For the third and any subsequent violation within five  
9 years of the last violation, an administrative fine of  
10 not more than \$10,000.

11 Each day of violation shall constitute a separate  
12 violation.

13 The board may also assess against a party found to have  
14 violated an administrative rule adopted pursuant to this chapter  
15 relating to the Mauna Kea lands the costs of any enforcement  
16 proceeding, including costs of holding any contested case  
17 proceedings.

18 The board may institute court action to collect any  
19 administrative fines and any costs that are or can be  
20 attributable to violations of administrative rules relating to  
21 the Mauna Kea lands."



- 1 SECTION 4. New statutory material is underscored.
- 2 SECTION 5. This Act shall take effect upon its approval.



**Report Title:**

University of Hawaii; Mauna Kea

**Description:**

Allows UH to adopt administrative rules to regulate activities at and within the Mauna Kea Lands, or the lands UH leases from the Board of Land and Natural Resources. Allows UH to provide for procedures to enforce these rules, and to assess and collect administrative fines for violations of these rules. Establishes the Mauna Kea Management Special Fund. (HB1174 HD1)

