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# HOUSE CONCURRENT RESOLUTION

URGING SUPPORT FOR DATA GATHERING RELATED TO IMPLEMENTATION OF  
ARTICLE XII, SECTION 1 OF THE HAWAII STATE CONSTITUTION.

1           WHEREAS, in 1920, the United States Congress enacted the  
2 Hawaiian Homes Commission Act to award 99-year homestead leases  
3 to qualified native Hawaiians as a measure to recognize the  
4 severe disruptions in the political, social and economic  
5 circumstances that led to the widespread loss of lands to  
6 Hawaiians since western contact; and  
7

8           WHEREAS, in 1959, the state of Hawaii agreed, in a compact  
9 with the United States, to assure that the spirit of the  
10 Hawaiian Homes Commission Act was faithfully administered for  
11 the benefit of native Hawaiian beneficiaries as a condition of  
12 attaining statehood and entry into the Union; and  
13

14           WHEREAS, this solemn promise was enshrined in the Hawaii  
15 State Constitution as a demonstration of the State's commitment  
16 to live up to the trust duties imposed on it by this compact;  
17 and  
18

19           WHEREAS, in 1978, the State ratified a constitutional  
20 amendment that required the State to provide the Department of  
21 Hawaiian Home Lands sufficient sums to pay for all of its  
22 operations, including:  
23

- 24           (1) Providing homesteads to every eligible beneficiary who  
25 applies in a timely manner;  
26  
27           (2) Funding farm, ranch and aquacultural assistance  
28 programs to make homesteaders successful on their  
29 homesteads;  
30  
31           (3) Assisting homesteaders in community development  
32 programs under the Native Hawaiian Rehabilitation  
33 Fund; and



1  
2 (4) Funding the administrative and operating budget of the  
3 Department of Hawaiian Home Lands; and  
4

5 WHEREAS, despite this mandate, for the next thirty years,  
6 the State never funded the Department of Hawaiian Home Lands  
7 adequately despite the 1978 constitutional amendment that it  
8 provide the Department of Hawaiian Home Lands with sufficient  
9 sums to pay for all the items specified above; and  
10

11 WHEREAS, as of June 2008, the Department of Hawaiian Home  
12 Lands admits that nearly 1,731 persons on the waiting list have  
13 waited for over thirty years for a homestead; and  
14

15 WHEREAS, ignoring the mandate of article XII, section 1,  
16 the Lingle Administration eliminated State General Fund  
17 appropriations beginning in fiscal year 2009-2010 for the first  
18 time since fiscal year 1989-1990; and  
19

20 WHEREAS, the Hawaiian Homes Commission has not filed any  
21 lawsuit to enforce the constitutional requirement, despite the  
22 eroding general fund appropriations and the increasing homestead  
23 demand during that same period; and  
24

25 WHEREAS, the Hawaiian Homes Commission, rather than taking  
26 all reasonable steps required of a reasonable trustee to enforce  
27 the provisions in article XII, section 1 to secure sufficient  
28 sums from the Legislature, as mandated in article XII, section  
29 1, instead has embarked on a formal policy to general lease  
30 selected tracts of trust lands to private developers to raise  
31 revenues it is not requesting nor receiving from the  
32 Legislature; and  
33

34 WHEREAS, the Department of Hawaiian Home Lands has  
35 established that its mission is in part "to manage the Hawaiian  
36 Home Lands trust effectively and to develop and deliver lands to  
37 native Hawaiians" and to "partner with others towards developing  
38 self-sufficient and healthy communities"; and  
39

40 WHEREAS, the Department of Hawaiian Home Lands has not  
41 quantified the level of funding that would be sufficient to meet  
42 the constitutional mandate to fund the Department of Hawaiian  
43 Home Lands in order for it to meet its mission; and  
44



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1           WHEREAS, the Hawaiian Homes Commission and the Department  
2 of Hawaiian Home Lands has failed to define what is self-  
3 sufficiency in terms of the revenue stream that is adequate to  
4 perform all of its duties as contemplated under article XII,  
5 section 1, which would require it to:

- 6
- 7           (1) Provide homesteads to every eligible beneficiary who  
8           applies within a reasonable time;
  - 9
  - 10          (2) In a timely manner fund farm, ranch and aquacultural  
11          assistance programs to make homesteaders successful on  
12          their homesteads;
  - 13
  - 14          (3) Assist homesteaders in community development programs  
15          under the Native Hawaiian Rehabilitation Fund; and
  - 16
  - 17          (4) Fund the administrative and operating budget of the  
18          Department of Hawaiian Home Lands; and
  - 19

20           WHEREAS, the Department of Hawaiian Home Lands Chair has  
21 publicly stated that the Department of Hawaiian Home Lands needs  
22 \$100 million per year to meet its homesteading needs, yet  
23 arbitrarily sought to replace the \$30 million per year being  
24 paid as the settlement reached in Act 14 as a means of achieving  
25 some unarticulated standard for achieving program self-  
26 sufficiency; and

