



1 as well as modern science and technology on Mauna Kea so that  
2 all can coexist in the twenty-first century.

3 The legislature further finds that the protection and  
4 preservation of Mauna Kea through proper management and  
5 stewardship is of statewide concern. Since 1998, four audits by  
6 the state auditor have been critical of the management,  
7 stewardship, and protection of Mauna Kea. Although significant  
8 changes have occurred on Mauna Kea since the 1998 audit,  
9 negative experiences over the past fifty years have eroded  
10 public confidence and demonstrated the critical need for fresh  
11 leadership centered on a new organizational structure,  
12 management system, and procedures.

13 Accordingly, the legislature finds that there is a clear  
14 need for one entity to serve as a single focal point of  
15 management, responsibility, communication, and enforcement  
16 regarding Mauna Kea. This new entity will increase the  
17 accountability of all tenants on Mauna Kea and will ensure that  
18 each tenant is aware of its obligations and responsibilities.  
19 This entity will also provide the necessary stewardship for the  
20 sustainable use of Mauna Kea and the proper generation of  
21 revenue from that use. This entity will be headquartered on the



1 island of Hawaii and will be recognized by the general public  
2 and the State as the single point of contact for Mauna Kea's  
3 summit region. The legislature intends that this new entity  
4 will be led by a board whose members have no inherent conflicts  
5 of interest regarding Mauna Kea, and who will provide the  
6 requisite level of independence, objectivity, competence,  
7 relevant expertise, commitment, and willingness to be engaged in  
8 order for the new entity to achieve its goals. In addition, it  
9 is the legislature's intent that the authority shall be  
10 self-funded and not require appropriations from the State's  
11 general fund. The authority shall be a new model for governance  
12 and management of Hawaii's most precious resources. Revenues  
13 generated by the authority will primarily be used for the  
14 management and proper stewardship of the approximately eleven  
15 thousand four hundred acres of lands on Mauna Kea under the  
16 authority's jurisdiction. The legislature further intends for  
17 the new entity to supersede all existing entities that are  
18 responsible for the management and stewardship of Mauna Kea.

19 The purpose of this chapter is to establish a Mauna Kea  
20 management authority.



1       §     -2   Definitions.  As used in this chapter, unless the  
2 context otherwise requires:

3       "Authority" means the Mauna Kea management authority.

4       "Chairperson" means the chairperson of the Mauna Kea  
5 management authority.

6       "Holder of record having a security interest" means a  
7 person who is the owner or possessor of a security interest in  
8 any land covered in section 171-21 and who has filed with the  
9 bureau of conveyances of the State and with the authority a copy  
10 of the interest; provided that for the purposes of this chapter,  
11 all references in section 171-21 to the board of land and  
12 natural resources shall be construed as referring to the Mauna  
13 Kea management authority and that section shall apply  
14 accordingly.

15       "Land" includes all interests therein and natural resources  
16 including water, minerals, and all things connected with land,  
17 unless expressly provided otherwise.

18       "Land license" means a privilege granted to enter land for  
19 a certain special purpose such as the removal of timber, soil,  
20 sand, gravel, stone, hapuu, and plants, but not including water  
21 rights, ground or surface, nor removal of minerals.



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

3 "Mauna Kea" means all real property identified in part II  
4 of this Act that is situated on the mountain on the island of  
5 Hawaii, known variously as Mauna Kea, Maunakea, Mauna a Wakea,  
6 Mauna O Wakea, Ka Mauna a Kea, or Mauna Akea.

7 "Mauna Kea lands" means all lands held in trust or  
8 otherwise controlled by the Mauna Kea management authority.

9 "Person" includes individual, partnership, corporation, and  
10 association, except as otherwise defined in this chapter.

11 "Vice chairperson" means the vice chairperson of the Mauna  
12 Kea management authority.

13 § -3 Mauna Kea management authority; established. (a)  
14 There is established the Mauna Kea management authority, which  
15 shall be a body corporate and a public instrumentality of the  
16 State for the purpose of implementing this chapter. The  
17 authority shall be temporarily attached to the office of the  
18 governor for administrative purposes.

19 (b) The authority shall consist of nine voting members who  
20 shall be subject to section 26-34. The members shall include:



- 1           (1) The director of business, economic development, and  
2           tourism;
- 3           (2) Members of private organizations, who shall be invited  
4           by the governor to participate as follows:
- 5           (A) The president of the Association of Hawaiian  
6           Civic Clubs, who shall serve as an ex officio  
7           member;
- 8           (B) The president of the East-West Center, who shall  
9           serve as an ex officio member;
- 10          (C) One member of the Native Hawaiian Bar Association  
11          who shall be selected by the governor from among  
12          three nominations provided by the board of  
13          directors of the Native Hawaiian Bar Association;
- 14          (D) One member who shall be selected by the governor  
15          and who shall be a member of the Royal Order of  
16          Kamehameha and a resident of the island of  
17          Hawaii;
- 18          (E) One representative of a statewide business  
19          organization; and
- 20          (F) One representative of a business organization on  
21          the island of Hawaii;



1 (3) One member of a private organization who shall be  
2 invited by the president of the senate; and

3 (4) One member of a private organization who shall be  
4 invited by the speaker of the house of  
5 representatives;

6 provided that no individual who has an inherent conflict of  
7 interest regarding any entity involved in the management, lease,  
8 sublease, or operation of any real property or other property  
9 under the jurisdiction of the authority may serve as a member of  
10 the authority; and provided further that any ex officio member  
11 with a conflict of interest that violates this subsection shall  
12 immediately designate from within the member's organization an  
13 appropriate designee to serve on the authority in that member's  
14 stead.

15 A majority of all members shall constitute a quorum to do  
16 business, and the concurrence of a majority of all members shall  
17 be necessary to make any action of the authority valid. All  
18 members shall continue in office until their respective  
19 successors have been appointed and qualified. Except for the  
20 director of business, economic development, and tourism, no



1 members appointed under this subsection shall be an officer or  
2 employee of the State or its political subdivisions.

3 (c) The authority shall appoint an executive director who  
4 shall be the chief executive officer. The authority shall set  
5 the salary of the executive director, who shall serve at the  
6 pleasure of the authority and shall be exempt from chapter 76.

7 (d) The authority shall annually elect the chairperson and  
8 vice chairperson from among its members.

9 (e) The members of the authority appointed under  
10 subsection (b) shall be compensated commensurately with trustees  
11 of the office of Hawaiian affairs pursuant to section 10-9;  
12 provided that salary and all expenses under this subsection  
13 shall be paid exclusively from the Mauna Kea management  
14 revolving fund under section -38.

15 (f) The authority's day-to-day operations shall be led by  
16 the executive director, who shall be accountable to the  
17 authority. The authority's organizational structure shall  
18 include but not be limited to six divisions as follows:

19 (1) Enforcement, which shall be led by a chief enforcement  
20 officer and include communication center operators,  
21 rangers and other law enforcement officers pursuant to





1 section -43, and other staff. This division shall  
2 be responsible for the health, safety, and welfare of  
3 visitors to Mauna Kea, including responding to  
4 emergencies of a medical or law enforcement nature,  
5 and for the protection of natural resources;

6 (2) Culture and the environment, which shall be led by a  
7 chief culture and environment officer and be  
8 responsible for the protection, preservation, and  
9 appreciation of cultural and environmental resources  
10 within the authority's managed areas. This division  
11 shall work with lineal descendants, community members,  
12 environmentalists, and individuals traditionally  
13 associated with cultural resources on Mauna Kea  
14 through appropriate programs of research, planning,  
15 and stewardship. This division shall also work with  
16 the state historic preservation division and the  
17 Hawaii island burial council, as necessary;

18 (3) Revenue management, which shall be led by a chief  
19 financial officer and be responsible for the fiscal  
20 management of all financial resources associated with  
21 the Mauna Kea summit, observatories, Hale Pohaku,



1 visitor center, and all commercial activities,  
2 including budget and accounting functions. A  
3 certified public accountant shall be a member of the  
4 division staff;

5 (4) Operations, which shall be led by a chief operations  
6 officer and be responsible for planning and organizing  
7 operations to achieve maximum efficiency and for the  
8 daily management and oversight of Mauna Kea's  
9 facilities, trails, and natural and cultural  
10 resources. This division shall also manage the entry  
11 and access center, cultural and visitor center, all  
12 infrastructure within the authority's jurisdiction,  
13 the portion of Mauna Kea access road under the  
14 authority's jurisdiction, and all water, wastewater,  
15 and power functions associated with summit and Hale  
16 Pohaku operations;

17 (5) Legal, which shall be led by a chief legal officer and  
18 general counsel and shall be responsible for  
19 overseeing all applications of all laws, court  
20 decisions, and rules pertaining to the authority, and  
21 shall include attorneys who shall be responsible for



1 the management of contracts, leases, subleases,  
2 easements, licenses, memoranda of understanding, and  
3 memoranda of agreement entered into by the authority;  
4 and

5 (6) Community relations, which shall be led by a chief  
6 community relations officer and be responsible for  
7 strengthening community engagement and education  
8 through grants, scholarships, and community benefits  
9 programs. Community relations staff shall work in  
10 coordination with community and business groups, the  
11 department of education, and the University of Hawaii  
12 to prepare local residents for careers in the science,  
13 technology, engineering, and mathematics fields. This  
14 division shall also coordinate interactive educational  
15 opportunities for Mauna Kea visitors and develop a  
16 summit access program and a peace park concept at Hale  
17 Pohaku.

18 § -4 Powers and responsibilities; generally. (a) The  
19 authority shall hold title to the lands situated on Mauna Kea  
20 and identified in section -2 and shall establish access,  
21 stewardship, and management policies for Mauna Kea lands,



1 including but not limited to policies pertaining to the  
2 protection of natural and cultural resources, all recreational  
3 activities, and all commercial uses.

