

ACT 287

S.B. NO. 3

A Bill for an Act Relating to the Office of Hawaiian Affairs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The board of trustees of the office of Hawaiian affairs is elected through a series of special elections held in conjunction with the biennial general election process. This special election process differs substantially from other elections because it lacks a primary election.

The lack of a primary election may create a large pool of trustee candidates competing in the general election. This may be problematic if more ballots are cast and dispersed among a number of unsuccessful candidates compared to the total number of ballots cast for winners. This outcome has occurred in each at-large trustee seat election since 1998 and has occurred in a number of island representative trustee seat elections.

In 2000, the general election ballot listed fifty-one candidates for three trustee at-large seats. The successful candidates won with only 6.8, 5.4, and 4.1 per cent of the total votes cast, respectively, while the rest of the votes were dispersed among the other candidates. Similarly, in 2006, there were fourteen candidates listed for three open trustee seats with the winners receiving 10.7, 9.8, and 8.5 per cent of the total votes cast, respectively. This pattern continued in 2012 when the winner out of six candidates vying for one at-large trustee seat received 23.8 per cent of the entire votes. The majority of the votes were cast for and dispersed among the other five candidates.

Furthermore, because the pool of trustee candidates is not narrowed by a primary election, incumbent trustees may be provided an unfair advantage. A number of studies have shown that incumbent candidates for any political office hold a distinct advantage over challengers. Under the special election process for the board of trustees of the office of Hawaiian affairs, incumbent candidates may hold an even greater advantage due to the larger number of candidates vying for a few open seats.

The legislature finds that implementing a primary election will address this problem by narrowing the pool of trustee candidates eligible in the general election, thereby limiting the dispersion of votes cast among a large pool of candidates. As a result, the successful candidate will receive votes from the majority of the electorate. Furthermore, establishing a primary election process will cost little for the office of elections to implement as costs should be neutralized as a result of eliminating the existing special election process.

The purpose of this Act is to repeal the special election process for the election of office of Hawaiian affairs board of trustee members and establish a system of nonpartisan primary and general elections to begin with the 2014 elections.

SECTION 2. Section 13D-4, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§13D-4]] Election of board members. [Members] (a) Beginning January 1, 2014, members~~ of the board of trustees shall be ~~[elected at a special election held in conjunction with]~~ 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.

~~[Nomination papers.] (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 ~~[such]~~ a residency requirement.

~~[Ballot.]~~ (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 ~~[alphabetically; provided that the names of candidates seeking seats requiring residency on a particular island shall also be grouped by island of residency. Each eligible voter shall be entitled to receive the board of trustees ballot and to vote for the number of seats available.]~~ 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 names of that candidates 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.”

SECTION 3. Section 13D-5, Hawaii Revised Statutes, is amended to read as follows:

“§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 special election held in conjunction with]~~ the general election ~~[of the year in]~~ 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 special election held in conjunction with]~~ the second general election after their election; except that the term of office of board members elected in 1980 shall be as follows: the four board members elected with the highest number of votes shall serve four years; the remaining members elected shall serve two years]. Members of the board may be re-elected 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.”

SECTION 4. Section 17-7, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Whenever any vacancy in the membership of the board of trustees occurs, the term of which ends at the next succeeding ~~[special election held in conjunction with the]~~ general election, the vacancy shall be filled by a two-thirds vote of the remaining members of the board. If the board fails to fill the vacancy within sixty days after it occurs, the governor shall fill the vacancy within ninety days after the vacancy occurs. When island residency is required under section 13D-1, the person so appointed shall reside on the island from which the vacancy occurred, and shall serve for the duration of the unexpired term.

(b) In the case of a vacancy, the term of which does not end at the next succeeding ~~[special election held in conjunction with the]~~ general election:

- (1) If it occurs not later than on the ~~[seventy-fifth]~~ ninetieth day prior to the next succeeding ~~[special election held in conjunction with the]~~ primary election, the vacancy shall be filled for the unexpired term at the next succeeding ~~[special election held in conjunction with the]~~ general election. The chief election officer shall issue a proclamation designating the election for filling the vacancy. All candidates for the unexpired term shall file nomination papers not later than ~~[4:30 p.m. on the sixtieth day prior to the special election (but if such day is a Saturday, Sunday, or holiday then not later than 4:30 p.m. on the first working day immediately preceding)]~~ the date and time specified in section 12-6 and shall be nominated and elected in accordance with this title. Pending the election, the board or the governor shall make a temporary appointment to fill the vacancy in the manner prescribed under subsection (a). When island residency is required under section 13D-1, the person so appointed shall reside on the island from which the vacancy occurred, and shall serve for the duration of the unexpired term and

shall serve until the election of the person duly elected to fill such vacancy.

- (2) If it occurs after the ~~[seventy-fifth]~~ ninetieth day prior to the next succeeding ~~[special election held in conjunction with the general]~~ primary election, the board or the governor shall make an appointment to fill the vacancy in the manner prescribed under subsection (a). When island residency is required under section 13D-1, the person so appointed shall reside on the island from which the vacancy occurred, and shall serve for the duration of the unexpired term.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Became law on July 9, 2013, without the governor's signature, pursuant to Art. III, §16, State Constitution.)