

JAN 22 2021

A BILL FOR AN ACT

RELATING TO THE HAWAIIAN HOMES COMMISSION ACT.

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

1 SECTION 1. Section 202, Hawaiian Homes Commission Act,
2 1920, as amended, is amended to read as follows:
3 "**§202. Department officers, staff, commission, members,**
4 **compensation.** (a) There shall be a department of Hawaiian home
5 lands which shall be headed by an executive board to be known as
6 the Hawaiian homes commission. The members of the commission
7 shall be nominated and appointed in accordance with section
8 26-34, Hawaii Revised Statutes. The commission shall be
9 composed of nine members, as follows: three shall be residents
10 of the city and county of Honolulu; two shall be residents of
11 the county of Hawaii one of whom shall be a resident of east
12 Hawaii and the other a resident of west Hawaii; two shall be
13 residents of the county of Maui one of whom shall be a resident
14 from the island of Molokai; one shall be a resident of the
15 county of Kauai; and the ninth member shall be the chairman of
16 the Hawaiian homes commission. All members shall have been
17 residents of the State at least three years prior to their



S.B. NO. 891

1 appointment and at least [~~four~~] five of the members shall be
2 [~~deseendants of not less than one fourth part of the blood of~~
3 ~~the races inhabiting the Hawaiian Islands previous to 1778.~~]
4 beneficiaries of the trust; provided that the beneficiary
5 members shall be on the waitlist for Hawaiian home lands at the
6 time of their appointment. The members of the commission shall
7 serve without pay, but shall receive actual expenses incurred by
8 them in the discharge of their duties as [~~such~~] members. The
9 governor shall appoint the [~~chairman~~] chairperson of the
10 commission from among the commission members [~~thereof~~].

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

20 (b) The provisions of section 76-16, Hawaii Revised
21 Statutes, shall apply to the positions of first deputy and



1 private secretary to the [~~chairman~~] chairperson of the
2 commission. The department may hire temporary staff on a
3 contractual basis not subject to chapters 76 and 78, Hawaii
4 Revised Statutes, when the services to be performed will assist
5 in carrying out the purposes of the Act. These positions may be
6 funded through appropriations for capital improvement program
7 projects and by the administration account, operating fund, or
8 native Hawaiian rehabilitation fund. No contract shall be for a
9 period longer than two years, but individuals hired under
10 contract may be employed for a maximum of six years; provided
11 that the six-year limitation shall not apply if the department,
12 with the approval of the governor, determines that [~~such~~] these
13 contract individuals are needed to provide critical services for
14 the efficient functioning of the department. All other
15 positions in the department shall be subject to chapter 76,
16 Hawaii Revised Statutes.

17 All vacant and new civil service positions covered by
18 chapter 76, Hawaii Revised Statutes, shall be filled in
19 accordance with section 76-22.5, Hawaii Revised Statutes;
20 provided that the provisions of these sections shall be
21 applicable first to qualified persons of Hawaiian extraction.



1 (c) The department shall distribute by email or its
2 website a quarterly report to the beneficiaries, registered
3 homestead associations, and the legislature that identifies each
4 land disposition and lease cancellation including the land
5 instrument used, the amount of land, under which section of the
6 Act the disposition or cancellation is authorized, and whether
7 the disposition or cancellation was made on behalf of a
8 beneficiary or non-beneficiary. The quarterly report shall also
9 identify all trust fund receipts and expenditures.

10 (d) The governor may establish an inter-agency council to
11 address the purposes of this chapter. The inter-agency council,
12 if established, shall meet at least three times per year."