4 Except as otherwise limited by this chapter, the authority  
5 may:

- 6 (1) Sue and be sued;
- 7 (2) Have a seal and alter the same at pleasure;
- 8 (3) Make and execute contracts, leases, and all other  
9 instruments necessary or convenient for the exercise  
10 of its powers and functions under this chapter;
- 11 (4) Make and alter bylaws for its organization and  
12 internal management;
- 13 (5) Adopt rules pursuant to chapter 91 for the purposes of  
14 this chapter;
- 15 (6) Through its executive director, appoint officers,  
16 agents, and employees, prescribe their duties and  
17 qualifications, and fix their salaries, without regard  
18 to chapter 76, and subject to chapter 89;
- 19 (7) Prepare or cause to be prepared a current and  
20 comprehensive management plan for all aspects of  
21 public and private access and use of Mauna Kea lands;



- 1 (8) Provide advisory, consultative, training, and  
2 educational services, technical assistance, and advice  
3 to any person, partnership, or corporation, either  
4 public or private, to carry out the purposes of this  
5 chapter, and engage the services of consultants on a  
6 contractual basis for rendering professional and  
7 technical assistance and advice;
- 8 (9) Procure insurance against any loss in connection with  
9 its property and other assets and operations in  
10 amounts and from insurers as it deems desirable;
- 11 (10) Contract for and accept gifts or grants in any form  
12 from any public agency or from any other source;
- 13 (11) Adopt rules governing the procurement and purchase of  
14 goods, services, and construction, subject to the  
15 requirements of chapter 103D;
- 16 (12) Prevent illegal activities on, unlawful occupation of,  
17 or trespassing on Mauna Kea lands;
- 18 (13) Cause all trespassers and persons unlawfully occupying  
19 Mauna Kea lands, and their effects, and all animals  
20 trespassing on the lands to be removed therefrom and  
21 to impound the animals according to law;



- 1       (14) Enter any Mauna Kea lands in order to take possession  
2           thereof, and to resume possession of any Mauna Kea  
3           lands in case of surrender, forfeiture, or escheat;
- 4       (15) Enforce contracts respecting sales, leases, licenses,  
5           permits, or other disposition of Mauna Kea lands;
- 6       (16) Recover money due the authority for damage done to any  
7           Mauna Kea lands by wrongful entry and occupation or by  
8           wrongful removal therefrom or destruction of any  
9           property;
- 10      (17) Bring actions and proceedings as may be necessary to  
11           carry out the powers and duties of the authority in  
12           the name of the State and to defend actions brought  
13           against the State as may be authorized;
- 14      (18) Enforce laws and rules within all Mauna Kea lands,  
15           pursuant to sections     -3(f)(1),     -42, and     -43;
- 16      (19) Do any and all things necessary to carry out its  
17           purposes and exercise the powers given and granted in  
18           this chapter; and
- 19      (20) Review, revise, and update as necessary all management  
20           plans for Mauna Kea, including but not limited to the  
21           2000 Mauna Kea science reserve master plan, the 2009



1 Mauna Kea comprehensive management plan, the cultural  
2 resources management plan, the natural resources  
3 management plan, the public access plan, and the  
4 decommissioning plan.

5 (b) Notwithstanding any other law to the contrary:

6 (1) The authority may grant easement, by direct  
7 negotiation or otherwise, for particular purposes in  
8 perpetuity on terms as may be set by the board,  
9 subject to reverter to the authority upon termination  
10 or abandonment of the specific purpose for which it  
11 was granted; provided the sale price of the easement  
12 shall be determined pursuant to section -8;

13 (2) No person who has had a previous sale, lease, license,  
14 permit, or easement covering Mauna Kea lands canceled,  
15 during the five years preceding the date of  
16 disposition, for failure to satisfy the terms and  
17 conditions thereof shall be eligible to purchase or  
18 lease Mauna Kea lands or to be granted a license,  
19 permit, or easement covering Mauna Kea lands,; and

20 (3) The authority shall not sell, exchange, or otherwise  
21 alienate Mauna Kea lands except as provided by law.



1       §   -5   **Auction.**   Except as otherwise specifically  
2   provided, all disposition of lands by the authority shall be  
3   made at public auction after public notice as provided in  
4   section     -7.   All applicable auctions shall be held at the  
5   door of the office of the land agent or at a place that is  
6   convenient in the district in which the land is located, and  
7   shall be conducted by the land agent or by any authorized  
8   employee of the authority under the direction of the authority,  
9   all of whom shall perform this service without extra  
10   compensation.

11       §   -6   **Drawing.**   Whenever Mauna Kea lands are to be sold  
12   or leased by drawing, the authority shall notify by publication  
13   of applications for the drawing as provided in section     -7  
14   with all details concerning the drawing as it shall deem  
15   necessary and desirable.   Applications to participate in the  
16   drawing shall be filed with the authority within two weeks after  
17   the last publication date.   Within forty-five days after the  
18   closing date for applications, the authority shall screen the  
19   qualifications of the applicants, select those qualified to  
20   participate, notify all applicants of the selection, and conduct  
21   a drawing.   The date of the drawing shall be published as set





1 forth in section -7. The award shall be made within one  
2 week and all applicants shall be notified of the result of the  
3 drawing. The lease or patent shall be issued within ninety days  
4 after the drawing or when conditions of sale are fulfilled.

5 § -7 Notices. (a) Auctions. Public notice of any  
6 proposed disposition by auction shall be given at least once  
7 statewide and once in the county where the land being disposed  
8 of is located. Notice of the auction shall contain the  
9 following:

- 10 (1) Time and place of the auction;
- 11 (2) General description of the land, including the address  
12 and tax map key;
- 13 (3) Specific use for which the disposition is intended;  
14 and
- 15 (4) Upset price or rental to be charged. The maps showing  
16 the metes and bounds description and the  
17 classification of the land shall be kept in the office  
18 of the authority and of its land agent in the county  
19 in which the land is situated, and shall be open for  
20 inspection at all reasonable hours.



(b) Drawings. Whenever a disposition by drawing by lots is proposed, public notice inviting applications to participate in the drawing shall be given once statewide and once in the county where the land being disposed of is located. The notice shall contain:

(1) The qualifications required of applicants;

(2) A general description of the land, including the address and tax map key;

(3) Specific use for which the disposition is intended; and

(4) Date by which all applications must be filed, which shall be not less than fourteen days after the last notice.

Within forty-five days after the closing date for applications, the authority shall select those qualified to participate in the drawing, notify all applicants as to whether or not they qualified, and conduct the drawing.

The notice of selection of applicants qualified to participate in the drawing, together with the notice of drawing, shall be mailed to each applicant, whether or not the applicant, in fact, qualified. The notice of the drawing shall state the



1 time and place of the drawing. Upon completion of the drawing,  
2 the award shall be announced within one week, and the lease or  
3 patent issued within ninety days after the drawing or when the  
4 conditions of the sale are fulfilled.

5 (c) Negotiation. Public notice of a proposed disposition  
6 by negotiation shall be given at least once statewide and once  
7 in the county where the land being disposed of is located;  
8 provided that the notices are not required for permits, and  
9 dispositions of remnants. The notice shall invite proposals and  
10 state in general terms the size, location, and prices or rental  
11 of lots to be sold or leased, the terms of sale or lease, and  
12 the last date upon which application will be received by the  
13 authority, which shall not be less than thirty days after the  
14 last date of the notice. The notice shall also state the times  
15 and places at which more detailed information with respect to  
16 the sale or lease may be secured by interested persons.

17 (d) Exchanges; quitclaim; reservations and easements.  
18 Whenever it is proposed to exchange public lands for private  
19 land pursuant to section -24, quitclaim public land or any  
20 interests of the State in private land pursuant to section  
21 171-51, dispose of a land license by negotiation pursuant to



1 section 171-54, or dispose of reserved rights and easements  
2 pursuant to section 171-57, public notice of the disposition  
3 shall be given at least once statewide and once in the county  
4 where the land or other interests being disposed of are located.  
5 The notice shall state in general terms the size and location of  
6 the public lands proposed to be disposed; provided that for the  
7 purposes of this section, all references in sections 171-51,  
8 171-54, and 171-57 to the board of land and natural resources  
9 shall be construed as referring to the authority and those  
10 sections shall apply accordingly.

11 (e) In addition to giving public notice, any public notice  
12 required under this section shall also be posted on the Internet  
13 in an easily-located manner.

14 § -8 Appraisals. (a) The appraisal of Mauna Kea lands  
15 for sale or lease at public auction for the determination of the  
16 upset price may be performed by an employee of the authority  
17 qualified to appraise lands, or by one but not more than three  
18 disinterested appraisers whose services shall be contracted for  
19 by the authority; provided that the upset price or upset rental  
20 shall be determined by disinterested appraisal whenever prudent  
21 management so dictates. No lands shall be sold or leased for a



1 sum less than the value fixed by appraisal; provided that for  
2 any sale or lease at public auction, the authority board may  
3 establish the upset sale or rental price at less than the  
4 appraisal value set by an employee of the authority may be sold  
5 or leased at that price. The authority shall be reimbursed by  
6 the purchaser or lessee for the cost of any appraisal required  
7 to be made by a disinterested appraiser or appraisers contracted  
8 for by the authority.

9 (b) The sale price or lease rental of lands to be disposed  
10 of by drawing or by negotiation shall be no less than the value  
11 determined by:

12 (1) An employee of the authority qualified to appraise  
13 lands; or

14 (2) A disinterested appraiser or appraisers whose services  
15 shall be contracted for by the authority, and the  
16 appraisal, and any further appraisal with the approval  
17 of the authority, shall be at the cost of the  
18 purchaser;

19 provided that the sale price or lease rental shall be determined  
20 by disinterested appraisal whenever prudent management so  
21 dictates; provided further that if the purchaser does not agree



1 upon the sale price or lease rental, the purchaser may appoint  
2 an appraiser who shall conduct an appraisal on behalf of the  
3 purchaser. If, after the purchaser's appraisal, the authority  
4 and the purchaser do not agree on the sale price or lease  
5 rental, the parties shall make a good faith effort to resolve  
6 the dispute through nonbinding mediation by a single mediator,  
7 appointed by mutual agreement of the parties. The cost of  
8 mediation shall be borne equally by the parties. If mediation  
9 does not resolve the dispute, the purchaser's appraiser together  
10 with the authority's appraiser shall appoint a third appraiser,  
11 and the sale price or lease rental shall be determined by  
12 arbitration as provided for in chapter 658A, which shall be  
13 final and binding. The purchaser shall pay for all appraisal  
14 costs, except that the cost of the third appraiser shall be  
15 borne equally by the purchaser and the authority.

16 (c) In the repurchase of any land by the authority, the  
17 authority shall have the option to repurchase the land for the  
18 original sale price or the fair market value at the time of  
19 repurchase, whichever is the lower. Any improvements affixed to  
20 the realty shall be purchased at their fair market value. At  
21 the time of the repurchase, the fair market value of the land,



1 and the improvements, if any, shall be determined by a qualified  
2 appraiser whose services shall be contracted for by the  
3 authority; provided that if the owner does not agree upon the  
4 value, the owner may appoint the owner's own appraiser who shall  
5 conduct an appraisal on behalf of the owner. If, after the  
6 owner's appraisal, the authority and the owner do not agree on  
7 the sale price, the parties shall make a good faith effort to  
8 resolve the dispute through nonbinding mediation by a single  
9 mediator, appointed by mutual agreement of the parties. The  
10 cost of mediation shall be borne equally by the parties. If  
11 mediation does not resolve the dispute, the owner's appraiser  
12 together with the authority's appraiser shall appoint a third  
13 appraiser, and the value shall be determined by arbitration as  
14 provided in chapter 658A. The owner shall pay for all appraisal  
15 costs, except that the cost of the third appraiser shall be  
16 borne equally by the owner and the authority.

17 (d) If a reopening of the rental to be paid on a lease  
18 occurs, the rental for any ensuing period shall be the fair  
19 market rental at the time of reopening. At least six months  
20 prior to the time of reopening, the fair market rental shall be  
21 determined by:



1           (1) An employee of the department qualified to appraise  
2           lands; or

3           (2) A disinterested appraiser whose services shall be  
4           contracted for by the authority,

5 and the lessee shall be promptly notified of the determination  
6 and provided with the complete appraisal prepared by the  
7 authority or the authority's appraiser; provided that if the  
8 lessee does not agree upon the fair market rental, the lessee  
9 may appoint the lessee's own appraiser and the lessee shall  
10 provide the authority with the complete appraisal prepared by  
11 the lessee's appraiser. Each party shall pay for its own  
12 appraiser. If the authority's and the lessee's appraisers do  
13 not agree upon the lease rental, the lessee and the authority  
14 shall in good faith attempt to resolve the dispute by nonbinding  
15 mediation by a single mediator mutually agreed upon by the  
16 parties. If the dispute is not resolved by the mediation, the  
17 fair market rental shall be determined by arbitration as  
18 provided in chapter 658A, which shall be final and binding.

