



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

**LATE**

Testimony Presented Before the  
Senate Committee on Ways and Means  
March 13, 2018, at 10:15 a.m.

by  
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SCR 29 SD1 – REQUESTING THE STATE AUDITOR TO CONDUCT A FINANCIAL  
AUDIT OF THE UNIVERSITY OF HAWAII'S ACTIVITIES RELATED TO MAUNA KEA.

Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the committee:

The University of Hawai'i (UH) appreciates the intent behind SCR 29 SD1, and thanks the committee for acknowledging the significant changes the University has made over the years in improving its stewardship on Maunakea.

While the University appreciates efforts in SD1 to narrow the definition and scope of the audit, we cannot support SCR 29 SD1 as written.

First, in Sections (10)-(15), SD1 incorporates wholesale the accusations-phrased-as-questions of the Office of Hawaiian Affairs (OHA) which sued both the State of Hawai'i and the University of Hawai'i regarding the exact same subject matter. For example, section (14) states that the University is to be audited on the value of "damage" and "opportunity costs" "that can be reasonably attributed to the failure of the University of Hawai'i to adequately balance observatory development with its public trust obligations." **It is wholly inappropriate for the legislature to insert itself as judge and jury in making conclusions of law, in law, while litigation is pending**, especially where one State agency has sued the State of Hawai'i itself, as well as the University of Hawai'i. We would respectfully note that validating OHA's (repeat) conduct in suing other State agencies would result in additional government-to-government litigation which is typically regarded by the public as a waste of taxpayer dollars. **Sections (10)-(15) of SD1, as adopted from OHA testimony, should be stricken**; OHA has chosen to litigate, so it should be held to litigate these questions in a court of law. The substantive financial information being "requested" by OHA is covered by the earlier provisions in SD1, and the Committee has already deleted in SB 757 SD2 the same objectionable language that had existed in SB 757 SD1 (accompanying bill mandating legislative audits).

Second, the scope of the audit is still overly broad. There are no time limitations provided, and the University does not maintain records for the duration of its activities on Maunakea.

Finally, the audit is duplicative and as the Legislative Auditor testified, it will be expensive. Recognizing the desire for updated financial information, the University administration has gathered basic information about both UH and RCUH programs relating to Maunakea. In addition, the Board of Regents (BOR) has adopted the attached Resolution Requesting Financial Management Audit of Maunakea Activities at its February 22, 2018 BOR Meeting to be held in Hilo. The Resolution calls for the Office of Internal Audit, which reports to the BOR and its Internal Audit Committee, to conduct an audit that **shall be completed by September 30, 2018**, and shall:

- (1) Study all university funds, lease payments, and any external funds that are received and used in the support of stewardship, management, education, and other activities related to Maunakea; and
- (2) Review transfers of funds between entities including both the University of Hawai'i and RCUH, and payments made to university-related support programs by Maunakea observatories or other third parties;

The Committee should consider the University's audit to be pursued before the State embarks on the costly and time-consuming audit called for in this reso. As the most current version of SB 757 (SD2) presumes, the cost of such a legislative audit is anticipated to cost \$200,000. Again, we would also point the committee to the Annual Reports on the Mauna Kea Lands filed every year, as required by Hawai'i Revised Statutes Section 304A-1905<sup>1</sup>, and to the multiple audits already performed by the State Auditor<sup>2</sup>. We welcome the opportunity to supplement and update information already requested and provided.

In that vein, the University cannot support SCR 29 SD1, since it inappropriately adopts wholesale the deposition-like "questions" posed by OHA, which are pending in current litigation which OHA chose to bring, it is overly broad in duration, and it is expensive and unnecessary considering the annual audits that are already conducted and the contemplated UH Regents audit.

Thank you for this opportunity to submit testimony.

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<sup>1</sup> The most recent Annual Report is dated November 2017, and is found at [http://www.hawaii.edu/govrel/docs/reports/2018/hrs304a-1905\\_2018\\_maunakea-lands\\_annual-report.pdf](http://www.hawaii.edu/govrel/docs/reports/2018/hrs304a-1905_2018_maunakea-lands_annual-report.pdf).

<sup>2</sup> See, e.g., 2014 Follow-Up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve, Exhibit 1.7 (Office of Mauna Kea Management Allocations, Revenues, and Expenditures, FY2009-FY2013), at p. 11; link provided here <http://files.hawaii.gov/auditor/Reports/2014/14-07.pdf>.