

MAR 10 2010

S.C.R. NO. 227

SENATE CONCURRENT RESOLUTION

REQUESTING, FOR REVIEW BY THE LEGISLATURE AND THE AUDITOR, AN ACCOUNTING AND REPORT CONCERNING ITEMS OF VALUE, INCLUDING VIEWING TIME ON MAUNA KEA TELESCOPES, PROVIDED TO THE UNIVERSITY OF HAWAII AND ITS INSTITUTE FOR ASTRONOMY FOR THE LEASE OR USE OF FACILITIES ON PUBLIC TRUST LANDS ON THE SUMMIT OF MAUNA KEA.

1 WHEREAS, the lands on the summit of Mauna Kea are public
2 lands returned to Hawaii at Statehood (1959) under section 5(f)
3 of the Admission Act and subject to an express public trust; and
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5 WHEREAS, that trust imposes an express public trust duty
6 and legal restrictions on the State, including a requirement
7 that all revenues derived from the use of the public trust lands
8 must be deposited into the public lands trust fund; and
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10 WHEREAS, under section 171-17, Hawaii Revised Statutes, the
11 State's Board of Land and Natural Resources (BLNR) is required
12 to assess and charge fair-market lease rent for the use of
13 section 5(f) public trust lands (ceded lands); and
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15 WHEREAS, in 1961, the Mauna Kea summit, forestry, and
16 watershed lands were designated for protection and placed in the
17 state Conservation District, pursuant to section 205-2, Hawaii
18 Revised Statutes; and
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20 WHEREAS, in 1968, the BLNR leased approximately 13,320
21 acres of public trust lands on the Mauna Kea summit and slopes
22 to the University of Hawaii and the University of Hawaii's
23 Institute for Astronomy (UH/UHIFA) for "a scientific complex,
24 including without limitation an observatory...." (General Lease
25 No. S-4191); and
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27 WHEREAS, the lease term was sixty-five years until 2033,
28 and the lease rent to the UHIFA was a nominal \$1 per year; and
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1 WHEREAS, the lease or setting aside of public trust lands
2 from BLNR to a state department, agency, or county is often made
3 for nominal or no rent because the entities are sub-units of the
4 State; and

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6 WHEREAS, since 1968, UHIFA has entered into multiple sub-
7 lease and use agreements with private third parties for the
8 development of telescope facilities on Mauna Kea's summit; and

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10 WHEREAS, in exchange for the sub-lease and use agreements,
11 UHIFA obtained the right to viewing time on each of the
12 telescopes and a formally-established sub-lease rent of a
13 nominal amount; and

14
15 WHEREAS, both UHIFA and BLNR failed to assess, charge, or
16 collect fair-market lease rents from private third parties for
17 the use of the public trust lands on Mauna Kea, and UHIFA
18 obtained a valuable quid pro quo of viewing time which was never
19 monetized or deposited in the public land trust fund pursuant to
20 section 171-18, Hawaii Revised Statutes; and

21
22 WHEREAS, instead of assessing and charging reasonable lease
23 rents pursuant to state law, BLNR has allowed the UHIFA since
24 1968 to negotiate sub-lease agreements with some of the world's
25 wealthiest foreign and domestic entities (corporations and
26 foreign governments) in exchange for \$1 per year and time-in-
27 lieu-of-rent agreements for the use of the Mauna Kea lands; and

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29 WHEREAS, while state taxpayers face employee layoffs,
30 furloughs, salary cuts, reduced public services, and potential
31 tax increases, the same taxpayers continue to subsidize wealthy
32 foreign and domestic entities' direct use of public trust lands
33 through the failure of BLNR and UHIFA to collect fair-market
34 lease rent for the use of Mauna Kea lands; and

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36 WHEREAS, from 1968 to 1970, UHIFA built two twenty-four
37 inch (0.6 m) telescopes and UH built an eighty-eight inch
38 (2.2 m) telescope on the summit of Mauna Kea (BLNR 1983
39 documents including sub-lease agreements and Mauna Kea
40 chronology); and

