

MAR 18 2009

SENATE CONCURRENT RESOLUTION

REQUESTING THE AUDITOR AND THE ATTORNEY GENERAL TO DEVELOP AND PROPOSE LEGISLATION TO AMEND CHAPTER 171, HAWAII REVISED STATUTES, TO ESTABLISH DEFINITIONS OF "APPROVAL IN PRINCIPLE" AND "LEASE IN PRINCIPLE," AND THAT THE BOARD OF LAND AND NATURAL RESOURCES REFRAIN FROM ISSUING ANY "APPROVALS IN PRINCIPLE" OR "LEASES IN PRINCIPLE" UNTIL THE ADOPTION OF SUCH LEGISLATION.

1 WHEREAS, since 2001, the Board of Land and Natural
2 Resources has been committing the State to dispositions of
3 public lands using the mechanisms of "approval in principle" and
4 "lease in principle"; and

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6 WHEREAS, neither "approval in principle" or "lease in
7 principle" are mechanisms established by law; and

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9 WHEREAS, the Board of Land and Natural Resources does not
10 have the statutory or other legal authority to grant an
11 "approval in principle" or a "lease in principle"; and

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13 WHEREAS, in granting "approvals in principle" and "leases
14 in principle" the Board of Land and Natural Resources relies
15 upon the general authority granted in section 171-6(19), Hawaii
16 Revised Statutes, which states that the Board may "do any and
17 all things necessary to carry out its purposes and exercise the
18 powers granted in . . . [the Public Lands, Management and
19 Disposition of] chapter"; and

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21 WHEREAS, chapter 171, Hawaii Revised Statutes, provides
22 that unless there is a specific exception, the disposition of
23 public lands requires public notice and public auction; and

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25 WHEREAS, by utilizing the concepts of "approval in
26 principle" and "lease in principle" the Board of Land and
27 Natural Resources has disposed of public lands or acquired



1 private lands without following the public notice requirements
2 of chapter 171, Hawaii Revised Statutes; and

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4 WHEREAS, article XI, section 5 of the State Constitution
5 and chapter 171, Hawaii Revised Statutes, contain specific
6 requirements and list specific exceptions for the disposition of
7 public lands, and reliance upon the general powers provision of
8 section 171-6(19), Hawaii Revised Statutes, is a
9 misinterpretation of the intended powers of the Board of Land
10 and Natural Resources; now, therefore,

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12 BE IT RESOLVED by the Senate of the Twenty-fifth
13 Legislature of the State of Hawaii, Regular Session of 2009, the
14 House of Representatives concurring, that the Legislature
15 requests the Auditor and the Attorney General to develop and
16 propose legislation to amend chapter 171, Hawaii Revised
17 Statutes, to establish definitions of "approval in principle"
18 and "lease in principle" as they pertain to the powers of the
19 Board of Land and Natural Resources; and

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21 BE IT FURTHER RESOLVED that the Legislature requests that
22 the Board of Land and Natural Resources refrain from issuing any
23 "approvals in principle" or "leases in principle" until the
24 enactment of such legislation; and

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26 BE IT FURTHER RESOLVED that the Attorney General is
27 requested to submit a report of its findings and
28 recommendations, including proposed legislation, to the
29 Legislature no later than twenty days prior to the convening of
30 the Regular Session of 2010; and

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32 BE IT FURTHER RESOLVED that certified copies of this
33 Concurrent Resolution be transmitted to the Attorney General,
34 the Auditor, and the Chairperson of the Board of Land and
35 Natural Resources.

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38 OFFERED BY:

Russell Kohn
[Signature]

[Signature]
[Signature]

Jill
Norman Sekanfi

