



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

---

Testimony Presented Before the  
House Committee on Water and Land and  
House Committee on Ocean, Marine Resources, and Hawaiian Affairs  
Wednesday, February 12, 2014 at 8:00 a.m.

by  
Donald O. Straney  
Chancellor, University of Hawai'i at Hilo

HB 1689 HD1 – RELATING TO MAUNA KEA

Chairs Evans and Hanohano, Vice Chairs Lowen and Cullen, and Members of the Committees:

Thank you for the opportunity to submit testimony on HB 1689 HD1. This bill relates to the use of a fair market valuation for subleases of Mauna Kea lands when the University calculates the pro rata share of ceded land revenues to be transferred to the Office of Hawaiian Affairs (OHA).

The University has heard the community's concern about the need to charge substantial rent for astronomy use on Mauna Kea. In response, the University has committed that any new sublease on Mauna Kea will include substantial rent that will be used to appropriately manage the Mauna Kea lands. The University is also fully committed to paying OHA its 20% share of revenues generated from ceded lands on Mauna Kea, and has paid nearly \$500,000 from tour operator fees.

In 2009, this Legislature passed Act 132, which formally establishes a mechanism that requires sublease rents and fees charged on Mauna Kea to be placed into the Mauna Kea Lands Management Special Fund (MKLMSF), which can only be used for the management of Mauna Kea. The funds deposited into the MKLMSF are subject to Act 178 (2006), which statutorily requires the State to make payments collected for all of its agencies to OHA according to a prescribed schedule and rate. The University is also bound by the Board of Land and Natural Resources, which has included conditions requiring payment of substantial sublease rent in its most recent Conservation District Use Permit. This sublease rent is distinct from the sharing of construction and operating costs of the telescope facilities among universities and other scientific partners, which are substantial, but which do not generate revenue for UH or any other participant.

The sublease for the Thirty Meter Telescope (TMT) will be the first under the new paradigm and will require the payment of substantial rent. The rent paid under this sublease, which is currently under negotiation and is expected to be finalized this spring, will be subject to the 20% payment to OHA. The remaining rent from TMT will be used to fund the management of the Mauna Kea lands. UH believes this process should be allowed to come to fruition before revisiting the structure of Act 132.

Existing subleases on Mauna Kea run through 2033 and do not provide for the payment of rent. The language of this bill would appear to require UH to pay OHA 20% of "fair market value of using Mauna Kea lands" for those subleases even though no revenue is actually being received. UH is committed to paying OHA its 20% share of revenues received, but opposes any requirement to pay when no actual revenue exists. UH is not aware of any other situation in which

an agency is required to make payments in the absence of actual revenue from ceded lands.

UH has concerns about applying the concept of "fair market value" to the unique situation of astronomy on Mauna Kea. UH is committed to charging substantial rents on all new subleases, which will be dedicated to stewardship of the mountain, as required by law. However, there is no established rental market for astronomy sites or the Mauna Kea summit, so a standard based on "fair market value" would be difficult to apply.

UH also has concerns about the wording in the bill suggesting that "fair market value" should include the value of using "facilities and programs relating to the Mauna Kea lands", which would appear to go well beyond valuation methodologies generally applied to leases of raw land. UH is unaware of any other state land lease involving rental payments that take into account the value of improvements constructed or programs conducted by lessees or sublessees, and is concerned that such an approach could negatively impact State leases.

If the Legislature determines that a statutory standard for the amount of rent is needed, UH suggests that a more appropriate measure would be one that divides the costs of stewardship among astronomy facilities on the mountain, to be phased in over time as the TMT sublease and any future sublease renegotiations are completed.

Thank you for the opportunity to provide testimony.