41
42 WHEREAS, in 1979, BLNR and UH negotiated the first sub-
43 lease agreement with foreign entities (France and Canada) for



1 the construction of the Canada-France-Hawaii Telescopes on the
2 summit of Mauna Kea; and

3
4 WHEREAS, subsequently, several more foreign entities
5 entered into sub-lease agreements with the BLNR and UH for the
6 use of public trust lands on the summit including, but not
7 limited to; Canada, France, the United Kingdom, the Netherlands,
8 Japan and the Mitsubishi Corporation, Australia, Taiwan, Brazil,
9 Chile and Argentina; and

10
11 WHEREAS, BLNR and UH negotiated sub-leases with out-of-
12 state public and private universities and institutions,
13 including but not limited to the California Institute of
14 Technology, the University of California institutions including
15 Berkeley, the California Association of Research in Astronomy,
16 and the W.M. Keck Foundation; and

17
18 WHEREAS, BLNR and UHIFA required these wealthy foreign and
19 out-of-state entities to pay only \$1 per year in lease rent and
20 to provide ten to twenty per cent of the viewing time on each
21 facility to the UHIFA in lieu of charging fair-market lease rent
22 as required by law; and

23
24 WHEREAS, BLNR and UH negotiated and are currently
25 negotiating lease agreements with private asset-rich
26 organizations including the W.M. Keck Foundation and the Gordon
27 and Betty Moore Foundation; and

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29 WHEREAS, the summit of Mauna Kea is an important community
30 resource; and

31
32 WHEREAS, the world astronomy community ranks the summit of
33 Mauna Kea as one of the best sites in the world for conducting
34 world class astronomy, and the University of Hawaii has long
35 claimed that Mauna Kea's rarified atmosphere and excellent
36 viewing conditions make it one of the premier astronomical sites
37 in the world; and

38
39 WHEREAS, the lands of Mauna Kea are host to unique and
40 fragile ecosystems and threatened and endangered plant and
41 animal species found nowhere else on Earth; and

42
43 WHEREAS, the conservation district of Mauna Kea encompasses
44 critical watershed and forestry lands; and



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2 WHEREAS, the Mauna Kea aquifer is the principal freshwater
3 aquifer for the island of Hawaii and provides Hawaii island
4 residents with drinking water; and
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6 WHEREAS, Mauna Kea is considered one of the most sacred
7 places in Hawaii and native Hawaiians continue to revere it as a
8 sacred burial ground and wahi pana; and
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10 WHEREAS, Mauna Kea is home to unique cultural and historic
11 resources that have been designated as a National Historical
12 Landmark and granted protection under state and national
13 historic preservation laws; and
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15 WHEREAS, Mauna Kea summit lands and Lake Waiau contain
16 unique geological characteristics that have contributed to
17 geological knowledge regarding glaciers and glaciations of the
18 last ice age; and
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20 WHEREAS, viewing time is very valuable as astronomy is a
21 competitive industry and many institutions are willing to pay
22 extraordinary hourly rates for time on the astronomical
23 facilities on Mauna Kea; and
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25 WHEREAS, under the time-in-lieu-of-rent agreements, each
26 astronomical facility is required to give the UHIFA
27 approximately thirty-six to fifty-four observing nights per
28 year; and
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30 WHEREAS, in 2009, Yale University agreed to pay \$12,000,000
31 for fifteen observing nights per year for ten years on the
32 William M. Keck Observatory, which is \$1,200,000 per year for
33 fifteen nights or \$80,000 per night; and
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35 WHEREAS, the W.M. Keck Foundation owns and operates the
36 William M. Keck Observatory on Mauna Kea; and
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38 WHEREAS, the W.M. Keck Foundation website reports assets in
39 excess of \$1,000,000,000; and
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41 WHEREAS, the UHIFA is unilaterally appropriating value from
42 the use of public lands by private third parties (in lieu of
43 lease rent) for UHIFA's exclusive benefit without legislative



