

ACT 132

H.B. NO. 1174

A Bill for an Act Relating to the University of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Pursuant to the Hawaii Constitution and Hawaii Revised Statutes, the University of Hawaii is vested with autonomous authority to control and manage its educational and proprietary affairs. This authority extends to the use and oversight of lands and real property owned by the University of Hawaii or leased, demised, or transferred to the University of Hawaii from various owners, including state, federal, or private entities, for the furtherance of the University of Hawaii's educational, research, and agricultural activities.

Such autonomous authority presumably carries with it the necessary legal means to supervise, oversee, and permit public activities on lands it leases and controls on Mauna Kea, including the Mauna Kea Science Reserve, Hale Pohaku, and the connecting roadway corridor between Hale Pohaku and the Mauna Kea Science Reserve (collectively the Mauna Kea lands), and may be implied from the autonomous character of the University of Hawaii. Nevertheless, the purpose of this Act is to clarify and add certainty to the law relating to the University of Hawaii's authority to manage and control public and commercial activities on the Mauna Kea lands by granting express authority to the University of Hawaii to adopt rules relating to public and commercial activities permitted or occurring on the Mauna Kea lands. In adopting the rules, the University of Hawaii shall address and reconcile any conflicts with other statutes or rules that are applicable to the Mauna Kea lands.

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

- (1) General access to sensitive resource areas, such as specific cultural features and identified natural resource habitat areas;
- (2) Traffic and off-road vehicle management and control;
- (3) Alcohol consumption;
- (4) Recreational activities; and
- (5) Commercial tour activities.

Access for traditional and customary native Hawaiian cultural and religious purposes shall be accommodated. The University of Hawaii shall encourage and foster a process of collaboration and involvement with the Mauna Kea lands advisory bodies and community interests to ensure that the process of

developing administrative rules is accomplished with community participation and input.

The purpose of this Act is to authorize the board of regents of the University of Hawaii to:

- (1) Charge fees and enter into lease agreements for the Mauna Kea lands;
- (2) In consultation with the office of Hawaiian affairs, adopt rules to regulate public and commercial activities on Mauna Kea lands that are consistent with the administrative rules of the division of forestry and wildlife of the department of land and natural resources related to forest reserves and natural area reserves;
- (3) In consultation with the office of Hawaiian affairs, establish and collect administrative fines for violations;
- (4) Establish the Mauna Kea lands management special fund to assist the University of Hawaii in its task of regulating the use of the Mauna Kea lands; and
- (5) Submit annual reports to the legislature.

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

“ . MAUNA KEA LANDS

§304A-A Definitions. As used in this subpart:

“Board of regents” means the board of regents of the University of Hawaii.

“Fees” includes rents on leases of Mauna Kea lands, moneys received for use of Mauna Kea lands, moneys attributable to commercial activities on Mauna Kea lands, and moneys received for the use of facilities and programs on Mauna Kea lands.

“Mauna Kea lands” means the lands that the University of Hawaii is leasing from the board of land and natural resources, including the Mauna Kea Science Reserve, Hale Pohaku, the connecting roadway corridor between Hale Pohaku and the Mauna Kea Science Reserve, and any other lands on Mauna Kea that the University of Hawaii leases or over which the University of Hawaii acquires control or jurisdiction.

§304A-B Mauna Kea lands; fees; lease agreements. (a) The board of regents may charge a fee for use of the Mauna Kea lands and for the use of facilities and programs related to the Mauna Kea lands.

(b) The board of regents may enter into lease agreements for the Mauna Kea lands; provided that the University of Hawaii shall comply with all statutory requirements in the disposition of ceded lands.

(c) In establishing the fees, the board of regents shall be exempt from the public notice, public hearing, and gubernatorial approval requirements of chapter 91; provided that the fees shall be established at an open public meeting pursuant to chapter 92. The fees shall be deposited into the Mauna Kea lands management special fund established under section 304A-F.

§304A-C Mauna Kea lands rules. The board of regents may adopt rules pursuant to chapter 91 to regulate public and commercial activities on Mauna Kea lands.

In adopting these rules, the board shall:

- (1) Strive for consistency with the administrative rules of the division of forestry and wildlife of the department of land and natural resources related to forest reserves and natural area reserves;
- (2) Consult with the office of Hawaiian affairs to ensure that these rules shall not affect any right, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupuaa tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights; and
- (3) Hold at least one public hearing, in addition to the public hearing at which decision making on the proposed rule is made, on the island of Hawaii.

§304A-D Violations; penalties; costs; collection. (a) In consultation with the office of Hawaiian affairs, the board of regents may set and provide for the assessment and collection of administrative fines for violations of this subpart or rules adopted hereunder; provided that the fines shall be set as follows:

- (1) For the first violation, not more than \$2,500;
 - (2) For the second violation within five years of a previous violation, not more than \$5,000; and
 - (3) For the third violation within five years of a prior violation and any subsequent violation, not more than \$10,000.
- (b) Each day that the violation continues shall constitute a separate offense.
- (c) The costs of any enforcement proceedings, including the costs of contested case proceedings, may be assessed against a party found to be in violation.
- (d) Any action taken to impose or collect the penalty provided for in this section shall be considered a civil action.

§304A-E Mauna Kea lands; reporting requirements. The board of regents shall report annually to the legislature, no later than twenty days prior to the convening of each regular session, on the Mauna Kea lands activities, current and pending lease agreements and fees, the status of current and pending administrative rules, income and expenditures of the Mauna Kea lands special fund established in section 304A-F, and any other issues that may impact the activities of the Mauna Kea lands.”

SECTION 3. Chapter 304A, part V, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§304A-F Mauna Kea lands management special fund. (a) There is established the Mauna Kea lands management special fund, into which shall be deposited:

- (1) Appropriations by the legislature;
 - (2) All net rents from leases, licenses, and permits, including fees and charges for the use of land and facilities within the Mauna Kea lands;
 - (3) All moneys collected for violations of subpart of part IV; and
 - (4) Interest earned or accrued on moneys in the special fund.
- (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-A.”

SECTION 4. In codifying the new sections added by sections 2 and 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 5. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 2009.

(Approved June 18, 2009.)

Note

1. Edited pursuant to HRS §23G-16.5.