

MAR 16 2011

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



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

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- 7 (1) Provide homesteads to every eligible beneficiary who
8 applies within a reasonable time;
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 - 10 (2) In a timely manner fund farm, ranch and aquacultural
11 assistance programs to make homesteaders successful on
12 their homesteads;
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 - 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
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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

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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

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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

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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

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

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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

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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

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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

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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

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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

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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

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

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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

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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



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

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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

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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

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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

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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

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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

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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

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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



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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

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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

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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,

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

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

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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:

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43 (B) Number of vacant improved lot awards;
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(C) Number of homestead awards with improved homes;

(D) Number of homestead awards built under the self-help home-building strategy;

(E) Number of homestead awards under the undivided interest program; and

(F) Number of applicants offered homestead awards for each category; and

(2) Funds expended each year to improve lots with infrastructure; and

(3) Type of funding, general, special, trust, federal, broken down by homestead type, including:

(A) Infrastructural costs to provide utilities; and

(B) Homes built on each type of homestead under the following strategies: turn key, self-help, and owner-builder; and

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

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

OFFERED BY:

Malama J. Kim