1 appropriation or approval and without any public accounting to
2 the residents and taxpayers of Hawaii; and

3
4 WHEREAS, public/private sector patent-leasing agreements
5 are valuable; and

6
7 WHEREAS, since at least 1968, the UHIFA has come before
8 state lawmakers seeking moneys from the general fund to support
9 UHIFA and astronomy development in general on both Mauna Kea and
10 Haleakala; and

11
12 WHEREAS, in 2001, UHIFA sought the Legislature's approval
13 of approximately \$709,000 in public funds and in 2010, the UHIFA
14 requested \$2,100,000 in public funds to secure the bid for the
15 Thirty Meter Telescope to be built on Mauna Kea; and

16
17 WHEREAS, UHIFA claims it holds numerous patents on various
18 technologies that were developed and tested on the astronomical
19 facilities on Mauna Kea and Haleakala, and the patents are often
20 leased to private high tech companies for substantial monetary
21 value; and

22
23 WHEREAS, in 2001, UHIFA claimed it had patent leasing
24 contracts worth approximately \$14,000,000; and

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26 WHEREAS, there has been no public accounting of the patent-
27 leasing contracts that are held by foreign and out-of-state
28 entities using Mauna Kea and Haleakala, and UHIFA has not
29 explained why these patent lease revenues were never recorded as
30 public revenues on the public ledger; and

31
32 WHEREAS, the existence of public-private agreements in
33 which public tax dollars are taken from the general fund, used
34 for initial research and development, and then patented and sold
35 for profit implies that Hawaii taxpayers could be subsidizing
36 out-of-state and foreign private profit; and

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38 WHEREAS, contracts held by out-of-state and foreign
39 entities that benefit from Hawaii public taxpayer support should
40 be publically assessed and accounted for; now, therefore,

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42 BE IT RESOLVED by the Senate of the Twenty-fifth
43 Legislature of the State of Hawaii, Regular Session of 2010, the
44 House of Representatives concurring, that UH and UHIFA are



1 requested to provide a written accounting and report to the
2 Legislature within fourteen calendar days of the effective date
3 of this Concurrent Resolution setting forth the following
4 information:

- 5
- 6 (1) A list of the total viewing time provided to UH,
7 UHIFA, their employees, agents, faculty, researchers,
8 affiliates, graduate students, visiting scientists,
9 and all those operating under or in association with
10 UH or UHIFA, without exception, for each telescope or
11 astronomical facility on Mauna Kea by year since 1968;
12
- 13 (2) A determination of the financial value by night or by
14 hour of the viewing time for each facility for each
15 year since 1968 for all of the viewing time set forth
16 in paragraph (1);
17
- 18 (3) A list of all value (viewing time, financial, quid pro
19 quo exchanges, and any and every other benefit)
20 received by the UH or UHIFA in relation to each
21 facility on Mauna Kea (or the sponsor) by year since
22 1968; and
23
- 24 (4) A list and copy of every contract or working agreement
25 or any other agreement UH or UHIFA has entered into
26 for the use of any facility on Mauna Kea by year since
27 1968; and
28

29 BE IT FURTHER RESOLVED that the Auditor is directed to
30 conduct a review of the UH and UHIFA written report and make a
31 separate written report to the Legislature within thirty days
32 following receipt of the UH and UHIFA report by the Legislature;
33 and
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35 BE IT FURTHER RESOLVED that certified copies of this
36 Concurrent Resolution be transmitted to the President of the
37 University of Hawaii, the Executive Director of the University
38 of Hawaii Institute for Astronomy, the Chair of the Board of
39 Regents of the University of Hawaii, the Chair of the Board of
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1 Land and Natural Resources, the Director of Commerce and
2 Consumer Affairs, and the Auditor.
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OFFERED BY:

