

[CHAPTER 13D]
BOARD OF TRUSTEES, OFFICE OF HAWAIIAN AFFAIRS

Section

- 13D-1 Board of trustees; number; composition
- 13D-2 Qualifications of board members
- 13D-3 Qualifications of voters; registration
- 13D-4 Election of board members
- 13D-5 Term of office; vacancies

" **§13D-1 Board of trustees; number; composition.** The board of trustees shall be composed of nine members elected at-large by qualified voters in the State. Of the nine members to be elected one shall reside on the island of Hawaii; one shall reside on the island of Maui; and one shall reside on the island of Molokai; one shall reside on the island of Kauai; and one shall reside on the island of Oahu. [L 1979, c 196, pt of §8; am L 2001, c 55, §3]

Cross References

Constitutional provision, see Const. art. XII, §5.

Law Journals and Reviews

To Dwell on the Earth in Unity: Rice, Arakaki, and the Growth of Citizenship and Voting Rights in Hawai'i. V HBJ No. 13, at pg. 15.

The California Civil Rights Initiative: Why It's Here, Its Far Reaching Effects, and the Unique Situation in Hawai'i. 22 UH L. Rev. 279.

Matters of Trust: Unanswered Questions After Rice v. Cayetano. 23 UH L. Rev. 363.

Doe v. Kamehameha Schools: A "Discrete and Insular Minority" in Hawai'i Seventy Years After Carolene Products? 30 UH L. Rev. 295.

Case Notes

State's electoral restriction enacted a race-based voting qualification; Hawaii's denial of petitioner's right to vote, where petitioner was not a "Hawaiian", was a clear violation of the Fifteenth Amendment to the U.S. Constitution. 528 U.S. 495.

" **§13D-2 Qualifications of board members.** No person shall be eligible for election or appointment to the board unless the person is Hawaiian and is: (1) qualified and registered to vote under the provisions of section 13D-3, and (2) where residency on a particular island is a requirement, a resident on the island for which seat the person is seeking election or appointment. No member of the board shall hold or be a candidate for any other public office under the state or county governments in accordance with Article II, section 7 of the Constitution of the State; nor shall a person be eligible for election or appointment to the board if that person is also a candidate for any other public office under the state or county governments. The term "public office", for purposes of this section, shall not include notaries public, reserve police

officers, or officers of emergency organizations for civilian defense or disaster, or disaster relief. [L 1979, c 196, pt of §8; am L 1980, c 138, §1; am L 1981, c 82, §4; gen ch 1985; am L 2000, c 59, §1]

Attorney General Opinions

A police captain is a public officer and cannot serve simultaneously as a police officer and as a trustee. Att. Gen. Op. 80-3.

Does not prevent county employee from also being trustee for that county. Att. Gen. Op. 84-8.

Law Journals and Reviews

To Dwell on the Earth in Unity: Rice, Arakaki, and the Growth of Citizenship and Voting Rights in Hawai'i. V HBJ No. 13, at pg. 15.

Case Notes

Limitation of eligibility to be a candidate for office of Hawaiian affairs trustee to Hawaiians invalid under the Fifteenth Amendment and §2 of the Voting Rights Act; plaintiffs lacked standing to challenge the restriction that appointed trustees be Hawaiian. 314 F.3d 1091.

" **§13D-3 Qualifications of voters; registration.** (a) Every person who registers as required by law shall be entitled to vote at any election of board members provided that the person shall have attained the age of eighteen years at the time of the election.

(b) No person shall be eligible to register as a voter for the election of board members unless the person meets the following qualifications:

- (1) The person has attained the age of eighteen years or will have attained such age within one year of the date of the next election of board members; and
- (2) The person is otherwise qualified to register to vote in the State.

(c) Any person eligible to and desiring to register as a voter for the election of board members shall go to any location designated by the clerk of the county, then and there to be examined under oath as to the person's qualifications as a voter. Each applicant shall make and subscribe to an application in the form of an affidavit as provided for under section 11-15.

(d) The clerk of each county shall register all persons in the county who are eligible to and desiring to register as voters for the election of board members. The register may be maintained in conjunction with the general county register; provided that the clerk shall be able to prepare a separate list of voters for the election of board members, capable of segregation by precinct and representative district. The maintenance, reproduction, and transmittal of records and affidavits to a central file shall be in accordance with section 11-14.