27

28           WHEREAS, prior to her election in 2002, Governor Lingle  
29 pledged to eliminate the waiting list for Hawaiian homesteads  
30 during her term in office; and

31

32           WHEREAS, Governor Lingle then scaled that goal to producing  
33 6,000 homesteads by the fifth year of her administration, by the  
34 end of 2008; and

35

36           WHEREAS, despite all the funding utilized between 2002 and  
37 2010 to develop homestead lots and housing under Act 14, the  
38 Department of Hawaiian Home Lands waiting list grew each year  
39 during the Lingle Administration; and

40

41           WHEREAS, the Department of Hawaiian Home Lands has received  
42 over \$450 million since 1995 under Act 14; and



1           WHEREAS, with that amount of funding and incorporating two  
2 years for planning and design, the Department of Hawaiian Home  
3 Lands should have produced at least 4500 improved homestead lots  
4 within the past fifteen years if it utilized only the funding  
5 under Act 14 that was to compensate the Department of Hawaiian  
6 Home Lands trust for breaches committed by the State against  
7 that trust prior to 1988; and

8  
9           WHEREAS, in fact, the Department of Hawaiian Home Lands has  
10 reported awarded no more than 3219 new leases between 1995 and  
11 2008; and

12  
13           WHEREAS, during the Lingle/Kane administration, the  
14 Department of Hawaiian Home Lands awarded more than half of  
15 these homesteads in the form of undivided interests in larger  
16 unsubdivided homestead tracts, without installed infrastructure  
17 to support homestead use by those lessees; and

18  
19           WHEREAS, despite the illusory nature of these undivided  
20 interests, that administration reported the award of undivided  
21 interests in homesteads without distinguishing them from regular  
22 homestead awards it did issue; and

23  
24           WHEREAS, this failure to report on undivided interests  
25 deceptively inflates the actual numbers of homesteads awarded to  
26 beneficiaries during those years; and

27  
28           WHEREAS, in 2003, with thousands waiting for suitable  
29 homestead lots, the Hawaiian Homes Commission leased two hundred  
30 acres of Department of Hawaiian Home Lands trust lands at  
31 Kealakehe in Kona to Jacoby Development Company for a time share  
32 development; and

33  
34           WHEREAS, that land is within a two miles of major  
35 employment centers at Kailua-Kona; and

36  
37           WHEREAS, those two hundred acres had the potential of  
38 serving at least 800 residential homesteaders immediately, but  
39 are now diverted from the trust for at least sixty years; and

40  
41           WHEREAS, any land needed to compensate for the loss of the  
42 Kealakehe acreage is located miles away and would require  
43 millions more to develop to homestead standards than the  
44 Kealakehe acreage; and



1  
2 WHEREAS, the Hawaiian Homes Commission and the Department  
3 of Hawaiian Home Lands has failed to analyze, and make officials  
4 findings and conclusions related to, the financial impact of  
5 diverting the Kealakehe lands for uses other than homesteading,  
6 and whether the leasing decision is in the best interest of  
7 those on growing waiting lists for homesteads on Hawaii island;  
8 and  
9

10 WHEREAS, contrary to requirements under Hawaiian Homes  
11 Commission Act, Section 204(a)(2), the Hawaiian Homes  
12 Commission/Department of Hawaiian Home Lands conducted no  
13 analysis of the Kealakehe parcel was required to provide  
14 homesteads to applicants on the Hawaiian Homes Commission  
15 waiting lists who might have otherwise settled within a couple  
16 of miles of a major employment center sooner than being awarded  
17 a homestead elsewhere in the indefinite future; and  
18

19 WHEREAS, the Hawaiian Homes Commission/Department of  
20 Hawaiian Home Lands is currently considering the creation of one  
21 hundred forty acres of commercial/industrial lots in Panaewa to  
22 supplement its illegal general lease income strategy on now  
23 unawarded trust lands potentially available for homestead leases  
24 in the future; and  
25

26 WHEREAS, that land is adjacent to major employment centers  
27 in Hilo, Hawaii; and  
28

29 WHEREAS, those one hundred and forty acres had the  
30 potential of serving at least hundreds of residential and/or  
31 agricultural homesteaders immediately, but are now diverted from  
32 the trust for potentially sixty years; and  
33

34 WHEREAS, any land needed to compensate for the loss of the  
35 Panaewa acreage is located miles away and would require millions  
36 more to develop to homestead standards than the Panaewa acreage;  
37 and  
38

39 WHEREAS, the Hawaiian Homes Commission/Department of  
40 Hawaiian Home Lands has failed to analyze, and make officials  
41 findings and conclusions related to, the financial impact of  
42 diverting the Panaewa lands for uses other than homesteading,  
43 and whether the leasing decision is in the best interest of



1 those on growing waiting lists for homesteads on Hawaii island;  
2 and

3  
4 WHEREAS, the number of applications for agricultural  
5 homesteads on Hawaii island was 6,658 as of June 30, 2009, the  
6 most for any category of homestead type on any island; and

