#### THE SENATE THIRTY-SECOND LEGISLATURE, 2024 STATE OF HAWAII

S.B. NO. 276

JAN 19 2024

### A BILL FOR AN ACT

RELATING TO THE MAUNA KEA STEWARDSHIP AND OVERSIGHT AUTHORITY.

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

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

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



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

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

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

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

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

20 Accordingly, this Act provides the authority with some21 flexibility during the transition period to meet in settings



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

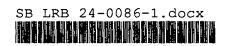
7 The legislature also finds that because the Mauna Kea 8 stewardship and oversight authority is an arm of the State, it 9 should have the same sovereign immunity available to other 10 administratively-attached state agencies. Accordingly, this Act 11 explicitly makes section 26-35(b), Hawaii Revised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

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

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1	The purpose of this Act is to:
2	(1) Authorize two or more members of the Mauna Kea
3	stewardship and oversight authority, including a
4	number of members that would constitute a quorum, to
5	meet during the transition period; provided that:
6	(A) No commitment to vote is made or sought; and
7	(B) Decision-making, if any, occurs only at a duly
8	noticed meeting of the authority; and
9	(2) Clarify that the authority is subject to state
10	sovereign immunity.
11	SECTION 2. Chapter 195H, Hawaii Revised Statutes, is
12	amended by adding a new section to be appropriately designated
13	and to read as follows:
14	" <u>§195H-</u> Transition period; authority meetings;
15	permitted interactions; restrictions. (a) Notwithstanding
16	section 92-2.5(b) or any other law to the contrary, two or more
17	members of the authority, including a number of members that
18	would constitute a quorum of the authority, may meet during the
19	transition period described in section 195H-6 regarding any
20	matter relating to the authority's business; provided that:
21	(1) No commitment to vote is made or sought; and



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1 (2) Decision-making, if any, shall occur at a duly noticed 2 meeting of the authority held pursuant to chapter 91. 3 (b) An interaction of authority members described in 4 subsection (a) shall not constitute a meeting for the purposes 5 of part I of chapter 92." 6 SECTION 3. Section 195H-3, Hawaii Revised Statutes, is 7 amended by amending subsection (a) to read as follows: 8 "(a) There is established the Mauna Kea stewardship and 9 oversight authority, which shall be a body corporate and a 10 public instrumentality of the State for the purpose of 11 implementing this chapter. The authority shall serve jointly 12 with the University of Hawaii in fulfilling the obligations and duties under the state lease for a period of five years as 13 14 established in section 195H-6. The authority shall be placed within the department of land and natural resources for 15 administrative purposes; provided that section [26-35] 26-35(a) 16 shall not apply to the authority." 17 18 SECTION 4. Statutory material to be repealed is bracketed

and stricken. New statutory material is underscored.



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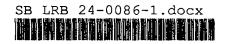
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SECTION 5. This Act shall take effect upon its approval;
provided that section 2 shall be repealed on June 30, 2028.

INTRODUCED BY: Am Mercals Ko



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#### Report Title:

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

#### Description:

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

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

