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## A BILL FOR AN ACT

RELATING TO THE HAWAIIAN HOMES COMMISSION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this Act is to authorize the  
2 election of the members of the Hawaiian homes commission by  
3 Hawaiian voters.

4           SECTION 2. The Hawaiian Homes Commission Act, 1920, is  
5 amended by adding four new sections to be appropriately  
6 designated and to read as follows:

7           "SA. Qualifications of commission members. (a) No person  
8 shall be eligible for election to the commission unless the  
9 person meets the following qualifications:

10           (1) The person is:

11           (A) A "native Hawaiian" as defined in section 201(7)  
12           of this Act; or

13           (B) A successor to a lessee as defined in section  
14           209(a) of this Act as of the day of the election;

15           (2) The person has attained the age of eighteen years or  
16           will have attained that age within one year of the  
17           date of the next election of commission members; and



1       (3) The person is otherwise qualified to register to vote  
2           in the State.

3       (b) No member of the commission shall hold or be a  
4       candidate for any other public office under the state or county  
5       governments in accordance with article II, section 7, of the  
6       Constitution of the State of Hawaii; nor shall a person be  
7       eligible for election to the commission if that person is also a  
8       candidate for any other public office under the state or county  
9       governments. For the purposes of this section, the term "public  
10       office" shall not include notaries public, reserve police  
11       officers, or officers of emergency organizations for civilian  
12       defense or disaster, or disaster relief.

13       §B. Election of commission members. (a) Members of the  
14       commission shall be elected at a special election held in  
15       conjunction with the general election in every even-numbered  
16       year.

17       (b) Any person wishing to register as a candidate for the  
18       election as a commission member shall submit to an examination  
19       under oath by the office of elections as to the person's  
20       qualifications. In addition, each candidate shall make and  
21       subscribe to an application in the form of an affidavit  
22       verifying the candidate's qualifications.



1        (c) The office of elections shall prepare the nomination  
2 papers in such a manner that a candidate desiring to file for  
3 election to the commission shall be able to specify that the  
4 candidate is seeking a seat requiring residency on a particular  
5 island.

6        (d) The ballot shall be prepared in such a manner that  
7 voters qualified and registered under this Act shall be afforded  
8 the opportunity to cast ballots for the candidates seeking  
9 election to the seats representing the island on which the voter  
10 resides. The ballot shall contain the names of the candidates  
11 arranged alphabetically. Each eligible voter shall be entitled  
12 to receive the commission ballot and to vote for the number of  
13 seats available on the island on which the voter resides.

14        (e) The cost of the election of commission members shall  
15 be borne by the department of Hawaiian home lands.

16        **§C. Qualification of voters; registration.** (a) No person  
17 shall be eligible to register as a voter for the election of  
18 commission members unless the person meets the following  
19 qualifications:

20        (1) The person is:

21            (A) A "native Hawaiian" as defined in section 201(7)  
22            of this Act; or



1                    (B) A successor to a lessee as defined in  
2                    section 209(a) of this Act;

3            (2) The person has attained the age of eighteen years or  
4            will have attained that age within one year of the  
5            date of the next election of commission members; and

6            (3) The person is otherwise qualified to register to vote  
7            in the State.

8            (b) The office of elections, with the assistance of the  
9            department of Hawaiian home lands, shall be responsible to  
10           register all persons in each county who are eligible and wish to  
11           register as voters for the election of commission members. The  
12           maintenance, reproduction, and transmittal of records and  
13           affidavits to a central file may be in accordance with section  
14           11-14, Hawaii Revised Statutes.

15            **§D. Term of office; vacancies.**    (a) The term of office of  
16            members of the commission shall be four years beginning on the  
17            day of the special election of the year in which they are  
18            elected and ending on the day of the special election day held  
19            four years hence; except that the term of office of commission  
20            members elected in 2006 shall be as follows:

21            (1) The four members elected with the highest number of  
22            votes shall serve four years; and



1        (2) The remaining members elected shall serve two years.  
 2 Members of the commission may be re-elected without restriction  
 3 as to the number of terms.