19 Either the authority or the lessee may initiate arbitration by a  
20 written demand to the other party. The arbitration shall be  
21 conducted by a single arbitrator, who shall be an attorney





1 licensed in the State, a person with experience in contracts and  
2 real estate valuation, or another qualified person, who shall be  
3 mutually agreed upon by the parties. If an arbitrator is not  
4 selected within fifteen days of the demand for arbitration,  
5 appointment of an arbitrator may be requested by either party by  
6 motion made to the circuit court in the circuit in which the  
7 land is located. The cost of mediation or arbitration shall be  
8 borne equally by the lessee and the authority. Any language in  
9 present leases to the contrary notwithstanding, the provisions  
10 of this subsection, when possible and notwithstanding the six-  
11 month notice required, shall apply to leases with original lease  
12 rental reopening dates effective before and after July 1, 1996.

13 (e) Complete appraisal reports, including all comparables  
14 relied upon in the appraisal reports, shall be available for  
15 study by the public. All complete appraisal reports shall be  
16 provided to the opposing party prior to the commencement of  
17 mediation or arbitration, if applicable, of the valuation  
18 dispute.

19 § -9 Notice of breach or default. Except as otherwise  
20 specifically provided in this chapter, if a breach or default of  
21 any term, covenant, restriction, or condition of any lease or



1 patent heretofore or hereafter issued under this chapter occurs,  
2 the authority shall deliver a written notice of the breach or  
3 default by personal service or by registered or certified mail  
4 to the party in default and to each holder of record having any  
5 security interest in the land covered by or subject to the lease  
6 or patent making demand upon the party to cure or remedy the  
7 breach or default within sixty days from the date of receipt of  
8 the notice; provided that where the breach involves a failure to  
9 make timely rental payments pursuant to the lease or patent  
10 heretofore or hereafter issued under this chapter, the written  
11 notice shall include a demand upon the party to cure the breach  
12 within less than sixty days, but not less than five business  
13 days, after receipt of the notice. Upon failure of the party to  
14 cure or remedy the breach or default within the time period  
15 provided herein or within an additional period as the authority  
16 may allow for good cause, the authority may exercise rights it  
17 may have at law or as set forth in the lease or patent, subject  
18 to section 171-21; provided that for the purposes of this  
19 section all references in section 171-21 to the board of land  
20 and natural resources shall be construed as referring to the  
21 authority and that section shall apply accordingly.



1       §   -10   Rights of holder of security interest. Whenever  
2 any notice of breach or default is given to any party under  
3 section    -9, or under the terms of any lease, license,  
4 agreement, or other instrument issued or to be issued under this  
5 chapter, a copy of the notice shall be delivered by the  
6 authority to all holders of record of any security interest in  
7 the land or interest covered by the lease, license, agreement,  
8 or other instrument whose security interest has been recorded  
9 with the authority. If the authority seeks to forfeit the  
10 privilege, interest, or estate created by the lease, license,  
11 agreement, or other instrument, each holder, at its option, may  
12 cure or remedy the breach or default, if it can be cured or  
13 remedied, by the payment of money or by performing or undertake  
14 in writing to perform all the terms, covenants, restrictions, or  
15 conditions of any lease, patent, license, agreement, or other  
16 instrument capable of performance by the holder, as determined  
17 by the board, within the time period provided in section   -9  
18 or within an additional period as the authority may allow for  
19 good cause and add the cost thereof to the mortgage debt and the  
20 lien of the mortgage. Any lease, license, agreement, or other  
21 instrument transferred pursuant to this section shall not be



1 subject to the requirements in section -5. Upon failure of  
2 the holder to exercise its option, the authority may:

- 3 (1) Pay to the holder from any moneys at its disposal,  
4 including the special land and development fund, which  
5 is made available for that purpose, the amount of the  
6 mortgage debt, together with interest and penalties,  
7 and secure an assignment of the debt and mortgage from  
8 the holder, or if ownership of the interest or estate  
9 has vested in the holder by way of foreclosure or  
10 action in lieu thereof, the authority shall be  
11 entitled to a conveyance of the interest or estate  
12 upon payment to the holder of the amount of the  
13 mortgage debt, including interest and penalties, and  
14 all reasonable expenses incurred by the holder in  
15 connection with the foreclosure and preservation of  
16 its security interest, less appropriate credits,  
17 including income received from the privilege,  
18 interest, or estate subsequent to the foreclosure; or  
19 (2) If the property cannot be reasonably reassigned  
20 without loss to the State, then terminate the  
21 outstanding privilege, interest, or estate without



1           prejudice to any other right or remedy for arrears of  
2           rent or for any preceding or other breach or default,  
3           and use its best efforts to redispense of the affected  
4           land to a qualified and responsible person free and  
5           clear of the mortgage and the debt thereby secured;  
6           provided that a reasonable delay by the authority in  
7           instituting or prosecuting any right or remedy it may  
8           have under this section shall not operate as a waiver  
9           of the right or deprive it of the remedy when it may  
10          still attempt otherwise to resolve the problems  
11          created by the breach or default involved.

12   The proceeds of any redispense under paragraph (2) shall be  
13   applied: first, to reimburse the authority for costs and  
14   expenses in connection with the redispense; second, to  
15   discharge in full any unpaid purchase price or other  
16   indebtedness owing the State in connection with the privilege,  
17   interest, or estate terminated; third, to the mortgagee to the  
18   extent of the value received by the State upon redispense  
19   that exceeds the fair market lease value of the land as  
20   previously determined by the State's appraiser; and fourth, to  
21   the owner of the privilege, interest, or estate. Nothing



1 contained in this section shall be construed in a manner as to  
2 infringe upon or prejudice in any way the rights of a holder of  
3 record having a security interest that has vested prior to the  
4 effective date of this chapter.

5       § -11 Consent to mortgage. Whenever under this chapter  
6 or under any lease, license, permit, or other instrument issued  
7 by the authority, consent of the State is required as a  
8 condition precedent to the mortgage of, or the creation of a  
9 security interest in Mauna Kea lands, the executive director,  
10 upon due application, may grant the consent, and if the mortgage  
11 or security interest is to a recognized lending institution  
12 authorized to do business as a lending institution in either the  
13 State or elsewhere in the United States, the consent may extend  
14 to foreclosure and sale at the foreclosure to any purchaser,  
15 including the mortgagee, without regard to whether or not the  
16 purchaser is qualified under this chapter to lease, own, or  
17 otherwise acquire and hold the land or any interest therein.  
18 The interest of the mortgagee or holder shall be freely  
19 assignable. The term "holder" includes an insurer or guarantor  
20 of the obligation or condition of the mortgage, including the  
21 Federal Housing Administration, the Federal National Mortgage



1 Association, the Department of Veterans Affairs, the Small  
2 Business Administration, the United States Department of  
3 Agriculture, or any other federal agency and their respective  
4 successors and assigns, or any lending institution authorized to  
5 do business in the State or elsewhere in the United States;  
6 provided that the consent to mortgage to a nongovernmental  
7 holder shall not confer any greater rights or powers in the  
8 holder than those which would be required by any of the  
9 aforementioned federal agencies.

10 Notwithstanding any provision in this chapter to the  
11 contrary, in leases or sales for residential purposes, the  
12 authority may waive or modify any restrictions of the lease or  
13 sale or any restrictions contained in that lease or sale if the  
14 waiver or modification is necessary to enable any of the  
15 aforementioned federal agencies or any lending institution  
16 authorized to do business in the State or elsewhere in the  
17 United States to participate in any loan secured by a mortgage  
18 on the land or the leasehold interest; provided any waiver or  
19 modification shall not confer any greater rights or powers in  
20 the holder than those that would be required by the Federal



1 Housing Administration or the United States Department of  
2 Agriculture.

3       §   -12 Report to legislature on all dispositions. (a)

4 The authority shall submit a written report annually to the  
5 legislature, no later than ten days prior to the convening of  
6 each regular session, of all land dispositions made in the  
7 preceding year, including sales, leases, leases with options to  
8 purchase, licenses, concessions, permits, exchanges, and setting  
9 aside of lands by executive orders, the persons to whom made,  
10 the size of each disposition, the purpose for which made, the  
11 land classification of each, the tax map key number, the per  
12 unit price paid or set, and whether the disposition was by  
13 auction, drawing, or negotiation. When land originally leased  
14 by the authority is, in turn, subleased by the authority's  
15 lessee or sublessee, the report shall include, in addition to  
16 the foregoing information, the reason for the approval of the  
17 sublease by the authority and the estimated net economic result  
18 accruing to the State, lessee, and sublessee.

19       (b) Whenever in this chapter any sale, lease, easement,  
20 license, executive order, quitclaim, exchange, or other  
21 disposition is made subject to disapproval of the legislature, a





1 written report thereof containing the information required in  
2 subsection (a) shall be submitted to the legislature in the  
3 session next following the date of the disposition, provided the  
4 report shall be submitted no later than ten days prior to the  
5 convening of the session.

6       §   -13   **Policy.** Unless otherwise specifically authorized  
7 in this chapter or by subsequent legislative acts, all  
8 dispositions shall be by lease only, disposed of by public  
9 auction in accordance with the procedure set forth in sections  
10       -5 and       -7.

11       §   -14   **Planning; generally.** Prior to any notice of  
12 intended disposition, the authority shall:

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



1 use or uses and then promptly notify the lessee of the  
2 determination.

3 § -15 Lease provisions; generally. Every lease issued  
4 by the authority shall contain:

5 (1) The specific use or uses to which the land is to be  
6 employed;

7 (2) The improvements required; provided that a minimum  
8 reasonable time be allowed for the completion of the  
9 improvements;

10 (3) Restrictions against alienation as set forth in  
11 section -16;

12 (4) The rent, as established by the authority or at public  
13 auction, which shall be payable not more than one year  
14 in advance, in monthly, quarterly, semiannual, or  
15 annual payments;

16 (5) Where applicable, adequate protection of forests,  
17 watershed areas, game management areas, wildlife  
18 sanctuaries, and public hunting areas, reservation of  
19 rights-of-way and access to other Mauna Kea lands,  
20 public hunting areas, game management areas, or public  
21 beaches, and prevention of nuisance and waste; and



1       (6) Any other terms and conditions as the authority deems  
2       advisable to more nearly effectuate the purposes of  
3       the state constitution and of this chapter.