13 SECTION 2. Section 213.6, Hawaiian Homes Commission Act,
14 1920, as amended, is amended to read as follows:

15 "§213.6. **Hawaiian home lands trust fund.** There is
16 established a trust fund to be known as the Hawaiian home lands
17 trust fund, into which shall be deposited all appropriations by
18 the state legislature specified to be deposited therein. Moneys
19 of the Hawaiian home lands trust fund shall be expended by the
20 department, as provided by law, upon approval by the commission
21 and shall be used for capital improvements and other purposes



1 undertaken in furtherance of the Act. The department shall have
2 a fiduciary responsibility toward the trust fund and shall
3 provide annual reports therefor to the legislature and to the
4 beneficiaries of the trust. The annual reports shall include a
5 full accounting of all Act 14, Special Session Laws of Hawaii
6 1995, funding receipts and expenditures.

7 The commission may deposit moneys from the trust fund into
8 depositories other than the state treasury and may manage,
9 invest, and reinvest moneys in the trust fund. The commission
10 may hold, purchase, sell, assign, transfer, or dispose of any
11 securities and investments in which any of the moneys have been
12 invested, as well as the proceeds of the investments. Moneys
13 from the trust fund that are deposited into depositories other
14 than the state treasury shall be exempt from the requirements of
15 chapters 36 and 38. Any interest or other earnings arising out
16 of investments from the trust fund shall be credited to and
17 deposited into the trust fund."

18 SECTION 3. Section 222, Hawaiian Homes Commission Act,
19 1920, as amended, is amended by amending subsection (a) to read
20 as follows:



1 "(a) The department may make [~~such~~] expenditures and shall
2 adopt rules in accordance with chapter 91, Hawaii Revised
3 Statutes, as are necessary for the efficient execution of the
4 functions vested in the department by this Act. All
5 expenditures of the department and all moneys necessary for
6 loans made by the department, in accordance with [~~the provisions~~
7 ~~of~~] this Act, shall be allowed and paid upon the presentation of
8 itemized vouchers approved by the [~~chairman~~] chairperson of the
9 commission or the [~~chairman's~~] chairperson's designated
10 representative. The department shall make an annual report to
11 the legislature of the State upon the first day of each regular
12 session and [~~such~~] any special reports as the legislature may
13 from time to time require. The [~~chairman~~] chairperson and
14 members of the commission shall give bond as required by law.
15 The sureties upon the bond and the conditions thereof shall be
16 approved annually by the governor."

17 SECTION 4. Section 28-8.3, Hawaii Revised Statutes, is
18 amended as follows:

19 1. By amending subsection (a) to read:

20 "(a) No department of the State other than the attorney
21 general may employ or retain any attorney, by contract or



1 otherwise, for the purpose of representing the State or the
2 department in any litigation, rendering legal counsel to the
3 department, or drafting legal documents for the department;
4 provided that the foregoing provision shall not apply to the
5 employment or retention of attorneys:

6 (1) By the public utilities commission, the labor and
7 industrial relations appeals board, and the Hawaii
8 labor relations board;

9 (2) By any court or judicial or legislative office of the
10 State; provided that if the attorney general is
11 requested to provide representation to a court or
12 judicial office by the chief justice or the chief
13 justice's designee, or to a legislative office by the
14 speaker of the house of representatives and the
15 president of the senate jointly, and the attorney
16 general declines to provide such representation on the
17 grounds of conflict of interest, the attorney general
18 shall retain an attorney for the court, judicial, or
19 legislative office, subject to approval by the court,
20 judicial, or legislative office;

21 (3) By the legislative reference bureau;



S.B. NO. 891

- 1 (4) By any compilation commission that may be constituted
- 2 from time to time;
- 3 (5) By the real estate commission for any action involving
- 4 the real estate recovery fund;
- 5 (6) By the contractors license board for any action
- 6 involving the contractors recovery fund;
- 7 (7) By the office of Hawaiian affairs;
- 8 (8) By the department of commerce and consumer affairs for
- 9 the enforcement of violations of chapters 480 and
- 10 485A;
- 11 (9) As grand jury counsel;
- 12 (10) By the Hawaii health systems corporation, or its
- 13 regional system boards, or any of their facilities;
- 14 (11) By the auditor;
- 15 (12) By the office of ombudsman;
- 16 (13) By the insurance division;
- 17 (14) By the University of Hawaii;
- 18 (15) By the Kahoolawe island reserve commission;
- 19 (16) By the division of consumer advocacy;
- 20 (17) By the office of elections;
- 21 (18) By the campaign spending commission;



- 1 (19) By the Hawaii tourism authority, as provided in
- 2 section 201B-2.5;
- 3 (20) By the division of financial institutions;
- 4 (21) By the office of information practices; [~~ex~~]
- 5 (22) By the Hawaiian homes commission or the department of
- 6 Hawaiian home lands; provided that:
- 7 (A) The Hawaiian homes commission and the department
- 8 of Hawaiian home lands may use the services of
- 9 the attorney general as needed and when the
- 10 interests of the State, the Hawaiian homes
- 11 commission, and the department of Hawaiian home
- 12 lands are aligned; and
- 13 (B) Legal fees owed to independent counsel shall be
- 14 paid by the State; or
- 15 ~~[(22)]~~ (23) By a department, if the attorney general, for
- 16 reasons deemed by the attorney general to be good and
- 17 sufficient, declines to employ or retain an attorney
- 18 for a department; provided that the governor waives
- 19 the provision of this section."
- 20 2. By amending subsection (c) to read:



1 "(c) Every attorney employed by any department on a full-
2 time basis, except an attorney employed by the public utilities
3 commission, the labor and industrial relations appeals board,
4 the Hawaii labor relations board, the office of Hawaiian
5 affairs, the Hawaii health systems corporation or its regional
6 system boards, the department of commerce and consumer affairs
7 in prosecution of consumer complaints, insurance division, the
8 division of consumer advocacy, the University of Hawaii, the
9 Hawaii tourism authority as provided in section 201B-2.5, the
10 office of information practices, the Hawaiian homes commission
11 or the department of Hawaiian home lands, or as grand jury
12 counsel, shall be a deputy attorney general."

13 SECTION 5. (a) The legislative reference bureau shall
14 conduct a study on the implications of creating a position for
15 the director of the department of Hawaiian home lands that is
16 separate from the chairperson of the Hawaiian homes commission.

17 (b) The legislative reference bureau shall submit a report
18 of its findings and recommendations, including any proposed
19 legislation, to the legislature no later than twenty days prior
20 to the convening of the regular session of 2022.



1 SECTION 6. Any sitting Hawaiian homes commission member
2 whose term of office has not expired on the effective date of
3 this Act and who does not qualify to be a member of the Hawaiian
4 homes commission under the amendments made by this Act may
5 continue to serve on the commission until that member's term
6 expires.

7 SECTION 7. The provisions of the amendments made by this
8 Act to the Hawaiian Homes Commission Act, 1920, as amended, are
9 declared to be severable, and if any section, sentence, clause,
10 or phrase, or the application thereof to any person or
11 circumstances is held ineffective because there is a requirement
12 of having the consent of the United States to take effect, then
13 that portion only shall take effect upon the granting of consent
14 by the United States and effectiveness of the remainder of these
15 amendments or the application thereof shall not be affected.

16 SECTION 8. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 9. This Act shall take effect upon its approval.

19

INTRODUCED BY: _____



S.B. NO. 891

Report Title:

Hawaiian Homes Commission Act; Beneficiaries; Department of Hawaiian Home Lands; Inter-agency Council; Legal Counsel

Description:

Requires that a majority of the members of the Hawaiian Homes Commission be beneficiaries and on the waitlist. Requires quarterly reporting to the legislature and beneficiaries on land dispositions made during the quarter. Authorizes the governor to establish an inter-agency council. Requires a full accounting of Act 14, Special Session Laws of Hawaii 1995, expenditures within one year. Allows the Hawaiian Homes Commission to retain separate counsel from the attorney general to provide service to the Commission and beneficiaries. Requires the Legislative Reference Bureau to conduct a study on the implications of creating a position for the director of the department of Hawaiian home lands that is separate from the chairperson of the Hawaiian Homes Commission.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

