

MAR 16 2011

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## SENATE RESOLUTION

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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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- 35           (4) Funding the administrative and operating budget of the  
36 Department of Hawaiian Home Lands; and



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

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

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

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

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

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

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

WHEREAS, the Hawaiian Homes Commission and the Department of Hawaiian Home Lands has failed to define what is self-sufficiency in terms of the revenue stream that is adequate to



1 perform all of its duties as contemplated under article XII,  
2 section 1, which would require it to:

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- 4 (1) Provide homesteads to every eligible beneficiary who  
5 applies within a reasonable time;
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- 7 (2) In a timely manner fund farm, ranch and aquacultural  
8 assistance programs to make homesteaders successful on  
9 their homesteads;
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- 11 (3) Assist homesteaders in community development programs  
12 under the Native Hawaiian Rehabilitation Fund; and  
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- 14 (4) Fund the administrative and operating budget of the  
15 Department of Hawaiian Home Lands; and  
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17 WHEREAS, the Department of Hawaiian Home Lands Chair has  
18 publicly stated that the Department of Hawaiian Home Lands needs  
19 \$100 million per year to meet its homesteading needs, yet  
20 arbitrarily sought to replace the \$30 million per year being  
21 paid as the settlement reached in Act 14 as a means of achieving  
22 some unarticulated standard for achieving program self-  
23 sufficiency; and  
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25 WHEREAS, prior to her election in 2002, Governor Lingle  
26 pledged to eliminate the waiting list for Hawaiian homesteads  
27 during her term in office; and  
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29 WHEREAS, Governor Lingle then scaled that goal to producing  
30 6,000 homesteads by the fifth year of her administration, by the  
31 end of 2008; and  
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33 WHEREAS, despite all the funding utilized between 2002 and  
34 2010 to develop homestead lots and housing under Act 14, the  
35 Department of Hawaiian Home Lands waiting list grew each year  
36 during the Lingle Administration; and  
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38 WHEREAS, the Department of Hawaiian Home Lands has received  
39 over \$450 million since 1995 under Act 14; and  
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41 WHEREAS, with that amount of funding and incorporating two  
42 years for planning and design, the Department of Hawaiian Home  
43 Lands should have produced at least 4500 improved homestead lots  
44 within the past fifteen years if it utilized only the funding



1 under Act 14 that was to compensate the Department of Hawaiian  
2 Home Lands trust for breaches committed by the State against  
3 that trust prior to 1988; and  
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5 WHEREAS, in fact, the Department of Hawaiian Home Lands has  
6 reported awarded no more than 3219 new leases between 1995 and  
7 2008; and  
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9 WHEREAS, during the Lingle/Kane administration, the  
10 Department of Hawaiian Home Lands awarded more than half of  
11 these homesteads in the form of undivided interests in larger  
12 unsubdivided homestead tracts, without installed infrastructure  
13 to support homestead use by those lessees; and  
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15 WHEREAS, despite the illusory nature of these undivided  
16 interests, that administration reported the award of undivided  
17 interests in homesteads without distinguishing them from regular  
18 homestead awards it did issue; and  
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20 WHEREAS, this failure to report on undivided interests  
21 deceptively inflates the actual numbers of homesteads awarded to  
22 beneficiaries during those years; and  
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24 WHEREAS, in 2003, with thousands waiting for suitable  
25 homestead lots, the Hawaiian Homes Commission leased two hundred  
26 acres of Department of Hawaiian Home Lands trust lands at  
27 Kealakehe in Kona to Jacoby Development Company for a time share  
28 development; and  
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30 WHEREAS, that land is within a two miles of major  
31 employment centers at Kailua-Kona; and  
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33 WHEREAS, those two hundred acres had the potential of  
34 serving at least 800 residential homesteaders immediately, but  
35 are now diverted from the trust for at least sixty years; and  
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37 WHEREAS, any land needed to compensate for the loss of the  
38 Kealakehe acreage is located miles away and would require  
39 millions more to develop to homestead standards than the  
40 Kealakehe acreage; and  
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42 WHEREAS, the Hawaiian Homes Commission and the Department  
43 of Hawaiian Home Lands has failed to analyze, and make officials  
44 findings and conclusions related to, the financial impact of