4       § -16 Lease restrictions; generally. (a) Except as  
5 otherwise provided, the following restrictions shall apply to  
6 all leases:

7       (1) Options for renewal of terms are prohibited;

8       (2) No lease shall be for a longer term than sixty-five  
9       years, except in the case of a residential leasehold  
10       which may provide for an initial term of fifty-five  
11       years with the privilege of extension to meet the  
12       requirements of the Federal Housing Administration,  
13       Federal National Mortgage Association, Federal Land  
14       Bank of Berkeley, Federal Intermediate Credit Bank of  
15       Berkeley, Berkeley Bank for Cooperatives, or  
16       Department of Veterans Affairs; provided that the  
17       aggregate of the initial term and extension shall in  
18       no event exceed seventy-five years;

19       (3) No lease shall be made for any land under a lease that  
20       has more than two years to run;



1       (4) No lease shall be made to any person who is in arrears  
2           in the payment of taxes, rents, or other obligations  
3           owing the State or any county;

4       (5) No lease shall be transferable or assignable, except  
5           by devise, bequest, or intestate succession; provided  
6           that with the approval of the authority, the  
7           assignment and transfer of a lease or unit thereof may  
8           be made in accordance with current industry standards,  
9           as determined by the authority; provided further that  
10          prior to the approval of any assignment of lease, the  
11          authority shall have the right to review and approve  
12          the consideration to be paid by the assignee and may  
13          condition its consent to the assignment of the lease  
14          on payment by the lessee of a premium based on the  
15          amount by which the consideration for the assignment,  
16          whether by cash, credit, or otherwise, exceeds the  
17          depreciated cost of improvements and trade fixtures  
18          being transferred to the assignee; provided further  
19          that with respect to state agricultural leases, in the  
20          event of foreclosure or sale, the premium, if any,  
21          shall be assessed only after the encumbrances of



1 record and any other advances made by the holder of a  
2 security interest are paid;

3 (6) The lessee shall not sublet the whole or any part of  
4 the demised premises except with the approval of the  
5 authority; provided that prior to the approval, the  
6 authority shall have the right to review and approve  
7 the rent to be charged to the sublessee; provided  
8 further that in the case where the lessee is required  
9 to pay rent based on a percentage of its gross  
10 receipts, the receipts of the sublessee shall be  
11 included as part of the lessee's gross receipts;  
12 provided further that the authority shall have the  
13 right to review and, if necessary, revise the rent of  
14 the demised premises based upon the rental rate  
15 charged to the sublessee including the percentage  
16 rent, if applicable, and provided that the rent may  
17 not be revised downward;

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



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

(b) The authority, from time to time, may:

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

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

(3) Extend the term of the lease,

to the extent necessary to qualify the lease for mortgage lending or guaranty purposes with any federal mortgage lending agency, to qualify the lessee for any state or private lending institution loan, private loan guaranteed by the State, or any loan in which the State and any private lender participates, or to amortize the cost of substantial improvements to the demised premises that are paid for by the lessee without institutional financing, the extension being based on the economic life of the improvements as determined by the authority or an independent appraiser; provided that the approval of any extension shall be subject to the following:



- 1           (1) The demised premises have been used substantially for  
2           the purpose for which they were originally leased;
- 3           (2) The aggregate of the initial term and any extension  
4           granted shall not be for more than sixty-five years;
- 5           (3) If a reopening occurs, the rental for any ensuing  
6           period shall be the fair market rental at the time of  
7           reopening;
- 8           (4) Any federal or private lending institution shall be  
9           qualified to do business in the State;
- 10          (5) Proceeds of any mortgage or loan shall be used solely  
11          for the operations or improvements on the demised  
12          premises;
- 13          (6) Where improvements are financed by the lessee, the  
14          lessee shall submit receipts of expenditures within a  
15          time period specified by the authority, otherwise the  
16          lease extension shall be canceled; and
- 17          (7) The rules of the authority, setting forth any  
18          additional terms and conditions, which shall ensure  
19          and promote the purposes of the demised lands.
- 20          (c) The authority at any time during the term of any  
21          intensive agricultural, aquaculture, or mariculture lease and





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

9 (1) The application of the lessee;

10 (2) Consent of each holder of record having a security  
11 interest in the leasehold; and

12 (3) A finding by the authority that the alternative use or  
13 uses are in the public interest.

14 (d) The authority, from time to time, during the term of  
15 any lease, may modify or eliminate any of the restrictions  
16 specified in subsection (a), extend or modify the fixed rental  
17 period of the lease, or extend the term of the lease upon a  
18 showing of significant economic hardship directly caused by:

19 (1) State disaster, pursuant to chapter 209, including

20 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; and provided further that the authority  
9 determines that the lessee will not be adequately  
10 compensated pursuant to the lease provisions.

11 (e) The approval of any extension granted pursuant to  
12 subsection (d) shall be subject to the following:

13 (1) The demised premises has 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 that shall ensure and  
21 promote the purposes of the demised lands; and



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

§ -17 Reservation of rights to prehistoric and historic remains on leased lands. The authority, in leases of lands, shall retain the rights to all prehistoric and historic remains found on those lands.

§ -18 Lands for historic preservation and restoration.

(a) Any law to the contrary notwithstanding, the authority may lease lands for use in historic preservation and restoration projects:

(1) Through negotiations; and

(2) For a price that shall be determined by the authority.

(b) The authority shall adopt rules pursuant to chapter 91 to determine what constitutes historic preservation and restoration projects for the purposes of this section; provided that no definition or criteria established shall conflict with any federal, state, or county law.

(c) All subleases of land disposed of pursuant to this section shall be subject to the approval of the authority.



1       §   -19   Condemnation of leases.   The lease shall provide  
2   that whenever a portion of the public land under lease is  
3   condemned for public purposes by the State, or any county or  
4   city and county, or any other governmental agency or  
5   subdivision, the rental shall be reduced in proportion to the  
6   value of the portion of the premises condemned, and the lessee  
7   shall be entitled to receive from the condemning authority the:

8       (1)   Value of growing crops, if any, that the lessee is not  
9             permitted to harvest; and

10      (2)   Proportionate value of the lessee's permanent  
11             improvements taken in the proportion that it bears to  
12             the unexpired term of the lease.

13   The lessee, in the alternative, may remove and relocate the  
14   lessee's improvements to the remainder of the lands occupied by  
15   the lessee.   The foregoing rights of the lessee shall not be  
16   exclusive of any other to which the lessee may be entitled by  
17   law.   Where the portion taken renders the remainder unsuitable  
18   for the uses for which the land was leased, the lessee shall  
19   have the option to surrender the lessee's lease and be  
20   discharged for any further liability therefor; provided that the



1 lessee may remove the lessee's permanent improvements within a  
2 reasonable period allowed by the authority.

3       §   -20   **Leases; forfeiture.** Upon the violation of any  
4 condition or term of any lease to be observed or performed by  
5 the lessee or tenant, the authority, after the notice of default  
6 as provided in section     -9, and subject to the rights of each  
7 holder of record having a security interest as provided in  
8 section     -10, shall terminate the lease or tenancy and take  
9 possession of the leased land, without demand or previous entry  
10 and without legal process, together with all improvements placed  
11 thereon and shall retain all rent paid in advance as damages for  
12 the violations.

13       §   -21   **Expired leases; holdover.** Upon expiration of the  
14 lease term, if the leased land is not otherwise disposed of, the  
15 authority may allow the lessee to continue to hold the land for  
16 a period not exceeding one year upon the rent, terms, and  
17 conditions as the authority may prescribe.

18       Upon expiration of the one-year extension, if the authority  
19 has not yet decided upon the re-lease of the land or reservation  
20 for other purposes, the authority may issue a temporary permit



1 to the lessee, subject to the rent and other terms and  
2 conditions as the authority may prescribe.

3       §   -22 Lessees within the last ten years of their lease  
4 terms; requests for interest. (a) Notwithstanding any other  
5 law to the contrary, and except as otherwise provided in section  
6 -16(b) and (d), a lessee of public land that is classified as  
7 commercial and industrial use pursuant to section 171-10, and  
8 that is subject to the management, administration, or control of  
9 the authority, during the last ten years of the term of the  
10 original lease, may submit a written request to the authority to  
11 initiate a request for interest process as provided in this  
12 section.

13       (b) Within one hundred eighty days of a lessee's written  
14 request to initiate a request for interest, the authority shall:

15       (1) Appraise the value of the land and any improvements to  
16 the land that existed as of the date of the written  
17 request pursuant to section -8(a) and require the  
18 awardee of a new lease executed pursuant to this  
19 section to reimburse the department for the appraisal;  
20 and



1           (2) Publish a request for interest and request for  
2           qualifications notice inviting persons to express  
3           their interest in leasing the land and their  
4           qualifications as potential lessees and describing any  
5           improvements to the land that exist as of the date of  
6           the written request. The notice shall be given at  
7           least once statewide and at least once in the county  
8           where the land is located and shall contain:

9           (A) The qualifications required of eligible lessees;

10          (B) A general description of the land, including the  
11           address and tax map key, and of any improvements  
12           to the land that existed as of the date of the  
13           written request;

14          (C) That the land to be leased is classified as  
15           commercial and industrial use pursuant to section  
16           171-10;

17          (D) The appraised value of the land and of any  
18           improvements to the land that existed as of the  
19           date of the written request;



1           (E) The closing date and manner by which a person  
2           shall indicate interest and submit a statement of  
3           qualifications; and

4           (F) Notice that a business plan is a prerequisite to  
5           participate at time of auction or direct  
6           negotiation, if applicable, and shall be made a  
7           term of the lease.

8           (c) Within ninety days after the closing date specified in  
9           the notice, the authority shall determine if any persons have  
10          qualified under the terms of the request for qualifications and  
11          shall notify all persons who expressed interest as to whether  
12          they qualified. The authority shall also notify the current  
13          lessee as to whether any other persons qualified.

14          (d) The authority shall enter into direct negotiation with  
15          the current lessee immediately upon notification if no other  
16          qualified persons have expressed interest in the property.

17          (e) If the land is not leased pursuant to subsection (d)  
18          within three years before the termination date of the lease, the  
19          authority shall dispose of the land by public auction as  
20          provided in this chapter; provided that the authority has  
21          determined that at least one person, who:





1 (1) Is not the current lessee;

2 (2) Has been determined by the authority to be qualified;  
3 and

4 (3) Has submitted a business plan prior to the date of the  
5 auction,

6 has expressed interest in leasing the land and any improvements  
7 to the land that existed as of the date of the written request  
8 in subsection (a). The auction upset price shall be the greater  
9 of the current rent or the fair market rent pursuant to  
10 section -8(d) based upon the appraised value of the land and  
11 any improvements to the land that existed as of the date of the  
12 written request.

13 The current lessee may bid on a new lease at the public  
14 auction. The current lessee's business plan shall be deemed  
15 acceptable to the authority and the current lessee shall not be  
16 required to submit a new business plan; provided that the  
17 current lessee is in compliance with the terms of the existing  
18 lease and has submitted a business plan prior to the date of the  
19 auction.

20 (f) Lease terms for any new lease executed pursuant to  
21 this section shall be determined by the authority and shall:



- 1           (1) Not commence prior to the termination of the current  
2           lease;
- 3           (2) Establish the rent at no less than the greater of the  
4           current rent or the fair market rent pursuant to  
5           section -8(d) based upon the appraised value of the  
6           land and any improvements to the land that existed as  
7           of the date of the written request;
- 8           (3) If the lease is awarded after public auction to any  
9           person other than the current lessee, include a  
10          premium equal to the value of any improvements to the  
11          land made after the date of the written request in  
12          subsection (a), which shall be paid to the current  
13          lessee prior to transfer of the land and improvements  
14          to the new lessee; and
- 15          (4) Include the previously submitted business plan.
- 16          (g) Unless specifically required to do so by the  
17          authority, the current lessee shall not be required to remove  
18          improvements or restore the land to a vacant condition at the  
19          expiration of the lease; provided that, without prejudice to any  
20          other rights or remedies that the current lessee or State may  
21          have, this subsection shall not alter any obligation of a



1 current lessee to indemnify, defend, and hold the State harmless  
2 from any claims regarding pollution or contamination of the land  
3 with potentially hazardous substances.