4        (b) Any vacancy that may occur through any cause other  
 5 than the expiration of the term of office shall be filled in  
 6 accordance with section 17- , Hawaii Revised Statutes."

7        SECTION 3. Chapter 17, Hawaii Revised Statutes, is amended  
 8 by adding a new section to be appropriately designated and to  
 9 read as follows:

10        **"§17- Hawaiian homes commission; vacancies. (a)**  
 11 Whenever any vacancy in the membership of the Hawaiian homes  
 12 commission occurs, the term of which ends at the next succeeding  
 13 special election, the vacancy shall be filled within sixty days  
 14 by a two-thirds vote of the remaining members of the commission.

15        (b) In the case of a vacancy, the term of which does not  
 16 end at the next succeeding special election:

17        (1) If it occurs not later than on the sixtieth day prior  
 18 to the next succeeding special election, the vacancy  
 19 shall be filled for the unexpired term at the next  
 20 succeeding special election. The chief election  
 21 officer shall issue a proclamation designating the  
 22 election for filling the vacancy. All candidates for

1           the unexpired term shall file nomination papers not  
2           later than 4:30 p.m. on the fiftieth day prior to the  
3           special election (but if that day is a Saturday,  
4           Sunday, or holiday then not later than 4:30 p.m. on  
5           the first working day immediately preceding) and shall  
6           be elected in accordance with the Hawaiian Homes  
7           Commission Act of 1920, as amended, and this title.  
8           Pending the election, the commission shall make a  
9           temporary appointment to fill the vacancy in the  
10           manner prescribed under subsection (a). The person  
11           appointed shall reside on the island from which the  
12           vacancy occurred, shall serve for the duration of the  
13           unexpired term, and shall serve until the election of  
14           the person duly elected to fill the vacancy; or  
15           (2) If it occurs after the sixtieth day prior to the next  
16           succeeding special election, the commission shall make  
17           an appointment to fill the vacancy in the manner  
18           prescribed under subsection (a). The person so  
19           appointed shall reside on the island from which the  
20           vacancy occurred and shall serve for the duration of  
21           the unexpired term.



1        (c) All appointments made by the commission under this  
2 section shall be made without consideration of the appointee's  
3 party preference or nonpartisanship status."

4        SECTION 4. Section 202, Hawaiian Homes Commission Act,  
5 1920, is amended to read as follows:

6        **"§202. Department officers, staff, commission, members,**  
7 **compensation.** (a) There shall be a department of Hawaiian home  
8 lands [~~which~~] that shall be headed by an executive board to be  
9 known as the Hawaiian homes commission. The members of the  
10 commission shall be [~~nominated and appointed in accordance with~~  
11 ~~section 26-34, Hawaii Revised Statutes~~] elected in accordance  
12 with this Act. The commission shall be composed of nine  
13 members, [~~as follows: three shall be residents of the city and~~  
14 ~~county of Honolulu; two shall be residents of the county of~~  
15 ~~Hawaii one of whom shall be a resident of east Hawaii and the~~  
16 ~~other a resident of west Hawaii; two shall be residents of the~~  
17 ~~county of Maui one of whom shall be a resident from the island~~  
18 ~~of Molokai; one shall be a resident of the county of Kauai; and~~  
19 ~~the ninth member shall be the chairman of the Hawaiian homes~~  
20 ~~commission. All members shall have been residents of the State~~  
21 ~~at least three years prior to their appointment and at least~~  
22 ~~four of the members shall be descendants of not less than one-~~



1 ~~fourth part of the blood of the races inhabiting the Hawaiian~~  
2 ~~Islands previous to 1778.]~~ elected pursuant to section B(a) of  
3 the Hawaiian Homes Commission Act, 1920, as follows:

4 (1) Two shall reside on the island of Hawaii and shall be  
5 registered to vote on the island of Hawaii; provided  
6 that one member shall reside in east Hawaii in one of  
7 the districts of Puna, South Hilo, North Hilo, or  
8 Hamakua, and the other shall reside in west Hawaii in  
9 one of the districts of North Kohala, South Kohala,  
10 North Kona, South Kona, or Kau;

11 (2) One shall reside on the island of Maui and shall be  
12 registered to vote on the island of Maui;

13 (3) One shall reside on the island of Molokai and shall be  
14 registered to vote on the island of Molokai;

15 (4) One shall reside on the island of Kauai and shall be  
16 registered to vote on the island of Kauai; and

17 (5) Four shall reside on the island of Oahu and shall be  
18 registered to vote on the island of Oahu.

