

MAR 14 2007

SENATE CONCURRENT RESOLUTION

ENCOURAGING THE PARTIES TO PROPOSE NON-JUDICIAL MEANS TO RESOLVE
ALL CLAIMS IN *KALIMA, ET AL., V. STATE OF HAWAII, ET AL.*

1 WHEREAS, Act 395, Session Laws of Hawaii 1988, codified as
2 chapter 673, Hawaii Revised Statutes, specifically waived the
3 State's sovereign immunity and allowed the beneficiaries of the
4 Hawaiian Homes Commission Act, to sue the State for breaches of
5 trust or fiduciary duty and to restore the trust for any
6 depletion a breach may have caused; and

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8 WHEREAS, Act 14, Session Laws of Hawaii Special Session
9 1995, transferred certain lands, and \$600 million (twenty annual
10 deposits) to the Hawaiian Home Lands Trust Fund, as established
11 by the Act; and

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13 WHEREAS, moneys in the Hawaiian Home Lands Trust Fund
14 (section 213.6, Hawaiian Homes Commission Act, 1920) is expended
15 by the Department of Hawaiian Home Lands for:

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17 (1) Capital improvements and other purposes undertaken in
18 furtherance of the Hawaiian Homes Commission Act;

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20 (2) Restoration of the trust for any depletions caused by
21 any act or omission of a state employee in the
22 management and disposition of the resources of the
23 Hawaiian Home Lands Trust between August 21, 1959, and
24 June 30, 1988; and

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26 (3) Settle all claims retroactively; and
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28 WHEREAS, Act 323, Session Laws of Hawaii 1991, codified as
29 chapter 674, Hawaii Revised Statutes, allows individual
30 beneficiaries to recover actual out-of-pocket monetary losses
31 for past breaches of the Hawaiian Homes Lands Trust between
32 August 21, 1959, and June 30, 1988, again waiving the State's



1 sovereign immunity, and establishing a two-step administrative
2 and judicial process for that purpose; and

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4 WHEREAS, under chapter 674, Hawaii Revised Statutes, the
5 Hawaiian Home Lands Trust Individual Claims Review Panel was to
6 review and evaluate the merits of all claims filed by August 31,
7 1995, and submit its recommendations as to damages or corrective
8 actions for every claim to the Legislature for action; and

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10 WHEREAS, section 674-17, Hawaii Revised Statutes, permits
11 claimants to reject the Legislature's action, and to sue the
12 State to recover out-of-pocket monetary losses they suffered as
13 a result of a breach of the Hawaiian Home Lands Trust caused by
14 an act or omission of a state employee in the management and the
15 disposition of the trust's resources that occurred between
16 August 21, 1959, and June 30, 1988, by filing with the Hawaiian
17 Home Lands Trust Individual Claims Review Panel a notice
18 rejecting the Legislature's action by October 1, 1999, and
19 filing suit pursuant thereto in the circuit court no later than
20 December 31, 1999 (section 674-19, Hawaii Revised Statutes); and

21
22 WHEREAS, according to the Final Report to the Governor and
23 the Hawaii State Legislature submitted by the Hawaiian Home
24 Lands Trust Individual Claims Review Panel soon before it ceased
25 its operations after October 1, 1999:

- 26
27 (1) Approximately 2,800 beneficiaries mailed or submitted
28 4,327 claims by August 31, 1995;
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30 (2) Fifty-three per cent of the claims received were
31 reviewed and evaluated;
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33 (3) The Panel recommended damage awards for 578 claims
34 totaling \$17,970,822.74, found 38 claims to have no
35 merit, and closed or dismissed 1,644 other claims; and
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37 (4) Forty claims were settled by the claimants and the
38 Department of Hawaiian Home Lands; and
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40 WHEREAS, according to that same Final Report, claims were
41 found to be non-meritorious because claimants withdrew their
42 claims; were not beneficiaries of the Hawaiian Home Lands Trust;
43 were beneficiaries but were not injured as a result of an act or
44 omission that occurred in the thirty-year period specified in



chapter 674, Hawaii Revised Statutes, or were unable to prove their claims by a preponderance of the evidence they presented; and

WHEREAS, claims were closed or dismissed because claimants did not appear at the hearing scheduled on their claim and did not ask to have the hearing rescheduled or the dismissal reconsidered; and

WHEREAS, according to records maintained by the Hawaiian Home Lands Trust Individual Claims Review Panel, no more than 1,650 claimants or their attorneys or representatives filed Notices for Judicial Relief developed by the Panel, to document their rejection of any action by the Legislature on their claims, by October 1, 1999; 43 claimants returned completed notices to the Panel after October 1, 1999; and 30 claimants returned the forms or wrote separate letters to the Panel to expressly indicate that they did not wish to pursue their claims any further; and

WHEREAS, on December 29, 1999, three claimants filed a class action lawsuit, *Kalima et al., v. State of Hawaii, et al.*, Civ. No. 99-4771-12, in the First Circuit Court on behalf of themselves and all claimants who filed timely claims and Notices for Judicial Review with the Panel; and

WHEREAS, by an order filed August 30, 2000, the Circuit Court ruled that the three claimants and all other similarly situated claimants were entitled to pursue their chapter 674, Hawaii Revised Statutes, breach of trust claims against the State, irrespective of whether their claims had been reviewed by the Panel or acted upon by the Legislature as described in chapter 674, Hawaii Revised Statutes; and