4 (h) This section shall not apply to:

5 (1) Any lessee who is in arrears in the payment of taxes,  
6 rents, or other obligations owing to the State or any  
7 county or who has had, during the five years preceding  
8 the anticipated disposition of the applicable land at  
9 a public auction or direct negotiation, a sale, lease,  
10 license, permit, or easement covering other Mauna Kea  
11 lands canceled for failure to satisfy the terms and  
12 conditions thereof; or

13 (2) Any lease that is subject to cancellation for failure  
14 to satisfy the terms or conditions of a lease,  
15 license, permit, or easement covering Mauna Kea lands.

16 (i) As used in this section, "improvements" means all  
17 physical improvements constructed, owned, or constructed and  
18 owned by the lessee during the lease term and shall exclude all  
19 infrastructure constructed, owned, or constructed and owned by  
20 third parties, such as water and sewer pipes, electricity and  
21 telephone lines and cables, or other infrastructure.



1       §   -23   Lease to eleemosynary organizations.   The  
2   authority may lease, at a nominal consideration, by direct  
3   negotiation and without recourse to public auction, public lands  
4   to an eleemosynary organization that has been certified to be  
5   tax exempt under section 501(c)(1) or 501(c)(3) of the Internal  
6   Revenue Code of 1986, as amended.   The lands shall be used by  
7   the eleemosynary organizations for the purposes for which their  
8   charter was issued and for which they were certified by the  
9   Internal Revenue Service.

10       §   -24   Land exchanges.   (a)   Purpose.   No exchange of  
11   Mauna Kea lands for private land shall be made except for public  
12   purposes, including but not limited to:

- 13       (1)   Consolidation of holdings of Mauna Kea lands;  
14       (2)   Straightening of boundaries of Mauna Kea lands;  
15       (3)   Acquisition of adequate access for landlocked Mauna  
16             Kea lands that have development potential; or  
17       (4)   Acquisition of lands suitable for residential use.

18   Exchanges shall be effected without public auction.   Public  
19   notice of any proposed exchange shall be given at least once  
20   statewide and once in the county where the land or other  
21   interests being disposed of are located.   The notice shall state



1 in general terms the size and location of the public lands  
2 proposed to be disposed. All private lands conveyed to the  
3 State by way of exchanges shall thereafter become public lands.

4 (b) Value. Mauna Kea lands exchanged shall be of  
5 substantially equal value to that of the private land. In any  
6 exchange, the fair market value of the private land and the  
7 Mauna Kea lands shall be separately determined by a  
8 disinterested qualified appraiser or appraisers and the cost  
9 shall be borne equally between the owner and the authority. No  
10 payment by the State shall be required if the private land  
11 exceeds the value of the Mauna Kea lands, but any difference in  
12 value of the Mauna Kea lands over the private land shall be paid  
13 to the authority at the time of the exchange; provided that no  
14 exchange shall be made if the Mauna Kea lands exceed one hundred  
15 twenty per cent of the value of the private land.

16 (c) Legislative approval. Any exchange of Mauna Kea lands  
17 for private land shall be subject to approval by majority vote  
18 of both houses of the legislature in any regular or special  
19 session following the date of the authority's approval in  
20 principle of the exchange. The authority shall submit for  
21 introduction to the legislature a resolution for review of



1 action on any exchange to be consummated by the authority  
2 wherein exchange deeds will be executed by the parties together  
3 with the following information:

4 (1) The specific location and size in square feet or in  
5 other precise measure of the parcels of land to be  
6 exchanged;

7 (2) The value of the lands to be conveyed by the State and  
8 the private party;

9 (3) The name or names of the appraiser or appraisers;

10 (4) The date of the appraisal valuation;

11 (5) The purpose for which the lands are being exchanged;

12 (6) A detailed summary of any development plans for the  
13 land to be exchanged; and

14 (7) A statement of whether the land is, or is not, land  
15 that was classed as government or crown lands previous  
16 to August 15, 1895, or was acquired by the State in  
17 exchange for lands of those classes, and a detailed  
18 explanation of how the state department or agency made  
19 this determination.

20 A copy of the draft resolution shall also be submitted to  
21 the office of Hawaiian affairs at least three months prior to



1 the convening of a regular or special session of the legislature  
2 to allow the office to determine whether the land was classed as  
3 government or crown lands previous to August 15, 1895, or was  
4 acquired by the State in exchange for lands of those classes.

5       §   -25 Land license. The authority may issue land  
6 licenses affecting Mauna Kea lands for a period not exceeding  
7 twenty years. No land license shall be disposed of except at  
8 public auction as provided in this chapter; provided that the  
9 board, after publication of notice in accordance with section  
10 -7(d), may dispose of a land license by negotiation, without  
11 recourse to public auction, if it determines that the public  
12 interest will best be served thereby. The disposition of a land  
13 license by negotiation shall be upon such terms and conditions  
14 as the authority determines shall best serve the public  
15 interest.

16       §   -26 Permits. Notwithstanding any other law to the  
17 contrary, the authority may issue permits for the temporary  
18 occupancy of state lands or an interest therein on a month-to-  
19 month basis by direct negotiation without public auction, under  
20 conditions and rent that will serve the best interests of the  
21 State, subject, however, to those restrictions as may from time



1 to time be expressly imposed by the authority. A permit on a  
2 month-to-month basis may continue for a period not to exceed one  
3 year from the date of its issuance; provided that the authority  
4 may allow the permit to continue on a month-to-month basis for  
5 additional one-year periods.

6       **§ -27 Contract or license for concessions or concession**  
7 **space.** The authority, subject to chapter 102, may dispose of  
8 concessions, as defined in chapter 102, and shall enter into  
9 contracts or issue licenses for those concessions; provided that  
10 the duration of the contract or license shall be related to the  
11 investment required, but in no event to exceed fifteen years.

12       **§ -28 Minerals and water rights.** (a) Except as  
13 provided in this section, the right to any mineral or surface or  
14 ground water shall not be included in any lease, agreement, or  
15 sale, this right being reserved to the State; provided that the  
16 authority may make provisions in the lease, agreement, or sale,  
17 for the payment of just compensation to the surface owner for  
18 improvements taken as a condition precedent to the exercise by  
19 the State of any reserved rights to enter, sever, and remove  
20 minerals or to capture, divert, or impound water.





1 (b) Disposition of mineral rights shall be in accordance  
2 with the laws relating to the disposition of mineral rights  
3 enacted or hereafter enacted by the legislature.

4 (c) Disposition of water rights may be made by lease at  
5 public auction as provided in this chapter or by permit for  
6 temporary use on a month-to-month basis under those conditions  
7 that will best serve the interests of the State and subject to a  
8 maximum term of one year and other restrictions under the law;  
9 provided that:

10 (1) Where an application has been made for a lease under  
11 this section to continue a previously authorized  
12 disposition of water rights, a holdover may be  
13 authorized annually until the pending application for  
14 the disposition of water rights is finally resolved or  
15 for a total of three consecutive one-year holdovers,  
16 whichever occurs sooner; provided that the total  
17 period of the holdover for any applicant shall not  
18 exceed three years; provided further that the holdover  
19 is consistent with the public trust doctrine;

20 (2) Any disposition by lease shall be subject to  
21 disapproval by the legislature by two-thirds vote of



1           either the senate or the house of representatives or  
2           by majority vote of both in any regular or special  
3           session next following the date of disposition; and  
4       (3) After a certain land or water use has been authorized  
5           by the authority subsequent to public hearings and  
6           conservation district use application and  
7           environmental impact statement approvals, water used  
8           in nonpolluting ways, for nonconsumptive purposes  
9           because it is returned to the same stream or other  
10          body of water from which it was drawn, and essentially  
11          not affecting the volume and quality of water or biota  
12          in the stream or other body of water, may also be  
13          leased by the authority with the prior approval of the  
14          governor and the prior authorization of the  
15          legislature by concurrent resolution.

16       (d) Any lease of water rights shall contain a covenant on  
17       the part of the lessee that the lessee shall provide, from  
18       waters leased from the State under the lease or from any water  
19       sources privately owned by the lessee, to any farmer or rancher  
20       engaged in irrigated pasture operations, crop farming, pen  
21       feeding operations, or raising of grain and forage crops, or for



1 those public uses and purposes as may be determined by the  
2 authority, at the same rental price paid under the lease, plus  
3 the proportionate actual costs, as determined by the authority,  
4 to make these waters available, so much of the waters as are  
5 determined by the authority to be surplus to the lessee's needs  
6 and for that minimum period as the authority shall determine;  
7 provided that in lieu of payment for those waters as the State  
8 may take for public uses and purposes, the authority may elect  
9 to reduce the rental price under the lease of water rights in  
10 proportion to the value of the waters and the proportionate  
11 actual costs of making the waters available. The authority, at  
12 any time during the term of the lease of water rights, may  
13 withdraw from waters leased from the State and from sources  
14 privately owned by the lessee so much water as it may deem  
15 necessary to:

16 (1) Preserve human life; and

17 (2) Preserve animal life,

18 in that order of priority; provided further that from waters  
19 leased from the State, the authority, at any time during the  
20 term of the lease of water rights, may also withdraw so much  
21 water as it may deem necessary to preserve crops; provided that



1 payment for the waters shall be made in the same manner as  
2 provided in this section.

3 (e) Any new lease of water rights shall contain a covenant  
4 that requires the lessee and the department of land and natural  
5 resources to jointly develop and implement a watershed  
6 management plan. The authority shall not approve any new lease  
7 of water rights without the foregoing covenant or a watershed  
8 management plan. The authority shall prescribe the minimum  
9 content of a watershed management plan; provided that the  
10 watershed management plan shall require the prevention of the  
11 degradation of surface water and ground water quality to the  
12 extent that degradation can be avoided using reasonable  
13 management practices.

14 (f) Upon renewal, any lease of water rights shall contain  
15 a covenant that requires the lessee and the authority to jointly  
16 develop and implement a watershed management plan. The  
17 authority shall not renew any lease of water rights without the  
18 foregoing covenant or a watershed management plan. The  
19 authority shall prescribe the minimum content of a watershed  
20 management plan; provided that the watershed management plan  
21 shall require the prevention of the degradation of surface water



1 and ground water quality to the extent that degradation can be  
2 avoided using reasonable management practices.

3 (g) The authority shall notify the department of Hawaiian  
4 home lands of its intent to execute any new lease, or to renew  
5 any existing lease of water rights. After consultation with  
6 affected beneficiaries, the authority and department shall  
7 jointly develop a reservation of water rights sufficient to  
8 support current and future homestead needs. Any lease of water  
9 rights or renewal shall be subject to the rights of the  
10 department of Hawaiian home lands as provided by section 221 of  
11 the Hawaiian Homes Commission Act.

12 § -29 Disposition by negotiation. A lease of Mauna Kea  
13 lands may be disposed of through negotiation upon a finding by  
14 the authority that the public interest demands it. Mauna Kea  
15 lands to be sold under this section shall be an economic unit as  
16 provided in section -14(3).