1 diverting the Kealakehe lands for uses other than homesteading,  
2 and whether the leasing decision is in the best interest of  
3 those on growing waiting lists for homesteads on Hawaii island;  
4 and  
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6 WHEREAS, contrary to requirements under Hawaiian Homes  
7 Commission Act, Section 204(a)(2), the Hawaiian Homes  
8 Commission/Department of Hawaiian Home Lands conducted no  
9 analysis of the Kealakehe parcel was required to provide  
10 homesteads to applicants on the Hawaiian Homes Commission  
11 waiting lists who might have otherwise settled within a couple  
12 of miles of a major employment center sooner than being awarded  
13 a homestead elsewhere in the indefinite future; and  
14

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

22 WHEREAS, that land is adjacent to major employment centers  
23 in Hilo, Hawaii; and  
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25 WHEREAS, those one hundred and forty acres had the  
26 potential of serving at least hundreds of residential and/or  
27 agricultural homesteaders immediately, but are now diverted from  
28 the trust for potentially sixty years; and  
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30 WHEREAS, any land needed to compensate for the loss of the  
31 Panaewa acreage is located miles away and would require millions  
32 more to develop to homestead standards than the Panaewa acreage;  
33 and  
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35 WHEREAS, the Hawaiian Homes Commission/Department of  
36 Hawaiian Home Lands has failed to analyze, and make officials  
37 findings and conclusions related to, the financial impact of  
38 diverting the Panaewa lands for uses other than homesteading,  
39 and whether the leasing decision is in the best interest of  
40 those on growing waiting lists for homesteads on Hawaii island;  
41 and  
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1           WHEREAS, the number of applications for agricultural  
2 homesteads on Hawaii island was 6,658 as of June 30, 2009, the  
3 most for any category of homestead type on any island; and  
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5           WHEREAS, the number of applications for residential  
6 homesteads on the Island of Hawaii was 5,505 as of June 30,  
7 2009; and  
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9           WHEREAS, the Hawaiian Homes Commission and Department of  
10 Hawaiian Home Lands conducted no analysis of the impact of  
11 general leasing the Panaewa parcel on applicants on the  
12 Department of Hawaiian Home Lands waiting lists who might have  
13 otherwise settled within a couple of miles of a major employment  
14 center sooner than being awarded a homestead elsewhere in the  
15 indefinite future; and  
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17           WHEREAS, on the Island of Hawaii, the Department of  
18 Hawaiian Home Lands summarily exempts its commercial developer  
19 lessees from any county requirements under a questionable Memo  
20 of Agreement it negotiated with the Kim administration; and  
21

22           WHEREAS, this summary procedure denies beneficiaries as  
23 well as the general public any forum normally available to  
24 address land use issues typically available during the county  
25 land use permitting process; and  
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27           WHEREAS, in contrast, the Department of Hawaiian Home Lands  
28 insists that homestead lessees meet county building and  
29 subdivision requirements, often without offsetting financial  
30 assistance, causing hardships to many beneficiaries, like those  
31 at Maku'u, who cannot get domestic water and building permits as  
32 a result of these requirements; and  
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34           WHEREAS, despite its emphasis in community-based land use  
35 planning, the Department of Hawaiian Home Lands initiated the  
36 one hundred forty acre industrial lot plan in the Panaewa  
37 Regional Land Use Plan that included the one hundred forty acre  
38 plan in the Panaewa Hawaiian Homes agricultural tract to be  
39 leased to the general public for commercial/industrial uses to  
40 generate income to the trust; and  
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42           WHEREAS, in an attempt to obtain community support for its  
43 general leasing plan, the Department of Hawaiian Home Lands



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

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

15  
16 WHEREAS, the Keaukaha-Panaewa Community Association was  
17 successful in stopping the attempt to make use of homestead  
18 lands without compensation to the trust in a legally famous case  
19 utilized today as the judicial precedent that allows  
20 beneficiaries to enforce provisions of the trust so that its  
21 assets are not diverted for other unspecified uses; now,  
22 therefore,

23  
24 BE IT RESOLVED by the Senate of the Twenty-sixth  
25 Legislature of the State of Hawaii, Regular Session of 2011,  
26 that it:

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

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

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40 (B) Number of vacant improved lot awards;

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42 (C) Number of homestead awards with improved homes;  
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(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 Resolution be transmitted to the Chairperson of the Hawaiian Homes Commission.

OFFERED BY:

*Melaine J. Kim*  
*Dan Anderson*