19 The tenth member shall be the director of Hawaiian home lands  
20 who shall serve as an ex officio nonvoting member. The members  
21 of the commission shall serve without pay, but shall receive  
22 actual expenses incurred by them in the discharge of their





1 duties as [~~such~~] members. The [~~governor shall appoint the~~  
2 ~~chairman~~] chairperson of the commission [~~from among the~~] shall  
3 be elected by the members [~~thereof.~~] of the commission. The  
4 commission shall appoint the director of the department who  
5 shall be compensated in accordance with section 26-52, Hawaii  
6 Revised Statutes.

7 The commission may delegate to the [~~chairman such~~] director  
8 duties, powers, and authority or so much thereof, as may be  
9 lawful or proper for the performance of the functions vested in  
10 the commission. The [~~chairman of the commission~~] director shall  
11 serve in a full-time capacity[~~. He shall, in such capacity,~~]  
12 and shall perform [~~such~~] the duties, and exercise [~~such~~] the  
13 powers and authority, or so much thereof, as may be delegated to  
14 [~~him~~] the director by the commission [~~as herein provided above~~].

15 (b) [~~The provisions of section~~] Section 76-16, Hawaii  
16 Revised Statutes, shall apply to the positions of first deputy  
17 and private secretary to the [~~chairman of the commission.~~]  
18 director. The department may hire temporary staff on a  
19 contractual basis not subject to chapters 76 [~~and~~], 78, and 89,  
20 Hawaii Revised Statutes, when the services to be performed will  
21 assist in carrying out the purposes of the Act. These positions  
22 may be funded through appropriations for capital improvement



1 program projects and by the administration account, operating  
2 fund, or native Hawaiian rehabilitation fund. No contract shall  
3 be for a period longer than two years, but individuals hired  
4 under contract may be employed for a maximum of six years;  
5 provided that the six-year limitation shall not apply if the  
6 department, with the approval of the governor, determines that  
7 ~~[such]~~ those contract individuals are needed to provide critical  
8 services for the efficient functioning of the department. All  
9 other positions in the department shall be subject to ~~[chapters]~~  
10 chapter 76, Hawaii Revised Statutes.

11 All vacancies and new positions ~~[which]~~ that are covered by  
12 chapter 76, Hawaii Revised Statutes, shall be filled in  
13 accordance with section 76-22.5, Hawaii Revised Statutes;  
14 provided that ~~[the provisions of]~~ these sections shall be  
15 applicable first to qualified persons of Hawaiian extraction."

16 SECTION 5. Section 11-15, Hawaii Revised Statutes, is  
17 amended by amending subsection (b) to read as follows:

18 "(b) Any person qualified to and desiring to register as a  
19 voter for the election of members of the board of trustees of  
20 the office of Hawaiian affairs or of members of the Hawaiian  
21 homes commission, shall make and subscribe to an application in  
22 the form of an affidavit ~~[which]~~ that shall state that the



1 person is Hawaiian and [~~which shall~~] contain the information  
2 required under subsection (a). The affidavit shall also apply  
3 to all elections, primary, special primary, general, special  
4 general, special, or county, held in the State, under all voting  
5 systems used within the State, so far as applicable and not  
6 inconsistent with this title."