7  
8 WHEREAS, the number of applications for residential  
9 homesteads on the Island of Hawaii was 5,505 as of June 30,  
10 2009; and

11  
12 WHEREAS, the Hawaiian Homes Commission and Department of  
13 Hawaiian Home Lands conducted no analysis of the impact of  
14 general leasing the Panaewa parcel on applicants on the  
15 Department of Hawaiian Home Lands waiting lists who might have  
16 otherwise settled within a couple of miles of a major employment  
17 center sooner than being awarded a homestead elsewhere in the  
18 indefinite future; and

19  
20 WHEREAS, on the Island of Hawaii, the Department of  
21 Hawaiian Home Lands summarily exempts its commercial developer  
22 lessees from any county requirements under a questionable Memo  
23 of Agreement it negotiated with the Kim administration; and

24  
25 WHEREAS, this summary procedure denies beneficiaries as  
26 well as the general public any forum normally available to  
27 address land use issues typically available during the county  
28 land use permitting process; and

29  
30 WHEREAS, in contrast, the Department of Hawaiian Home Lands  
31 insists that homestead lessees meet county building and  
32 subdivision requirements, often without offsetting financial  
33 assistance, causing hardships to many beneficiaries, like those  
34 at Maku'u, who cannot get domestic water and building permits as  
35 a result of these requirements; and

36  
37 WHEREAS, despite its emphasis in community-based land use  
38 planning, the Department of Hawaiian Home Lands initiated the  
39 one hundred forty acre industrial lot plan in the Panaewa  
40 Regional Land Use Plan that included the one hundred forty acre  
41 plan in the Panaewa Hawaiian Homes agricultural tract to be  
42 leased to the general public for commercial/industrial uses to  
43 generate income to the trust; and



1  
2 WHEREAS, in an attempt to obtain community support for its  
3 general leasing plan, the Department of Hawaiian Home Lands  
4 attempted to induce the Keaukaha-Panaewa Farmers Association and  
5 the Panaewa Hawaiian Home Lands Community Association to endorse  
6 a Panaewa Regional Plan by offering them a lease at a reduced  
7 rent for one of the 17 lots being designated exclusively for  
8 income to support the operations of its community center and  
9 other activities related to community development in the Panaewa  
10 homestead tract; and

11  
12 WHEREAS, nearly four decades ago, the Keaukaha-Panaewa  
13 Community Association was the pioneer homestead group that first  
14 judicially challenged the actions of the State to improperly  
15 divert homestead lands for projects and uses that benefit the  
16 general public, at the expense of native Hawaiian beneficiaries;  
17 and

18  
19 WHEREAS, the Keaukaha-Panaewa Community Association was  
20 successful in stopping the attempt to make use of homestead  
21 lands without compensation to the trust in a legally famous case  
22 utilized today as the judicial precedent that allows  
23 beneficiaries to enforce provisions of the trust so that its  
24 assets are not diverted for other unspecified uses; now,  
25 therefore,

26  
27 BE IT RESOLVED by the House of Representatives of the  
28 Twenty-sixth Legislature of the State of Hawaii, Regular Session  
29 of 2011, the Senate concurring, that it:

30  
31 (1) Requests that the Department of Hawaiian Home Lands  
32 provide data on the following statistics for the  
33 period 2000 through 2010:

34  
35 (A) Number of homestead awards reported to the  
36 Legislature (if there is a discrepancy with the  
37 appropriate annual report, an explanation shall  
38 be provided), and a breakdown for each year in  
39 each of three categories of homesteads -  
40 residential, pastoral, agricultural, and  
41 aquacultural:

42  
43 (B) Number of vacant improved lot awards;  
44



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- 1 (C) Number of homestead awards with improved homes;
- 2
- 3 (D) Number of homestead awards built under the self-
- 4 help home-building strategy;
- 5
- 6 (E) Number of homestead awards under the undivided
- 7 interest program; and
- 8
- 9 (F) Number of applicants offered homestead awards for
- 10 each category; and
- 11
- 12 (2) Funds expended each year to improve lots with
- 13 infrastructure; and
- 14
- 15 (3) Type of funding, general, special, trust, federal,
- 16 broken down by homestead type, including:
- 17
- 18 (A) Infrastructural costs to provide utilities; and
- 19
- 20 (B) Homes built on each type of homestead under the
- 21 following strategies: turn key, self-help, and
- 22 owner-builder; and
- 23

24 BE IT FURTHER RESOLVED that the data requested in this  
 25 measure be submitted to the Legislature, no later than twenty  
 26 days prior to the Regular Session of 2012; and

27  
 28 BE IT FURTHER RESOLVED that a certified copy of this  
 29 Concurrent Resolution be transmitted to the Chairperson of the  
 30 Hawaiian Homes Commission.

31  
 32  
 33 OFFERED BY:



MAR 16 2011

