
HOUSE CONCURRENT RESOLUTION

REQUESTING THE ESTABLISHMENT OF A WORKING GROUP TO ASSESS THE STATUS OF ACT 14, SPECIAL SESSION LAWS OF HAWAII 1995, AND THE HAWAIIAN HOMES COMMISSION ACT OF 1920, AS AMENDED.

1 WHEREAS, when the United States Congress passed the
2 Hawaiian Homes Commission Act (HHCA) of 1920, as amended and set
3 aside approximately 203,500 acres of public lands as Hawaiian
4 home lands for the rehabilitation of native Hawaiians, the
5 United States reaffirmed the trust responsibility it had assumed
6 toward the native Hawaiian people; and
7

8 WHEREAS, currently, approximately 40,000 acres of land are
9 under various homestead leases, and a total of 163,500 acres of
10 land are managed by the land division of the Department of
11 Hawaiian Home Lands (DHHL); and
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13 WHEREAS, when Congress enacted the Hawaii Admission Act in
14 1959, the State of Hawaii, in compliance with the Admission Act
15 and as a compact between the State and the United States,
16 adopted the HHCA as a law of the State through article XII of
17 the Hawaii State Constitution, affirming the State's fiduciary
18 duty to faithfully administer the HHCA on behalf of native
19 Hawaiian beneficiaries; and
20

21 WHEREAS, the Legislature found that thousands of acres of
22 Hawaiian home lands were allegedly used, disposed of, or
23 withdrawn from the trust by territorial or state executive
24 actions in contravention of the HHCA; between 1922 and 1959, the
25 federal government and, later the State, used Hawaiian home
26 lands for purposes not permitted by the trust; and after 1959,
27 the State took over the management and disposition of the
28 Hawaiian home lands and failed to restore the lands to the trust
29 or compensate the trust; and
30



1 WHEREAS, in 1982, the Hawaii Supreme Court held in *Ahuna v.*
2 *Department of Hawaiian Home Lands* that the Hawaiian Homes
3 Commission must be evaluated using the most exacting fiduciary
4 standards in their assessment of the responsibilities of the
5 Hawaiian Homes Commission and that their trust duties include
6 the obligation to administer the trust solely in the interest of
7 the beneficiary and the use of reasonable skill and care to make
8 trust property productive; and
9

10 WHEREAS, beginning in the early 1980s, and in part as a
11 result of the findings of a 1983 joint federal and state task
12 force charged with undertaking a "comprehensive review of every
13 facet of the [HHCA]," the state and federal governments began to
14 take steps to resolve past breaches of trust, including the
15 cancellation of gubernatorial executive orders and proclamations
16 that had taken lands from the trust to be used for other public
17 purposes, allowing trust beneficiaries to restore trust lands
18 and assets, or allowing beneficiaries to seek compensation for
19 damages; and
20

21 WHEREAS, in recognition of these allegations and toward
22 their resolution, the Legislature passed the Native Hawaiian
23 Trusts Judicial Relief Act (Act 395, Session Laws of Hawaii
24 1988) (Act 395), codified as chapter 673, Hawaii Revised
25 Statutes, which sought to provide redress to HHCA beneficiaries
26 by providing for limited waiver of the State's sovereign
27 immunity to enable beneficiaries of the Hawaiian Home Lands
28 Trust to bring suits for past breaches of the Trust that
29 occurred between August 21, 1959 and July 1, 1988; and
30

31 WHEREAS, the Governor's Action Plan to Address
32 Controversies under the Hawaiian Home Lands Trust and the Public
33 Land Trust (Action Plan) was accepted by the Legislature
34 pursuant to its adoption of S.C.R. No. 185, H.D. 1, Regular
35 Session of 1991; and
36

37 WHEREAS, the Action Plan, among other actions, proposed
38 convening a task force of representatives from the DHHL,
39 Department of Land and Natural Resources, Office of State
40 Planning, and Department of the Attorney General to accelerate
41 the review process; however, trust beneficiaries were excluded
42 from participation; and
43



1 WHEREAS, the actions of the task force were to include
2 verifying title claims, determining if improper uses were still
3 in existence and whether these uses should be canceled or
4 continued if authorized by the Hawaiian Homes Commission,
5 conducting appraisals and determining appropriate compensation
6 for past and continued use of Hawaiian home lands, and pursuing
7 all avenues for return of lands and compensation from the
8 federal government for wrongful actions; and
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10 WHEREAS, the task force recommended a one-time payment of
11 only \$39,000,000 for the state's illegal misuse of 29,633 acres
12 of trust lands since statehood, significantly understating the
13 value of the trust's claims, and conditioned the payment upon
14 DHHL's agreement to waive, on behalf of its beneficiaries, the
15 rights to all uncompensated past and future claims; and
16

17 WHEREAS, consequently, a group of native Hawaiian
18 beneficiaries filed suit in *Ka'ai'ai v. Drake*, challenging the
19 validity of the task force's settlement evaluation and the
20 appraisal process used in reaching this determination, in which
21 the First Circuit Court granted the beneficiaries a preliminary
22 injunction, halting the settlement process and appointed an
23 "independent representative" for the trust beneficiaries and
24 ordered a complete reevaluation of the claims; and
25