7 SECTION 6. Section 11-25, Hawaii Revised Statutes, is  
8 amended by amending subsections (a) and (b) to read as follows:

9 "(a) Challenging prior to election day. Any registered  
10 voter may challenge the right of a person to be or to remain  
11 registered as a voter in any precinct for any cause not  
12 previously decided by the board of registration or the supreme  
13 court in respect to the same person; provided that [~~it~~]:

14 (1) In an election of members of the board of trustees of  
15 the office of Hawaiian affairs the voter making the  
16 challenge [~~must~~] shall be registered to vote in that  
17 election[-]; and

18 (2) In an election of members of the Hawaiian homes  
19 commission, the voter making the challenge shall be  
20 registered to vote in that election.

21 The challenge shall be in writing, setting forth the grounds  
22 upon which it is based, and be signed by the person making the



1 challenge. The challenge shall be delivered to the clerk, who  
 2 shall forthwith serve notice thereof on the person challenged.  
 3 The clerk [~~shall~~], as soon as possible, shall investigate and  
 4 rule on the challenge.

5 (b) Challenging on election day. Any voter rightfully in  
 6 the polling place may challenge the right to vote of any person  
 7 who comes to the precinct officials for voting purposes. The  
 8 challenge shall be on the grounds that the voter is not the  
 9 person the voter alleges to be, or that the voter is not  
 10 entitled to vote in that precinct; provided that only in an  
 11 election of members of the board of trustees of the office of  
 12 Hawaiian affairs[7] or members of the Hawaiian homes commission,  
 13 a person registered to vote in that election may also challenge  
 14 on the grounds that the voter is not [~~Hawaiian~~] eligible to  
 15 vote in the particular election. No other or further challenge  
 16 shall be allowed. Any person thus challenged shall first be  
 17 given the opportunity to make the relevant correction pursuant  
 18 to section 11-21. The challenge shall be considered and decided  
 19 immediately by the precinct officials and the ruling shall be  
 20 announced."

21 SECTION 7. Section 12-5, Hawaii Revised Statutes, is  
 22 amended by amending subsection (c) to read as follows:

1           "(c) Nomination papers for candidates for members of the  
2 board of trustees of the office of Hawaiian affairs and for  
3 members of the Hawaiian homes commission shall be signed by [~~not~~  
4 ~~less~~] no fewer than twenty-five persons registered as prescribed  
5 under section 11-15(b)."

6           SECTION 8. Section 12-6, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8           "(a) Nomination papers shall be filed as follows:

9           (1) For members of Congress, state, and county offices,  
10           and the Hawaiian homes commission, nomination papers  
11           shall be filed with the chief election officer, or  
12           county clerk in case of county offices, not later than  
13           4:30 p.m. on the sixtieth calendar day prior to the  
14           primary, special primary, or special election provided  
15           that if [~~such~~] that day is a Saturday, Sunday, or  
16           holiday then not later than 4:30 p.m. on the first  
17           working day immediately preceding. A state candidate  
18           from the counties of Hawaii, Maui, and Kauai may file  
19           the declaration of candidacy with the respective  
20           county clerk. The county clerk shall transmit to the  
21           office of the chief election officer the state  
22           candidate's declaration of candidacy without delay.



1           However, if a special primary or special election is  
2           to be held by a county and the county charter requires  
3           that the council shall issue a proclamation calling  
4           for the election to be held within a specified period  
5           of time, and if that requirement would not allow the  
6           filing of nomination papers with the appropriate  
7           office by the sixtieth calendar day prior to the day  
8           for holding the special primary or special election,  
9           the council shall establish the deadline for the  
10          filing of nomination papers in the proclamation  
11          calling for the election; and

- 12          (2) For the board of trustees for the office of Hawaiian  
13          affairs, nomination papers shall be filed with the  
14          chief election officer, not later than 4:30 p.m. on  
15          the sixtieth calendar day prior to the primary  
16          election referred to in paragraph (1); provided that  
17          if that day is a Saturday, Sunday, or holiday, then  
18          not later than 4:30 p.m. on the first working day  
19          immediately preceding."

20          SECTION 9. Section 26-17, Hawaii Revised Statutes, is  
21          amended to read as follows:



1           "**§26-17 Department of Hawaiian home lands.** The department  
2 of Hawaiian home lands shall be headed by an executive board to  
3 be known as the Hawaiian homes commission.