17 After a determination is made to negotiate the disposition  
18 of a lease, the authority shall:

19 (1) Give public notice as in public auction, in accordance  
20 with the procedure set forth in section -7(a), of  
21 its intention to lease Mauna Kea lands through



1 negotiation setting forth the minimum conditions  
2 thereunder, the use for which the land will be leased.  
3 Any person interested in securing the lease shall file  
4 an application with the authority not later than  
5 forty-five days after the first publication of the  
6 notice;

7 (2) Establish reasonable criteria for the selection of the  
8 lessee; provided that where the intended use of the  
9 land is agriculture, the department of agriculture  
10 shall establish the criteria; and

11 (3) Determine the applicants who meet the criteria for  
12 selection set by the authority or the department of  
13 agriculture, as the case may be, and notify all  
14 applicants of its determination. Any applicant may  
15 examine the basis of the determination, which shall be  
16 in writing, to ascertain whether or not the conditions  
17 and criteria established by the authority or the  
18 department of agriculture were followed; provided that  
19 if any applicant does not notify the authority of the  
20 applicant's objections, and the grounds therefor, in  
21 writing, within twenty days of the receipt of the



1 notice, the applicant shall be barred from proceeding  
2 to seek legal remedy for any alleged failure of the  
3 authority to follow the conditions and criteria.

4 If only one applicant meets the criteria for selection of  
5 the lessee, the authority, after notice as provided in paragraph  
6 (3) may dispose of the lease by negotiation.

7 If two or more applicants meet the criteria for the  
8 selection of the lessee, the authority shall select the lessee  
9 who submits the highest offer contained in a sealed bid  
10 deposited with the authority.

11 § -30 Covenants against discrimination. The authority  
12 shall provide in every deed, lease, agreement, license, or  
13 permit that the use and enjoyment of the premises being granted  
14 shall not be in support of any policy that discriminates against  
15 anyone based upon race, creed, color, national origin, sex, or a  
16 physical disability. The authority shall not dispose of any  
17 Mauna Kea lands to any person who practices discrimination based  
18 upon race, creed, color, national origin, sex, or a physical  
19 disability. As used in this section, "physical disability"  
20 means a physical impairment that substantially limits one or  
21 more of a person's major life activities.



1       §   -31   Legislative approval of sale or gift of lands.

2   (a)   This section applies to all lands or interest therein owned  
3   or under the control of the authority classed as government or  
4   crown lands previous to August 15, 1895, or acquired or reserved  
5   by the authority upon or subsequent to that date by purchase,  
6   exchange, escheat, or the exercise of the right of eminent  
7   domain, or any other manner.

8       (b)   Notwithstanding any law to the contrary, no sale of  
9   lands described in subsection (a) in fee simple including land  
10   sold for roads and streets, or gift of lands described in  
11   subsection (a) in fee simple to the extent that the gift is  
12   otherwise permitted by law, shall occur without the prior  
13   approval of the sale or gift by the legislature by concurrent  
14   resolution to be adopted by each house by at least a two-thirds  
15   majority vote of the members to which each house is entitled in  
16   a regular or special session at which a concurrent resolution is  
17   submitted for approval of the sale; provided that this section  
18   shall not apply to remnants, as that term is defined in section  
19   171-52, or portions thereof; provided further that this section  
20   shall not apply to the issuance of licenses, permits, easements,





1 and leases executed in conformance with the laws applicable to  
2 the lands listed in subsection (a).

3 (c) The authority shall submit for introduction to the  
4 legislature a concurrent resolution for review of the proposed  
5 sale or gift. The concurrent resolution shall contain a list of  
6 all sales or gifts of Mauna Kea lands proposed by the authority.  
7 The concurrent resolution shall contain the following  
8 information:

- 9 (1) The specific location and size in square feet or in  
10 other precise measure of the parcels of land to be  
11 sold or given;
- 12 (2) The appraisal value of the land to be sold or given;
- 13 (3) The names of all appraisers performing appraisals of  
14 the land to be sold or given;
- 15 (4) The date of the appraisal valuation;
- 16 (5) The purpose for which the land is being sold or given;
- 17 (6) A detailed summary of any development plans for the  
18 land to be sold or given; and
- 19 (7) A statement of whether the land is, or is not, land  
20 that was classed as government or crown lands previous  
21 to August 15, 1895, or was acquired by the State in



1 exchange for lands of those classes, and a detailed  
2 explanation of how the authority made this  
3 determination.

4 A draft of the concurrent resolution for the prior approval  
5 of a sale or gift of land shall also be submitted to the office  
6 of Hawaiian affairs at least three months prior to the convening  
7 of a regular or special session of the legislature to allow the  
8 office to determine whether the land was classed as government  
9 or crown lands previous to August 15, 1895, or was acquired by  
10 the State in exchange for lands of those classes.

11 (d) If the legislature fails to approve the concurrent  
12 resolution by at least a two-thirds majority vote of both  
13 houses, the transaction shall be abandoned by the authority.

14 (e) Prior to finalizing any proposal for the sale or gift  
15 of lands described in subsection (a) to a person or entity other  
16 than the State, its agencies, or its entities, and prior to  
17 submission of the concurrent resolution to the legislature under  
18 subsection (c), the State, agency, or entity, as appropriate,  
19 shall hold an informational briefing on the proposed sale or  
20 gift in the community where the land to be sold or given is  
21 located.



1       §   -32   Disposition to governments, governmental agencies,  
2   public utilities, and renewable energy producers.   (a)  
3   Notwithstanding any limitations to the contrary, the authority,  
4   without public auction, may:

5       (1)   Sell public lands at a price and on any other terms  
6             and conditions as the authority may deem proper to  
7             governments, including the United States, a city and  
8             county, counties, other governmental agencies  
9             authorized to hold lands in fee simple, and public  
10            utilities;

11      (2)   Lease Mauna Kea lands to the governments, agencies,  
12             public utilities, and renewable energy producers for  
13             terms up to, but not in excess of, sixty-five years at  
14             rental and other terms and conditions as the authority  
15             may determine;

16      (3)   Grant licenses and easements to the governments,  
17             agencies, public utilities, and renewable energy  
18             producers on terms and conditions as the authority may  
19             determine for road, pipeline, utility, communication  
20             cable, and other rights-of-way;



1 (4) Exchange Mauna Kea lands with the governments and  
2 agencies;

3 (5) Execute quitclaim deeds to the governments and  
4 agencies, with or without consideration, releasing any  
5 claim to the property involved made upon disputed  
6 legal or equitable grounds, whenever the authority in  
7 its discretion deems it beneficial to the State; and

8 (6) Waive or modify building and other requirements and  
9 conditions contained in deeds, sales agreements, or  
10 leases held by the governments and agencies whenever  
11 such waiver or modification is beneficial to the  
12 State.

13 (b) In any disposition to public utilities under this  
14 section:

15 (1) The sale price or lease rental shall be no less than  
16 the value determined in accordance with section  
17 -8(b); provided that the sale price or lease  
18 rental may be on a nominal basis, if the authority  
19 finds that an easement is required in connection with  
20 a government project;



1       (2) The authority shall provide that in case the land  
2           ceases to be used at any future time for the use for  
3           which the disposition was made, the authority shall  
4           have the right to repurchase the land at the original  
5           sale price or fair market value, whichever is lower,  
6           and to purchase improvements thereon at the  
7           depreciated value or fair market value, whichever is  
8           lower;

9       (3) Disposition shall not be made to any public utility if  
10          the utility has suitable lands of its own; and

11      (4) The disposition to public utilities shall be subject  
12          to disapproval by the legislature by two-thirds vote  
13          of either the senate or the house of representatives  
14          or by majority vote of both, in any regular or special  
15          session next following the date of the disposition.

16      (c) For the purposes of this section:

17      "Public utility" shall have the same meaning as in section  
18      269-1.

19      "Renewable energy producer" means:

20      (1) Any producer or developer of electrical or thermal  
21          energy produced by wind, solar energy, hydropower,



1 geothermal resources, landfill gas, waste-to-energy,  
2 ocean thermal energy conversion, cold seawater, wave  
3 energy, biomass, including municipal solid waste,  
4 biofuels or fuels derived from organic sources,  
5 hydrogen fuels derived primarily from renewable  
6 energy, or fuel cells where the fuel is derived  
7 primarily from renewable sources that sell all of the  
8 net power produced from the demised premises to an  
9 electric utility company regulated under chapter 269  
10 or that sells all of the thermal energy it produces to  
11 customers of district cooling systems; provided that  
12 up to twenty-five per cent of the power produced by a  
13 renewable energy producer and sold to the utility or  
14 to district cooling system customers may be derived  
15 from fossil fuels; or

- 16 (2) Any grower or producer of plant or animal materials  
17 used primarily for the production of biofuels or other  
18 fuels; provided that nothing herein is intended to  
19 prevent the waste product or by-product of the plant  
20 or animal material grown or produced for the  
21 production of biofuel, other fuels, electrical energy,



1 or thermal energy, from being used for other useful  
2 purposes.

3 § -33 Lease to foreign governments. Notwithstanding any  
4 limitations to the contrary, the authority, with the prior  
5 approval of the governor, may lease Mauna Kea lands for  
6 consulate purposes without recourse to public auction to foreign  
7 governments. The manner of disposition and the terms and  
8 conditions thereto shall be in accordance with sections -14,  
9 -15, and -16.

10 § -34 Telescopes; leases; impacts. In addition to any  
11 other requirements under this chapter and other applicable law,  
12 and notwithstanding the eleemosynary, governmental, or public  
13 utility natures of any lessee, the authority shall take into  
14 account, in issuing any lease pertaining to telescopes on Mauna  
15 Kea lands, the value of land use, telescope viewing time, and  
16 impacts to natural and cultural resources and traditional and  
17 customary cultural practices, including the costs of preventing  
18 and remediating any anticipated and potential unanticipated  
19 impacts to land, natural and cultural resources, and cultural  
20 sites that may result both directly and indirectly from those  
21 land uses as a result of telescope-related activities.



1           §     -35   Telescopes; limitations.  No more than thirteen  
2   telescopes shall be present on Mauna Kea lands at any time;  
3   provided that no more than nine telescopes shall be present on  
4   Mauna Kea lands by January 1, 2028.

5           §     -36   Rules; management, stewardship, and protection of  
6   cultural resources.  The authority shall expedite the  
7   establishment of rules pursuant to chapter 91 on the management,  
8   stewardship, and protection of lands and cultural resources, and  
9   any fees and fee waivers under its jurisdiction.  Rules adopted  
10   under this section shall follow existing law, rules, ordinances,  
11   and regulations as closely as is consistent with standards to  
12   meet minimum requirements of good design, health, safety, and  
13   coordinated development; provided that the rules, at a minimum,  
14   shall require that:

15           (1)   A nominal fee shall be charged for all passenger and  
16                 commercial vehicles traveling to the Hale Pohaku  
17                 Visitor Center; and

18           (2)   No privately owned vehicles shall travel to the Mauna  
19                 Kea summit unless they are:

20                 (A)   Four-wheel-drive vehicles; and





1 (B) Used to provide access for customarily and  
2 traditionally exercised practices protected under  
3 article XII, section 7, of the Hawaii State  
4 Constitution or as otherwise provided by permit  
5 or rule;

6 provided that no fee shall be charged for a private  
7 vehicle to travel to the Mauna Kea summit for purposes  
8 of providing access for customarily and traditionally  
9 exercised practices protected under article XII,  
10 section 7, of the Hawaii State Constitution.

