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# SENATE CONCURRENT RESOLUTION

URGING THE OFFICE OF THE MAYOR, COUNTY OF HAWAII TO STUDY THE  
FEASIBILITY OF CREATING AN OVERSIGHT AUTHORITY FOR  
SUBDIVISIONS IN THE COUNTY OF HAWAII.

1           WHEREAS, some housing subdivisions in the State have been  
2 approved without a requirement that the respective lot owners  
3 fund the repair and maintenance of the private roads and other  
4 infrastructure within the subdivisions; and  
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6           WHEREAS, unlike condominium property regimes, many housing  
7 subdivisions are not subject to a statutory framework or a  
8 regulatory agency like the Department of Commerce and Consumer  
9 Affairs to oversee the creation, monitoring, training,  
10 validating, and auditing of the various volunteer associations  
11 responsible for the subdivisions' infrastructures, and to which  
12 aggrieved property owners may file complaints regarding  
13 assessments or misuse of collected association dues; and  
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15           WHEREAS, courts have created a patchwork of judgments and  
16 orders in various lawsuits that have created master  
17 receiverships to fill the vacuum caused by the lack of formal  
18 oversight; and  
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20           WHEREAS, in *Paradise Hui Hanalike v. Hawaiian Paradise Park*  
21 *Corp.*, 66 Haw. 362, 662 P.2d 211 (1983), although the Hawaii  
22 Supreme Court found that there exists a legal duty for the  
23 owners of property that abuts subdivision roads to contribute to  
24 the respective corporation's necessary maintenance of those  
25 subdivision roads, the court also upheld in relevant part the  
26 lower court's decision that, based on the facts of the case,  
27 "the proposed means of carrying out the assessments by requiring  
28 payments to that corporation were innately unfair"; and  
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30           WHEREAS, although the Intermediate Court of Appeals in  
31 *Kaanapali Hillside Homeowners' Ass'n v. Doran*, 112 Haw. 356, 145



1 P.3d 899 (App. 2006), determined that the homeowners were bound  
2 by an "implied obligation to pay their share of the costs  
3 incurred" by the respective association for "provided services  
4 that benefitted the subdivision", and affirmed in relevant part  
5 a lower court's decision that awarded monetary damages against  
6 the homeowners for accrued assessments, the costs of road  
7 maintenance were not at issue in that particular case; and  
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9 WHEREAS, courts have found that volunteer organizations and  
10 homeowner associations are deficient in facilitating road  
11 maintenance; and  
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13 WHEREAS, the state judicial system already bears a heavy  
14 caseload, and it is expensive for both residents and homeowner  
15 associations to resolve disputes regarding assessments,  
16 management, and repairs in the courts; and  
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18 WHEREAS, the inability to collect contributions from lot  
19 owners of some subdivisions with no court-approved corporation,  
20 association, or entity, has led to the neglect of roads and has  
21 caused roads to become substandard and deeply-rutted, which in  
22 turn has caused delays in emergency vehicle responses; and  
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24 WHEREAS, because the counties have the authority to approve  
25 housing subdivisions and collect real property taxes from the  
26 owners in those subdivisions, the counties should establish  
27 rules and procedures for, conduct audits of, and establish  
28 agencies that oversee the housing subdivisions or, in the  
29 alternative, the counties should maintain and repair the  
30 infrastructure of the housing subdivisions; and  
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32 WHEREAS, the problems in these infrastructure-deficient  
33 subdivisions are most pronounced in the County of Hawaii,  
34 particularly in the District of Puna; now, therefore,  
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36 BE IT RESOLVED by the Senate of the Twenty-ninth  
37 Legislature of the State of Hawaii, Regular Session of 2018, the  
38 House of Representatives concurring, that the Office of the  
39 Mayor, County of Hawaii, is urged to study the feasibility of  
40 creating an oversight authority for subdivisions in the County  
41 of Hawaii that would have the power to:  
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- 1 (1) Validate homeowner associations if none are stated in  
2 subdivision deeds for those subdivisions with private  
3 roads;
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- 5 (2) Audit or validate disputed assessments imposed by such  
6 homeowner associations; and  
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- 8 (3) Resolve disputes on such matters between property  
9 owners and their respective homeowner associations;  
10 and  
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12 BE IT FURTHER RESOLVED that the Office of the Mayor, County  
13 of Hawaii, is requested to submit a report of its findings and  
14 recommendations to the Legislature no later than twenty days  
15 prior to the convening of the Regular Session of 2021; and  
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17 BE IT FURTHER RESOLVED that a certified copy of this  
18 Concurrent Resolution be transmitted to the Office of the Mayor,  
19 County of Hawaii.