4           The commission shall be composed of nine elected members  
5 and a tenth appointed by the chairperson to serve as the  
6 director, who shall be an ex-officio, nonvoting member. The  
7 [~~appointment,~~] election, tenure, and removal of the elected  
8 members and the filling of vacancies on the commission shall be  
9 in accordance with section [~~26-34 and~~] 17- and section  
10 [~~202(a)~~] B of the Hawaiian Homes Commission Act of 1920, as  
11 amended. [~~The governor shall appoint the chairperson of the~~  
12 ~~commission from among the members thereof.~~]

13           The commission may delegate to the [~~chairperson such~~]  
14 director of Hawaiian home lands duties, powers, and authority,  
15 or so much thereof as may be lawful or proper, for the  
16 performance of the functions vested in the commission.

17           The [~~chairperson of the board~~] director of Hawaiian home  
18 lands shall serve in a [~~full-time~~] full-time capacity and shall  
19 perform [~~such~~] the duties, and exercise [~~such~~] the powers and  
20 authority, or so much thereof as may be delegated to the  
21 [~~chairperson~~] director of Hawaiian home lands by the [~~board.~~]  
22 commission.



1           The department shall administer the Hawaiian Homes  
2 Commission Act of 1920 as set forth in the Constitution of the  
3 State and by law.

4           The functions and authority heretofore exercised by the  
5 Hawaiian homes commission as heretofore constituted are  
6 transferred to the department of Hawaiian home lands established  
7 by this chapter."

8           SECTION 10. Section 26-34, Hawaii Revised Statutes, is  
9 amended by amending subsection (a) to read as follows:

10          "(a) The members of each board and commission established  
11 by law except the Hawaiian homes commission shall be nominated  
12 and, by and with the advice and consent of the senate, appointed  
13 by the governor. Unless otherwise provided by this chapter or  
14 by law hereafter enacted, the terms of the members shall be for  
15 four years; provided that the governor may reduce the terms of  
16 those initially appointed so as to provide, as nearly as can be,  
17 for the expiration of an equal number of terms at intervals of  
18 one year for each board and commission. Unless otherwise  
19 provided by law, each term shall commence on July 1 and expire  
20 on June 30, except that the terms of the chairpersons of the  
21 board of agriculture, and the board of land and natural  
22 resources [~~and the Hawaiian homes commissions~~] shall commence





1 on January 1 and expire on December 31. No person shall be  
2 appointed consecutively to more than two terms as a member of  
3 the same board or commission; provided that [~~membership~~]:

4 (1) Membership on any board or commission shall not exceed  
5 eight consecutive years[-]; and

6 (2) These term limitations shall not apply to the Hawaiian  
7 homes commission."

8 SECTION 11. The terms of the appointed members of the  
9 Hawaiian homes commission shall expire on the day of the special  
10 election to elect members of the commission.

11 SECTION 12. The amendments made by this Act to the  
12 Hawaiian Homes Commission Act, 1920, as amended, are declared to  
13 be severable and, if any section, sentence, clause, or phrase,  
14 or the application thereof to any person or circumstance is held  
15 ineffective because there is a requirement of having the consent  
16 of the United States to take effect, then that portion shall  
17 take effect only upon the granting of consent by the United  
18 States, and the effectiveness of the remainder of these  
19 amendments of the application thereof shall not be affected.

20 SECTION 13. In codifying the new sections added by  
21 section 2 and referenced in sections 4 and 9 of this Act, the  
22 revisor of statutes shall substitute appropriate section numbers



1 for the letters used in designating the new sections in this  
2 Act.

3 SECTION 14. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 15. This Act shall take effect upon its approval.

6 INTRODUCED BY: Michael P. Kolubina

JAN 25 2006



HB 2795

**Report Title:**

Hawaiian Homes Commission; Elected Commissioners

**Description:**

Provides for election of members to the Hawaiian Homes Commission; specifies qualification for eligibility and to vote; specifies length of term of office; provides for filling vacancies with special election.