11 On the effective date of the initial rules adopted pursuant  
12 to this section, all rules pertaining to Mauna Kea lands,  
13 established by the University of Hawaii, including but not  
14 limited to the office of Mauna Kea management, Mauna Kea  
15 management authority board, and Kahu Ku Mauna, shall be  
16 rescinded. The authority shall coordinate and enter into  
17 memoranda of agreement as necessary with other government  
18 entities, including the office of Hawaiian affairs, department  
19 of Hawaiian home lands, department of land and natural  
20 resources, department of transportation, and county of Hawaii  
21 with regard to the use and maintenance of the portions of the



1 Mauna Kea summit access road that traverse lands controlled by  
2 those entities.

3       §     -37 Project approval authorization. The authority is  
4 authorized to approve or disapprove all projects, including but  
5 not limited to design review, on all Mauna Kea lands; provided  
6 that rules adopted pursuant to this chapter shall supersede all  
7 conservation district rules.

8       §     -38 Mauna Kea management revolving fund. There is  
9 created the Mauna Kea management revolving fund into which all  
10 receipts and revenues of the authority shall be deposited.  
11 Proceeds from the fund shall be used for administration, capital  
12 improvement projects, and other purposes pursuant to this  
13 chapter.

14       §     -39 Expenditures of revolving funds under the  
15 authority exempt from appropriation and allotment. Except as to  
16 administrative expenditures, and except as otherwise provided by  
17 law, expenditures from any revolving fund administered by the  
18 authority may be made by the authority without appropriation or  
19 allotment of the legislature; provided that no expenditure shall  
20 be made from and no obligation shall be incurred against any  
21 revolving fund in excess of the amount standing to the credit of



1 the fund or for any purpose for which the fund may not lawfully  
2 be expended. Nothing in sections 37-31 to 37-41 shall require  
3 the proceeds of any revolving fund administered by the authority  
4 to be reappropriated annually.

5       §     -40   **Transfer and renegotiation of leases, subleases,**  
6   **easements, permits, and licenses.** All leases, subleases,  
7 easements, permits, and licenses executed by the University of  
8 Hawaii or department of land and natural resources, and  
9 pertaining to Mauna Kea, shall be transferred to the authority  
10 and shall be subject to renegotiation upon mutual agreement of  
11 the parties. The authority shall renegotiate subleases  
12 pertaining to telescopes on Mauna Kea in accordance with section  
13 171-17 and take into account the value of land use and telescope  
14 viewing time. In addition, any future leases shall include, at  
15 a minimum, a stewardship component, community benefits package,  
16 and conversion of the applicable facility to a self-contained,  
17 zero-discharge waste system.

18       §     -41   **Managed access.** The authority shall develop a  
19 visitor center along the Mauna Kea summit access road that shall  
20 include, at a minimum, a kiosk entrance to manage access to  
21 Mauna Kea. All visitors who travel beyond the visitor center



1 shall be required to register at the visitor center, pay  
2 applicable fees there, and receive orientation regarding safety,  
3 environmental protection, and cultural traditions and  
4 sensitivities. All visitors who travel to the summit shall be  
5 required to use a shuttle service established by the authority.  
6 The authority shall establish a policy that waives the entrance  
7 fee for visitors who wish to conduct, at any time during normal  
8 operating hours, customarily and traditionally exercised  
9 practices protected under article XII, section 7, of the Hawaii  
10 State Constitution.

11       **§   -42   Mauna Kea management authority; police powers.**

12   (a) The authority shall have police powers and may appoint and  
13 commission enforcement officers, who shall be known as rangers.  
14 Persons appointed and commissioned under this section shall have  
15 and may exercise all of the powers and authority of a police  
16 officer, including the power of arrest, and may enforce all  
17 state laws and rules and county ordinances and rules within all  
18 Mauna Kea lands; provided that those powers shall remain in  
19 force and effect only while in actual performance of their  
20 duties, which shall include off-duty employment when that  
21 employment is for other state departments or agencies. These



1 enforcement officers shall consist of personnel whose primary  
2 duty will be the protection of the health, safety, and welfare  
3 of visitors to Mauna Kea, the enforcement of laws related to  
4 crimes against property rights under parts II and III of chapter  
5 708, protection of natural resources, and the enforcement of  
6 other laws and rules as necessary.

7 (b) An enforcement officer, upon arresting any person, may  
8 immediately take the person arrested to a police station or  
9 before a district judge, or take the name, address, and the  
10 number of the licenses or permits, if any, of the person, and  
11 note the violation of the law or rule by the person, and issue  
12 the person a summons or citation, printed in the form described  
13 in section -44, warning the person to appear and to answer to  
14 the charge against the person at a certain place and time within  
15 seven days after the arrest. Any person failing to obey a  
16 summons issued pursuant to this section shall be subject to  
17 section -45.

18 § -43 Enforcement; rangers; powers; duties. (a)  
19 Pursuant to section -3(f)(1), the authority shall establish a  
20 unit of rangers who shall enforce laws and rules within Mauna  
21 Kea lands.



1 (b) Rangers employed pursuant to this section shall be law  
2 enforcement officers who shall:

3 (1) Be responsible for the health, safety, and welfare of  
4 visitors to Mauna Kea, including responding to  
5 emergencies of a medical or law enforcement nature,  
6 enforcement of laws related to crimes against property  
7 rights under parts II and III of chapter 708, the  
8 protection of natural resources, and the enforcement  
9 of other laws and rules as necessary;

10 (2) Investigate complaints, gather evidence, conduct  
11 investigations, and conduct field observations and  
12 inspections as required or assigned;

13 (3) Cooperate with enforcement authorities of the State,  
14 counties, and the federal government in the  
15 development of programs and mutual aid agreements for  
16 the protection of Mauna Kea and the enforcement of  
17 applicable laws;

18 (4) Cooperate with established search and rescue agencies  
19 of the State, counties, and the federal government in  
20 developing plans and programs and mutual aid



1 agreements for search and rescue activities within the  
2 State;

3 (5) Check and verify all leases, permits, and licenses  
4 issued by the authority;

5 (6) Enforce the laws relating to firearms, ammunition, and  
6 dangerous weapons contained in chapter 134; and

7 (7) Carry out other duties and responsibilities as the  
8 authority shall direct.

9 (c) The authority may establish memoranda of agreement  
10 with:

11 (1) The department of land and natural resources to  
12 provide assistance from the division of conservation  
13 and resources enforcement with applicable training and  
14 certification of rangers; and

15 (2) The county of Hawaii police department to provide  
16 assistance such as access to holding cells and  
17 fingerprinting and other processing of persons  
18 detained by rangers;

19 provided that the memoranda may provide for reimbursement by the  
20 authority for applicable expenses.



1 (d) Rangers may also serve as interpretive officers who  
2 provide information to Mauna Kea visitors.

3 § -44 Summons or citation. There shall be a form of  
4 summons or citation for use in citing violators for violations  
5 that do not mandate the physical arrest of the violators. The  
6 summons or citation shall be printed in a form commensurate with  
7 the form of other summons or citation used in modern methods of  
8 arrest and shall be so designed to include all necessary  
9 information to make it valid and legal within the laws and rules  
10 of the State. The form and content of the summons or citation  
11 shall be adopted or prescribed by the district courts.

12 In every case where a summons or citation is issued, the  
13 original of the same shall be given to the violator; provided  
14 that the district courts may prescribe the issuance to the  
15 violator of a carbon copy of the summons or citation and provide  
16 for the disposition of the original and any other copies. Every  
17 summons or citation shall be consecutively numbered and each  
18 carbon copy shall bear the number of its respective original.

19 § -45 Failure to obey a summons. (a) Any person who  
20 fails to appear at the place and within the time specified in  
21 the summons or citation issued by the officers or their agents





1 or subordinates, upon that person's arrest, shall be guilty of a  
2 petty misdemeanor and, upon conviction, shall be fined not more  
3 than \$500 or be imprisoned not more than thirty days, or both.

4 (b) If any person fails to comply with a summons or  
5 citation issued, or if any person fails or refuses to deposit  
6 bail as required and within the time permitted, the officers  
7 shall cause a complaint to be entered against the person and  
8 secure the issuance of a warrant for the person's arrest.

9 (c) When a complaint is made to any prosecuting officer of  
10 the violation, the officer who issued the summons or citation  
11 shall subscribe to it under oath administered by another  
12 official or officials of the authority whose names have been  
13 submitted to the prosecuting officer and who have been  
14 designated by the executive director of the authority to  
15 administer the same.

16 § -46 Search and seizure; forfeiture of property. (a)  
17 Any law enforcement officer or agent of the authority upon whom  
18 the authority has conferred powers of law enforcement officers,  
19 shall have the authority to conduct searches on probable cause  
20 as provided by law and to seize any equipment, article,  
21 instrument, aircraft, vehicle, vessel, business records, or



1 natural resource used or taken in violation of the laws of the  
2 State, or any rules adopted thereunder. For purposes of this  
3 section, "natural resource" includes any archaeological  
4 artifacts, minerals, any aquatic life or wildlife or parts  
5 thereof, including their eggs, and any land plants or parts  
6 thereof, including seeds.

7 (b) Any equipment, article, instrument, aircraft, vehicle,  
8 vessel, business records, or natural resource seized is subject  
9 to forfeiture pursuant to chapter 712A. Unless otherwise  
10 directed by the environmental court pursuant to chapter 712A,  
11 any item, other than a natural resource, seized shall be ordered  
12 forfeited to the State for disposition as determined by the  
13 department, or may be destroyed, or may be kept and retained and  
14 utilized by the authority or any other state agency. If not  
15 needed or required by the authority or other state agency, the  
16 forfeited items shall be disposed of as provided by chapter  
17 712A. Notwithstanding any other law to the contrary, any live  
18 natural resource seized may be immediately returned to its  
19 natural environment or suitable habitat or may be disposed of as  
20 determined by the authority; provided that if the natural  
21 resource disposed of was unlawfully seized, the authority shall



1 be liable to the owner for the fair market value of the items  
2 disposed of.

3 (c) The authority shall compile a list of all equipment,  
4 articles, instruments, aircraft, vehicles, vessels, or any  
5 natural resource forfeited as provided in this section and shall  
6 publish the list in its annual report.

7 (d) Notwithstanding any other law to the contrary, the  
8 authority may sell or take actions to cause the sale of any  
9 perishable natural resource that is seized to prevent the waste  
10 of the natural resource and to ensure the economic value of the  
11 natural resource; provided that the authority may not sell or  
12 cause the sale of any threatened or endangered species or any  
13 other species whose sale is prohibited by law. The authority  
14 may require the person or persons who took the natural resources  
15 to sell the seized natural resources at fair market value. The  
16 authority may require any person purchasing any seized natural  
17 resource to deliver the proceeds of the sale to the authority or  
18 its authorized representative. Any person who refuses to sell  
19 the seized natural resources at fair market value or any person  
20 who fails to deliver the proceeds of the sale, as directed by  
21 the authority, shall be in violation of this subsection and



1 punishable as provided by law. The authority shall deposit and  
2 keep the proceeds of the sale in an interest-bearing account  
3 until the suspected violation is settled between the person or  
4 persons who took the natural resource, consignee or consignees,  
5 if any, and the authority. Should a settlement not be reached,  
6 the authority shall submit the proceeds of the sale to the  
7 environmental court. The proceeds of the sale, after deducting  
8 any reasonable costs of the sale incurred by the authority,  
9 shall be subject to any administrative or judicial proceedings  
10 in the same manner as the seized natural resource would have  
11 been, including an action in rem for the forfeiture of the  
12 proceeds. Seizure and sale of a natural resource is without  
13 prejudice to any other remedy or sanction authorized by law.

