

MAR 12 2013

SENATE CONCURRENT RESOLUTION

REQUESTING THE AUDITOR TO CONDUCT AN AUDIT OF THE KAPIOLANI PARK TRUST TO EVALUATE ITS GOVERNANCE STRUCTURE AND IDENTIFY THE PERMISSIBLE USES OF THE PARK LANDS, INCLUDING DELINEATING ANY LIMITATIONS ON COMMERCIAL OR OTHER INCONSISTENT USES THAT MAY FALL OUTSIDE THE SCOPE OF THE TRUST'S PURPOSE OR MAY CONSTITUTE WASTE OF THE TRUST PROPERTY.

1 WHEREAS, Kapiolani Park is a popular venue for various
2 public functions, including amateur sporting events, cultural
3 fairs, and family gatherings that are all well attended by
4 Hawaii residents and visitors; and

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6 WHEREAS, there is a significant public interest in
7 maintaining the existing nature and character of Kapiolani Park
8 through the preservation of its open space for the public's
9 benefit in perpetuity as well as the park's historic value; and

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11 WHEREAS, in 1896, Kapiolani Park was established as a
12 public charitable trust to be maintained as a free public park
13 and recreation ground for its sole beneficiaries, the members of
14 the general public; and

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16 WHEREAS, the members of the Honolulu City Council act as
17 trustees of the Kapiolani Park Trust and are responsible for
18 faithfully executing trust duties as directed under the trust
19 instrument; and

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21 WHEREAS, Kapiolani Park is among the most valuable land in
22 the State due to its vast expanse of open space, close proximity
23 to Waikiki Beach, and frequent exposure to a high volume of
24 residents and visitors; and

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26 WHEREAS, these factors contribute to frequent pressure from
27 private entities and the City and County of Honolulu and its
28 permittees who seek opportunities to conduct commercial or other



1 activities that may be inconsistent or contrary to the purposes
2 of the trust on Kapiolani Park lands; and
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4 WHEREAS, the Hawaii Supreme Court held in Kapiolani Park
5 Preservation Society v. City and County of Honolulu, 69 Haw.
6 569, 751 P.2d 1022 (1988), that it is not within the power of
7 any legislative body to terminate a charitable trust, change its
8 administration on grounds of expediency, or seek to control or
9 amend the disposition of its property under cy pres doctrines;
10 and

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12 WHEREAS, furthermore, the court held that the City and
13 County of Honolulu had no power to execute leases or deeds for
14 part of or all of Kapiolani Park land; and
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16 WHEREAS, previous questions regarding the use of the park
17 lands have led to establishing a standard whereby any use must
18 demonstrate a nexus with the use and care of Kapiolani Park; and
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20 WHEREAS, in City and County of Honolulu v. Warren Price,
21 III et al., (1991), the Circuit Court judge held that the City's
22 use of Kapiolani Park for a nursery was a permissible use under
23 the trust "so long as the nursery and plants [stored there] are
24 used for city park purposes"; and
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26 WHEREAS, the recent proposal from the City and County of
27 Honolulu to use land next to the Waikiki Aquarium to develop a
28 new ocean safety substation has raised concerns of whether the
29 proposal is a permissible use of park property under the trust
30 instrument; and
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32 WHEREAS, a decision on this matter will be based on whether
33 the use of park property for an ocean safety substation
34 demonstrates a sufficient nexus with the use and care of the
35 park; and
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37 WHEREAS, furthermore, this decision has the potential of
38 establishing a precedent regarding how the park space may be
39 used in the future; and
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41 WHEREAS, the State has a significant interest in ensuring
42 that the Kapiolani Park Trust is executed in a manner that is
43 consistent with the trust's purpose; and
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1 WHEREAS, furthermore, the State has a significant interest
2 in ensuring that the decisions made by the Honolulu City Council
3 regarding the park's permissible uses are made in the best
4 interests of its beneficiaries and are consistent with the
5 limitations of the trust instrument and the park's carrying
6 capacity; and
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8 WHEREAS, defining commercial and other inconsistent uses
9 and burdens and outlining limitations on such uses within the
10 park should be addressed to better enable the general public, as
11 sole beneficiary, and the members of the Honolulu City Council,
12 as trustees, to differentiate between acceptable public and
13 private uses of Kapiolani Park and maintain transparency and
14 accountability among the trustees and beneficiaries; now,
15 therefore,
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17 BE IT RESOLVED by the Senate of the Twenty-seventh
18 Legislature of the State of Hawaii, Regular Session of 2013, the
19 House of Representatives concurring, that the Auditor is
20 requested to conduct an audit of the Kapiolani Park Trust to
21 evaluate its governance structure and identify the permissible
22 uses of the park lands, including delineating any limitations on
23 commercial or other inconsistent uses that may fall outside the
24 scope of the trust's purpose or may constitute waste of the
25 trust property; and
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27 BE IT FURTHER RESOLVED that the Auditor is requested to
28 report findings and recommendations, including any proposed
29 legislation, to the Legislature no later than twenty days prior
30 to the convening of the Regular Session of 2014; and
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32 BE IT FURTHER RESOLVED that certified copies of this
33 Concurrent Resolution be transmitted to the Auditor, Mayor of
34 the City and County of Honolulu, Chairperson of the Honolulu
35 City Council, Director of the Department of Parks and Recreation
36 of the City and County of Honolulu, and Board President of the
37 Kapiolani Park Preservation Society.
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OFFERED BY: _____