WHEREAS, the State was allowed to file an interlocutory appeal from the Circuit Court's to the Hawaii Supreme Court, and in a decision filed on June 30, 2006, the Hawaii Supreme Court ruled that "the plaintiffs [were] entitled to pursue their claims under HRS chapter 674;" and remanded the case to the Circuit Court to allow the plaintiffs to prove their breach of trust claims at trial, *Kalima v. State*, 111 Hawaii 84, 112-113 (2006); and



1 WHEREAS, upon the case's return to the Circuit Court, the
2 plaintiffs moved to amend their original complaint, and pursuant
3 to an order filed on January 24, 2007, amended their complaint
4 to include:

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- 6 (1) Nine additional named plaintiffs;
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- 8 (2) A "liability class" consisting of 2,721 claimants who
9 are alleged to be making 4,327 claims defined as all
10 Hawaiian Home Lands Trust beneficiaries who timely
11 filed a claim with the Hawaiian Home Lands Trust
12 Individual Claims Review Panel, gave notice of intent
13 to sue by October 1, 1999, and filed suit by
14 December 31, 1999, excluding any beneficiaries whose
15 claims were either approved by the Legislature or
16 settled;
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- 18 (3) Nine "liability subclasses" "for the purposes of
19 establishing liability, causation, and damages" for
20 the following types of claims: Waiting List; Ultra
21 Vires Qualifications; Uninhabitable Awards; Lost
22 Application; Construction Claims; Successor Rights;
23 Loans; Leases; and Other Claims; and
- 24
- 25 (4) Three additional counts for claims for breach of
26 trust, breach of fiduciary duty, and restitution or
27 other equitable relief, separate from the claims
28 brought pursuant to chapter 674, Hawaii Revised
29 Statutes; and
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31 WHEREAS, trial in the case, presently estimated to last at
32 least eight days, is scheduled to begin the week of October 1,
33 2007; and

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35 WHEREAS, continued litigation is likely to be complicated
36 and expensive for all of the parties, with no guarantee that the
37 claims of the claimants who filed claims with the Panel on or
38 before August 31, 1995, will be heard and satisfactorily
39 resolved in their favor, or that the total amount awarded as
40 actual damages at the conclusion of the trial would be twice the
41 \$17,970,822.74 the Panel recommended for the 578 claims it heard
42 and found meritorious or would even be based upon that amount;
43 and

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1 WHEREAS, while approximately 2,800 beneficiaries of the
2 Hawaiian Home Lands Trust filed claims under chapter 674, Hawaii
3 Revised Statutes, more than four times as many other
4 beneficiaries did not file claims, even though they had yet to
5 receive a Hawaiian Home Lands lease, or waited as long, or
6 longer than those who had filed claims to receive a lease; and
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8 WHEREAS, after an effort that has been on-going for more
9 than fifteen years, it is in the best interest of the claimants
10 and the State of Hawaii, as well as all of the beneficiaries of
11 the Hawaiian Home Lands Trust and the citizens of the State of
12 Hawaii, that there be closure for all of the claims brought
13 under chapter 674, Hawaii Revised Statutes; and
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15 WHEREAS, a non-judicial settlement of the claims will
16 increase the resources and broaden the options that can be used
17 and considered to devise a fair and just settlement of all of
18 the claims brought under chapter 674, Hawaii Revised Statutes;
19 now, therefore,
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21 BE IT RESOLVED by the Senate of the Twenty-fourth
22 Legislature of the State of Hawaii, Regular Session of 2007, the
23 House of Representatives concurring, that the parties to *Kalima,*
24 *et al., v. State of Hawaii, et al.,* are urged to agree to stay
25 all proceedings presently pending in the court so that they may
26 focus instead on developing a mutually agreeable proposal to
27 settle the plaintiffs' claims legislatively, without further
28 judicial action; and
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30 BE IT FURTHER RESOLVED the parties and their counsel
31 develop a settlement proposal for the Legislature to consider
32 effectuating that is not confined solely to cash payments to
33 claimants, but relies also on the use of public lands and other
34 state resources to increase the opportunities claimants and all
35 other beneficiaries of the Hawaiian Home Lands Trust have to a
36 homestead award; and
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38 BE IT FURTHER RESOLVED that if a settlement is not
39 possible, then the Attorney General and the attorneys for
40 plaintiffs are requested to prepare and submit a report, which
41 shall be deemed confidential and not a public record, of their
42 progress, to the Legislature by December 1, 2007, or if a joint
43 report is not possible then the Attorney General alone, with
44 details, to the extent the Attorney General deems prudent:



- 1 (1) The nature and amounts of a proposed settlement or, if
2 no agreement has yet been reached, the type of
3 settlement each side proposes;
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5 (2) Non-cash state resources proposed to be used to
6 implement any settlement, and the manner in which each
7 resource is proposed to be used;
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9 (3) The extent to which establishing loan programs,
10 improving infrastructure for existing homestead areas,
11 rehabilitating existing homesteads, increasing the
12 number of group living arrangements, and other forms
13 of beneficiary assistance have been considered for
14 settling claims under chapter 674, Hawaii Revised
15 Statutes;
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17 (4) Amounts for attorneys' fees and costs;
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19 (5) Prerequisites and underlying conditions and premises
20 for the settlement, including language concerning
21 waivers; and
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23 (6) Recommended actions to implement the settlement, and
24 if appropriate, proposed enabling legislation; and
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26 BE IT FURTHER RESOLVED that certified copies of this
27 Concurrent Resolution be transmitted to the Governor, the
28 President of the Senate, the Speaker of the House of
29 Representatives, the Chairperson of the Hawaiian Homes
30 Commission, and the Attorney General.
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OFFERED BY: 