26 WHEREAS, in 1992, the Legislature approved the resolution
27 of the first set of claims covering gubernatorial executive
28 orders and proclamations which set aside 29,633 acres of lands
29 for public uses such as forest reserves, schools, and parks; and
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31 WHEREAS, Act 316, Session Laws of Hawaii 1992, provided
32 \$12,000,000 to pay verified claims and provide other means to
33 resolve public use controversies; and
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35 WHEREAS, the Legislature approved further means to resolve
36 verified claims in Act 352, Session Laws of Hawaii 1993, which
37 extended the period within which to pay compensation, continued
38 the authorization of the State to pursue claims against the
39 United States for the federal government's wrongful actions, and
40 authorized land exchanges to resolve alienations of Hawaiian
41 home lands; and
42



1 WHEREAS, the reappraisal resulted in a settlement that was
2 affirmed in Act 14, Special Session Laws of Hawaii 1995 (Act
3 14), to provide for a full settlement of all land claims made on
4 behalf of the Hawaiian Home Lands Trust against the State
5 between August 21, 1959, and July 1, 1988; and
6

7 WHEREAS, in Act 14, the Legislature found that due to the
8 difficulty, time, uncertainty, disruption of public purposes,
9 impact to the public land trust and private landowners, and
10 expenses of judicial resolutions of remaining disrupted claims,
11 another approach, which results in the repair of the Hawaiian
12 home lands trust and the final resolution of claims against the
13 State, was necessary and in the best interests of the State and
14 the beneficiaries of the trust; and
15

16 WHEREAS, in passing Act 14, the intent of the Legislature
17 was, in part, to: resolve all controversies for the period
18 between August 21, 1959 and July 1, 1988, allowed by Act 395,
19 except those permitted by chapter 674, Hawaii Revised Statutes;
20 resolve all controversies relating to the validity of patents
21 issued after 1920 and prior to July 1, 1988, and affecting any
22 lands covered by or allegedly covered by the HHCA and to all
23 rights arising from or relating to such patents as issued; and
24 make certain other related amendments to chapters 673 and 674,
25 Hawaii Revised Statutes; and
26

27 WHEREAS, Act 14 was intended to further the public interest
28 to ensure that claims with respect to the administration of the
29 Hawaiian Home Lands Trust brought pursuant to chapters 673 and
30 674, Hawaii Revised Statutes were resolved in a fair, complete,
31 and timely manner; and
32

33 WHEREAS, the Legislature also found that to properly
34 utilize Hawaiian home lands, there was a need to establish a
35 substantial, predictable funding mechanism for DHHL to
36 effectuate the purposes of the HHCA; to address that need, Act
37 14 established the Hawaiian Home Lands Trust Fund; and
38

39 WHEREAS, through Act 14, the State was required to make
40 twenty annual deposits of \$30,000,000, or their discounted value
41 equivalent, into the trust fund; and
42

43 WHEREAS, Act 14 directed that the proceeds deposited into
44 the Hawaiian Home Lands Trust Fund were to be used by the DHHL



1 for capital improvements and other purposes undertaken in
2 furtherance of the HHCA, affirmed DHHL's fiduciary
3 responsibility toward the trust fund, and required DHHL to
4 provide annual financial reports to the Legislature and
5 beneficiaries of the Hawaiian Home Lands Trust; and

6
7 WHEREAS, Act 14 contained a specific provision clarifying
8 that payments made pursuant to its provision would not diminish
9 the funds the DHHL is entitled to under article XII, section 1,
10 of the Hawaii State Constitution; and

11
12 WHEREAS, Act 14 also required the transfer of various state
13 lands to the DHHL, compensation for all remaining confirmed
14 uncompensated public uses of Hawaiian home lands, and the
15 initiation of a land exchange to remedy uncompensated use of
16 Hawaiian home lands for state roads and highways; and

17
18 WHEREAS, with the passage of Act 14, with respect to all
19 controversies that arose between August 21, 1959, and July 1,
20 1988, excluding individual claims provided for pursuant to
21 chapter 674, Hawaii Revised Statutes, the State withdrew the
22 limited waiver of sovereign immunity permitted by Act 395,
23 thereby forever barring all claims arising between August 21,
24 1959, and July 1, 1988; and

25
26 WHEREAS, Act 14 authorized the transfer of 16,518 acres of
27 state land to DHHL to restore the corpus to its original
28 estimated acreage; and

29
30 WHEREAS, the Department of Land and Natural Resources has
31 conveyed 16,298.975 acres to the Hawaiian Homes Commission, of
32 which the 15,742.652 acres are in satisfaction of the
33 requirements of Act 14; and

34
35 WHEREAS, over twenty-five years have passed since the
36 enactment of Act 14; despite the assurances of fulfilling
37 homestead obligations to HHCA beneficiaries, the need for
38 affordable housing for beneficiaries remains great; and