14       §     -47   **Fees and surcharges.** (a) The authority shall  
15 establish an annual fee for each visitor to Mauna Kea; provided  
16 that the fee shall be waived for visitors who access Mauna Kea  
17 to exercise their customary and traditional practice rights  
18 under article XII, section 7, of the Hawaii State Constitution;  
19 provided further that the authority shall establish rules for  
20 fee waivers, pursuant to section     -36.



1 (b) The authority shall establish an annual fee for  
2 commercial tour operators to access Mauna Kea, the total annual  
3 net revenues of which shall be calculated to approximately equal  
4 the authority's annual operations and maintenance costs.

5 (c) The authority may establish a commercial tour fee  
6 surcharge, net revenues of which shall be used for cultural and  
7 educational programs related to activities on Mauna Kea.

8 (d) The University of Hawaii shall not be exempt from any  
9 fee that is associated with access to Mauna Kea and established  
10 pursuant to this chapter.

11 (e) For the purposes of this section, "net revenues" means  
12 the revenues realized by the authority after the amount  
13 collected and owed to the office of Hawaiian affairs pursuant to  
14 section -48 has been deducted.

15 § -48 Revenue to be shared with the office of Hawaiian  
16 affairs. Notwithstanding Act 178, Session Laws of Hawaii 2006,  
17 or any other law to the contrary, the authority and the  
18 University of Hawaii shall provide to the office of Hawaiian  
19 affairs twenty per cent of all revenue collected by the  
20 authority or university as a result of lease rent, fees,  
21 penalties, commercial activities, technological transfers,



1 monetization of intellectual properties or discoveries, and  
2 other revenue sources associated with telescopes situated on  
3 Mauna Kea; provided that revenue provided to the office of  
4 Hawaiian affairs pursuant to this section shall constitute the  
5 authority's pro rata share of public land trust proceeds to be  
6 expended by the office of Hawaiian affairs under section  
7 10-13.5.

8       §     -49   **Exemption from taxation.** The authority shall not  
9 be required to pay assessments levied by any county, nor shall  
10 the authority be required to pay state taxes of any kind.

11       §     -50   **Assistance by state and county agencies.** Any  
12 state or county agency may render services upon request of the  
13 authority.

14       §     -51   **Annual report.** No later than twenty days prior  
15 to the convening of each regular session, the authority shall  
16 submit to the governor and the legislature, a complete and  
17 detailed report of its activities, including but not limited to:

18           (1) The status of transfers of title to lands from the  
19               department of land and natural resources to the  
20               authority pursuant to part II of this Act;



(2) The status of all leases and subleases of Mauna Kea lands; and

(3) An accounting of all revenue collected and expended by the authority.

The report submitted prior to the 2019 session shall include the status of rulemaking pursuant to section -36.

§ -52 Court proceedings; preferences; venue. (a) Any action or proceeding to which the authority, the State, or a county may be a party, in which any question arises as to the validity of this chapter or any portion of this chapter, shall be brought in the circuit court of the circuit where the case or controversy arises, which court is hereby vested with original jurisdiction over the action or proceeding. The action or proceeding shall be heard and determined in preference to all other civil cases pending therein except election cases, irrespective of position on the calendar. Upon application of counsel to the authority, the same preference shall be granted in any action or proceeding questioning the validity of this chapter in which the authority may be allowed to intervene.



1 (b) Notwithstanding any provision of law to the contrary,  
2 declaratory relief may be obtained for an action or proceeding  
3 under this section.

4 (c) Any party aggrieved by the decision of the circuit  
5 court may appeal in accordance with part I of chapter 641 and  
6 the appeal shall be given priority.

7 § -53 Issuance of bonds. The director of finance may,  
8 from time to time, issue general obligation bonds pursuant to  
9 chapter 39 in amounts authorized by the legislature, for the  
10 purposes of this chapter.

11 § -54 General administrative penalties. (a) Except as  
12 otherwise provided by law, the authority or its authorized  
13 representative by proper delegation may set, charge, and collect  
14 administrative fines or bring legal action to recover  
15 administrative fees and costs as documented by receipts or  
16 affidavit, including attorneys' fees and costs; or bring legal  
17 action to recover administrative fines, fees, and costs,  
18 including attorneys' fees and costs, or payment for damages  
19 resulting from a violation of this chapter or any rule adopted  
20 pursuant to this chapter. The administrative fines shall be as  
21 follows:





1 (1) For a first violation, a fine of not more than \$2,500;

2 (2) For a second violation within five years of a previous  
3 violation, a fine of not more than \$5,000; and

4 (3) For a third or subsequent violation within five years  
5 of the last violation, a fine of not more than  
6 \$10,000.

7 (b) Any criminal action against a person for any violation  
8 of this chapter or any rule adopted pursuant to this chapter  
9 shall not preclude the State from pursuing civil legal action  
10 against that person. Any civil legal action against a person to  
11 recover administrative fines and costs for any violation of this  
12 chapter or any rule adopted pursuant to this chapter shall not  
13 preclude the State from pursuing any criminal action against  
14 that person. Each day of each violation shall constitute a  
15 separate offense.

16 § -55 Violations and penalties. (a) The authority may  
17 set, charge, and collect reasonable fines for a violation of  
18 this chapter or any rule adopted pursuant to chapter 91.

19 (b) Any person found guilty of a violation of this chapter  
20 or any rules adopted thereunder shall be guilty of a petty  
21 misdemeanor and shall be punished as follows:



1 (1) For a first offense, by a mandatory fine of not less  
2 than \$500 or imprisonment of not more than thirty days  
3 or both;

4 (2) For a second offense within five years of a previous  
5 conviction under this section, by a mandatory fine of  
6 not less than \$1,000 or imprisonment of not more than  
7 thirty days or both; and

8 (3) For a third or subsequent offense within five years of  
9 two prior convictions under this section, by a  
10 mandatory fine of not less than \$2,000 or imprisonment  
11 of not more than thirty days or both.

12 (c) Any criminal action against a person for any violation  
13 under this section shall not preclude the State from pursuing  
14 civil legal action to recover administrative fines and costs  
15 against the person. Any civil legal action against a person to  
16 recover administrative fines and costs for any violation of this  
17 chapter or any rules adopted thereunder shall not preclude the  
18 State from pursuing any criminal action against that person  
19 pursuant to this section.



1 (d) The authority may maintain an action for an injunction  
2 to restrain any violation of this chapter and may take any other  
3 lawful action to prevent or remedy any violation.

4 (e) The continuance of a violation after conviction shall  
5 be deemed a new offense for each day of a violation's  
6 continuance."

7 SECTION 2. Section 171-2, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "§171-2 Definition of public lands. "Public lands" means  
10 all lands or interest therein in the State classed as government  
11 or crown lands previous to August 15, 1895, or acquired or  
12 reserved by the government upon or subsequent to that date by  
13 purchase, exchange, escheat, or the exercise of the right of  
14 eminent domain, or in any other manner; including lands accreted  
15 after May 20, 2003, and not otherwise awarded, submerged lands,  
16 and lands beneath tidal waters that are suitable for  
17 reclamation, together with reclaimed lands that have been given  
18 the status of public lands under this chapter, except:

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



1 (2) Lands set aside pursuant to law for the use of the

2 United States;

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

4 (4) Lands to which the United States relinquished the

5 absolute fee and ownership under section 91 of the

6 Hawaiian Organic Act prior to the admission of Hawaii

7 as a state of the United States unless subsequently

8 placed under the control of the board of land and

9 natural resources and given the status of public lands

10 in accordance with the state constitution, the

11 Hawaiian Homes Commission Act, 1920, as amended, or

12 other laws;

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

14 (6) Lands to which the Hawaii housing finance and

15 development corporation in its corporate capacity

16 holds title;

17 (7) Lands to which the Hawaii community development

18 authority in its corporate capacity holds title;

19 (8) Lands to which the department of agriculture holds

20 title by way of foreclosure, voluntary surrender, or



otherwise, to recover moneys loaned or to recover  
debts otherwise owed the department under chapter 167;

(9) Lands that are set aside by the governor to the Aloha  
Tower development corporation; lands leased to the  
Aloha Tower development corporation by any department  
or agency of the State; or lands to which the Aloha  
Tower development corporation holds title in its  
corporate capacity;

(10) Lands that are set aside by the governor to the  
agribusiness development corporation; lands leased to  
the agribusiness development corporation by any  
department or agency of the State; or lands to which  
the agribusiness development corporation in its  
corporate capacity holds title; ~~and~~

(11) Lands to which the high technology development  
corporation in its corporate capacity holds title; and

(12) Lands to which the Mauna Kea management authority  
holds title, controls by lease from any state  
department or agency, or that are designated by the  
governor under section 171-11 for management by the  
authority;



1 provided that, except as otherwise limited under federal law and  
2 except for state land used as an airport as defined in section  
3 262-1, public lands shall include the air rights over any  
4 portion of state land upon which a county mass transit project  
5 is developed after July 11, 2005."

6 SECTION 3. Chapter 304A, part IV, subpart O, is repealed.

7 SECTION 4. Section 304A-2170, Hawaii Revised Statutes, is  
8 repealed.

9 ~~["[§304A-2170] Mauna Kea lands management special fund.~~

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

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

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

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

18 ~~(4) Interest earned or accrued on moneys in the special~~  
19 ~~fund.~~

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



~~(1) Managing the Mauna Kea lands, including maintenance, administrative expenses, salaries and benefits of employees, contractor services, supplies, security, equipment, janitorial services, insurance, utilities, and other operational expenses; and~~

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

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

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

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

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

SECTION 5. All moneys in the Mauna Kea lands management special fund established pursuant to section 304A-2170, Hawaii Revised Statutes, shall be deposited in the Mauna Kea management



1 revolving fund established pursuant to section -38 in section  
2 1 of this Act.

3 PART II

4 SECTION 6. Title to all lands held in trust by the State  
5 and identified as government lands of Kaohe, Hamakua District,  
6 Hawaii, tax map keys:

7 (1) (3)4-4-015:09;

8 (2) (3) 4-4-015:12; and

9 (3) That portion of (3)4-4-015:01 serving as a road

10 easement comprising 70.798 acres,

11 are transferred by the department of land and natural resources  
12 to the Mauna Kea management authority established pursuant to  
13 section 1 of this Act.

14 PART III

15 SECTION 7. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 8. This Act shall take effect upon its approval.





**Report Title:**

Mauna Kea Management Authority; Established

**Description:**

Establishes the Mauna Kea Management Authority. Limits the number of telescopes that may be authorized on Mauna Kea. Authorizes the renegotiation of leases, subleases, easements, permits, and licenses pertaining to Mauna Kea. Requires that revenue derived from activities on Mauna Kea be shared with the Office of Hawaiian Affairs. Provides that the Mauna Kea Management Authority may not alienate lands except as provided by law. Excludes Mauna Kea lands from the definition of "public lands." Provides for free access to Mauna Kea for traditional cultural purposes. Establishes police powers and provides for enforcement of laws on land under the jurisdiction of the Mauna Kea Management Authority. (SD1 PROPOSED)

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