(e) The clerk of each county shall amend the general county register to include therein any person, who on November 6, 1984, was registered to vote only for members of the board of trustees, to hereinafter be registered to vote in all elections held in the State. [L 1979, c 196, pt of §8; am L 1985, c 203, §7; am L 2000, c 59, §2]

Law Journals and Reviews

To Dwell on the Earth in Unity: Rice, Arakaki, and the Growth of Citizenship and Voting Rights in Hawai'i. V HBJ No. 13, at pg. 15.

The California Civil Rights Initiative: Why It's Here, Its Far Reaching Effects, and the Unique Situation in Hawai'i. 22 UH L. Rev. 279.

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Case Notes

State's electoral restriction enacted a race-based voting qualification; Hawaii's denial of petitioner's right to vote, where petitioner was not a "Hawaiian", was a clear violation of the Fifteenth Amendment to the U.S. Constitution. 528 U.S. 495.

" **§13D-4 Election of board members.** (a) Beginning January 1, 2014, members of the board of trustees shall be nominated at a primary election and elected at the general election in every even-numbered year. Except as otherwise provided by this chapter, members shall be nominated and elected in the manner prescribed by this title.

(b) The chief election officer shall prepare the nomination papers in such a manner that a candidate desiring to file for election to the board shall be able to specify whether

the candidate is seeking a seat requiring residency on a particular island or a seat without a residency requirement.

(c) The board of trustees ballot shall be prepared in such a manner that every voter qualified and registered under section 13D-3 shall be afforded the opportunity to vote for each and every candidate seeking election to the board. The ballot shall contain the names of all board candidates arranged in accordance with section 11-115.

(d) Each voter registered to vote in the general election shall be entitled to receive the office of Hawaiian affairs ballot and to vote for the number of seats available on the respective islands.

(e) Any election with only one available seat without a residency requirement or for any available seat requiring residency on a particular island shall be conducted as follows:

- (1) If, after the close of filing of nomination papers, there is only one qualified candidate for any available seat, the chief election officer shall declare the candidate to be duly and legally elected, and the name of that candidate shall not appear on the primary or the general election ballot;
- (2) If, after the close of filing nomination papers, there are only two qualified candidates for any available seat, the chief election officer shall declare those two candidates duly nominated for the general election. The names of those two candidates shall not appear on the primary election ballot; and
- (3) If, at the close of filing of nomination papers, there are three or more qualified candidates for any available seat, the names of those candidates shall be listed on the primary election ballot. The two candidates receiving the highest number of votes for each available seat shall be nominated at the primary election for the general election; provided that if any candidate receives more than fifty per cent of the total votes cast for the available seat at the primary election, the chief election officer shall declare that candidate to be duly and legally elected and the name of that candidate shall not appear on the general election ballot.

(f) Any election with three available seats without a residency requirement shall be conducted as follows:

- (1) If, after the close of filing of nomination papers, there are only three or less qualified candidates for the available seats without a residency requirement, the chief election officer shall declare those candidates to be duly and legally elected and the

names of those candidates shall not appear on the primary or general election ballot;

- (2) If, after the close of filing of nomination papers, there are four, five, or six qualified candidates for the available seats without a residency requirement, the chief election officer shall declare those candidates duly nominated for the general election. The names of those candidates shall not appear on the primary election ballot; and
- (3) If, at the close of filing of nomination papers, there are seven or more qualified candidates for the available seats without a residency requirement, the names of those candidates shall be listed on the primary election ballot. The qualified candidates receiving the highest number of total votes at the primary election shall be declared by the chief election officer duly nominated for the general election provided that the general election shall include no more than twice the number of qualified candidates as seats available; provided further that if any candidate receives more than fifty per cent of the total votes cast for the available seats at the primary election, the chief election officer shall declare that candidate to be duly and legally elected and the name of that candidate shall not appear on the general election ballot. [L 1979, c 196, pt of §8; gen ch 1985; am L 2013, c 287, §2]

" **§13D-5 Term of office; vacancies.** The term of office of members of the board shall be four years beginning on the day of the general election at which they are elected, or if elected at a primary election, on the day of the general election immediately following the primary election at which they are elected, and ending on the day of the second general election after their election. Members of the board may be reelected without restriction as to the number of terms.

Any vacancy that may occur through any cause other than the expiration of the term of office shall be filled in accordance with section 17-7. [L 1979, c 196, pt of §8; am L 1980, c 264, §4; am L 2013, c 287, §3]

Case Notes

Rice v. Cayetano decision did not create a "vacancy" that "occurs through any cause other than expiration of the term of office" under this section as to those office of Hawaiian affairs trustees who were elected in 1996 and/or 1998. 94 H. 1,

6 P.3d 799.