39
40 WHEREAS, more than two thousand native Hawaiian
41 beneficiaries have died while on the Hawaiian homes waiting list
42 for a home land lease, and twenty-eight thousand beneficiaries
43 currently remain on the list, causing HHCA beneficiaries to
44 languish; and



1
2 WHEREAS, the existing status of Act 14 and whether its
3 mandates to provide for a settlement of all state land claims
4 for the benefit of native Hawaiians under the HHCA have been
5 fulfilled are unknown; and

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7 WHEREAS, in 2020, in *Kalima v. State*, the Hawaii Supreme
8 Court concluded that the State breached its duties as a trustee
9 of the HHCA to keep and render accounts, exercise reasonable
10 care and skill, administer the trust, to make the trust property
11 productive, and failing to correct the ongoing dispossession of
12 trust lands to the significant detriment of the native Hawaiian
13 people for whom the Trust was created and failed to restore
14 those lands to the trust by failing to compensate the trust with
15 the lands' rental value while in use by non-beneficiaries; and

16
17 WHEREAS, since the enactment of Act 14, the Department of
18 Interior promulgated regulations under 43 Code of Federal
19 Regulations (CFR) parts 47 and 48, to clarify how the Department
20 of Interior administers certain provisions of the HHCA and the
21 Hawaiian Home Lands Recovery Act with the goal of facilitating
22 the rehabilitation of the native Hawaiian community, including
23 the return of native Hawaiians to the land, consistent with the
24 HHCA, the State of Hawaii Admission Act, and the Hawaiian Home
25 Lands Recovery Act; and

26
27 WHEREAS, these regulations seek to clarify the land
28 exchange process for Hawaiian home lands, the documents required
29 for land exchanges, and the respective responsibilities of the
30 Department of the Interior, DHHL, Hawaiian Homes Commission, and
31 other entities engaged in land exchanges of Hawaiian home lands;
32 and

33
34 WHEREAS, 43 CFR Parts 47 and 48 provide that the HHCA,
35 Admission Act, and Hawaiian Home Lands Recovery Act defined the
36 three parties involved in reviewing land exchanges involving
37 Hawaiian home lands and proposed amendments to the HHCA; these
38 parties are the federal government (represented by the Secretary
39 of the Interior); State (represented by DHHL and the Hawaiian
40 Homes Commission); and beneficiaries as defined under the HHCA;
41 and

42
43 WHEREAS, the Legislature continues to have concerns about
44 the following issues:



- 1
- 2 (1) Outstanding issues related to Act 14;
- 3
- 4 (2) Claims made pursuant to chapter 673, Hawaii Revised
- 5 Statutes, which arose after July 1, 1988; and
- 6
- 7 (3) The outstanding status of certain elements such as the
- 8 Mauna Kea Access Road;
- 9

10 now, therefore,

11
12 BE IT RESOLVED by the House of Representatives of the
13 Thirty-first Legislature of the State of Hawaii, Regular Session
14 of 2021, the Senate concurring, that the Department of Hawaiian
15 Home Lands and Department of Land and Natural Resources is
16 requested to convene a working group to assess the status of Act
17 14; and

18
19 BE IT FURTHER RESOLVED that the working group is requested
20 to comprise the following members, or their designees:

- 21
- 22 (1) A representative from the United States Department of
- 23 the Interior;
- 24
- 25 (2) The Chairperson of the Board of Land and Natural
- 26 Resources, who shall serve as a co-chair of the task
- 27 force;
- 28
- 29 (3) The Chairperson of the Hawaiian Homes Commission, who
- 30 shall serve as a co-chair of the task force;
- 31
- 32 (4) The Attorney General; and
- 33
- 34 (5) A representative from a federally defined regional
- 35 homestead association deemed necessary by the
- 36 Department of Hawaiian Home Lands; and
- 37

38 BE IT FURTHER RESOLVED that the working group is requested
39 to identify:

- 40
- 41 (1) The requirements of Act 14;
- 42
- 43 (2) The requirements that have been fulfilled, including
- 44 when and how they were fulfilled;



- 1
- 2 (3) Outstanding issues related to Act 14;
- 3
- 4 (4) The steps necessary to finalize outstanding claims
- 5 related to Act 14;
- 6
- 7 (5) Claims pursuant to chapter 673, Hawaii Revised
- 8 Statutes, which arose after July 1, 1988; and
- 9
- 10 (6) The annual revenues and expenditures from the Hawaiian
- 11 Home Lands Trust Fund since 1995; and
- 12

13 BE IT FURTHER RESOLVED that the working group is requested
14 to submit a report of its findings and recommendations,
15 including any proposed legislation, to the Legislature and
16 beneficiaries of the Hawaiian Home Lands Trust no later than
17 twenty days prior to the convening of the Regular Session of
18 2022; and

19
20 BE IT FURTHER RESOLVED that the task force be dissolved on
21 June 30, 2022; and

22
23 BE IT FURTHER RESOLVED that certified copies of this
24 Concurrent Resolution be transmitted to the Secretary of the
25 United States Department of the Interior, Governor, Attorney
26 General, Chairperson of the Hawaiian Homes Commission, and
27 Chairperson of the Board of Land and Natural Resources.

