

ACT 196

H.B. NO. 890

A Bill for an Act Relating to an Office on Hawaiian Affairs.

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

SECTION 1. Purpose. The purpose of this bill is to implement Article XII, sections 4, 5, and 6 of the Constitution of the State of Hawaii as amended by the Hawaii Constitutional Convention of 1978, ratified by the electorate, and pertaining to Hawaiian Affairs.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
OFFICE OF HAWAIIAN AFFAIRS**

Sec. -1 Declaration of purpose. (a) The people of the State of Hawaii and the United States of America as set forth and approved in the Admission Act,

established a public trust which includes among other responsibilities, betterment of conditions for native Hawaiians. The people of the State of Hawaii reaffirmed their solemn trust obligation and responsibility to native Hawaiians and furthermore declared in the state constitution that there be an office of Hawaiian affairs to address the needs of the aboriginal class of people of Hawaii.

(b) It shall be the duty and responsibility of all state departments and instrumentalities of state government providing services and programs which affect native Hawaiians and Hawaiians to actively work toward the goals of this chapter and to cooperate with and assist wherever possible the office of Hawaiian affairs.

Sec. -2 Definitions. In this chapter, if not inconsistent with the context:

- (1) "Office" means the office of Hawaiian affairs;
- (2) "Board" means the board of trustees;
- (3) "Administrator" means the administrator of the office of Hawaiian affairs;
- (4) "Native Hawaiian" means any descendant of not less than one-half part of the races inhabiting the Hawaiian Islands previous to 1778, as defined by the Hawaiian Homes Commission Act, 1920, as amended; provided that the term identically refers to the descendants of such blood quantum of such aboriginal peoples which exercised sovereignty and subsisted in the Hawaiian Islands in 1778 and which peoples thereafter continued to reside in Hawaii.
- (5) "Hawaiian" means any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii.
- (6) "Beneficiary of the public trust entrusted upon the office" means native Hawaiians and Hawaiians.

Sec. -3 Purpose of the Office. The purposes of the office of Hawaiian affairs include:

- (1) The betterment of conditions of native Hawaiians. A pro rata portion of all the funds derived from the public land trust shall be funded in an amount to be determined by the legislature for this purpose, and shall be held and used solely as a public trust for the betterment of the conditions of native Hawaiians. For the purpose of this chapter, the public land trust shall be all proceeds and income from the sale, lease, or other disposition of lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, and conveyed to the State of Hawaii by virtue of section 5(b) of the Act of March 18, 1959 (73 Stat. 4, the Admissions Act), (excluding therefrom lands and all proceeds and income from the sale, lease, or disposition of lands defined as "available lands" by section 203 of the Hawaiian Homes Commission Act, 1920, as amended), and all proceeds and income from the sale, lease, or other disposition of lands retained by the United States under sections 5(c) and 5(d) of the Act of March 18, 1959, later conveyed to the State under section 5(e);
- (2) The betterment of conditions of Hawaiians;
- (3) Serving as the principal public agency in this State responsible for the

performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; except that the Hawaiian Homes Commission Act, 1920, as amended, shall be administered by the Hawaiian homes commission;

- (4) Assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians;
- (5) Applying for, receiving, and disbursing, grants and donations from all sources for native Hawaiian and Hawaiian programs and services; and
- (6) Serving as a receptacle for reparations.

Sec. -4 Office of Hawaiian Affairs; established; general powers. There shall be an office of Hawaiian affairs constituted as a body corporate which shall be a separate entity independent of the executive branch. The office, under the direction of the board of trustees, shall have the following general powers:

- (1) To adopt, amend, and repeal by-laws governing the conduct of its business and the performance of the powers and duties granted to or imposed upon it by law;
- (2) To acquire in any lawful manner any property, real, personal, or mixed, tangible or intangible, or any interest therein; to hold, maintain, use, and operate the same; and to sell, lease, or otherwise dispose of the same at such time, in such manner, and to the extent necessary or appropriate to carry out its purpose;
- (3) To determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid, subject to provisions of law specifically applicable to the office of Hawaiian affairs;
- (4) To enter into and perform such contracts, leases, cooperative agreements, or other transactions with any agency or instrumentality of the United States, or with the State, or with any political subdivision thereof, or with any person, firm, association, or corporation, as may be necessary in the conduct of its business and on such terms as it may deem appropriate;
- (5) To execute, in accordance with its by-laws, all instruments necessary or appropriate in the exercise of any of its powers; and
- (6) To take such actions as may be necessary or appropriate to carry out the powers conferred upon it by law.

Sec. -5 Board of trustees; powers and duties. The board shall have the power in accordance with law to:

- (1) Manage, invest, and administer the proceeds from the sale or other disposition of lands, natural resources, minerals, and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section -3, of this chapter;
- (2) Exercise control over real and personal property set aside to the office by the State of Hawaii, the United States of America, or any private sources, and transferred to the office for native Hawaiians and Hawaiians;
- (3) Collect, receive, deposit, withdraw, and invest money and property on

- behalf of the office;
- (4) Formulate policy relating to the affairs of native Hawaiians and Hawaiians, provided that such policy shall not diminish or limit the benefits of native Hawaiians under Article XII, section 4, of the state constitution;
 - (5) Otherwise act as a trustee as provided by law;
 - (6) Delegate to the administrator, its officers and employees such powers and duties as may be proper for the performance of the powers and duties vested in the board;
 - (7) Provide grants to public or private agencies for pilot projects, demonstrations, or both, where such projects or demonstrations fulfill criteria established by the board;
 - (8) Make available technical and financial assistance and advisory services to any agency or private organization for native Hawaiian and Hawaiian programs, and for other functions pertinent to the purposes of the office of Hawaiian affairs. Financial assistance may be rendered through contractual arrangements as may be agreed upon by the board and any such agency or organization; and
 - (9) Adopt and use a common seal by which all official acts shall be authenticated.

Sec. -6 General duties of the board. (a) The general duties of the board shall be:

- (1) To develop, implement, and continually update a comprehensive master plan for native Hawaiians and Hawaiians which shall include, but not be limited to, the following:
 - (A) Compilation of basic demographic data on native Hawaiians and Hawaiians;
 - (B) Identification of the physical, sociological, psychological, and economic needs of native Hawaiians and Hawaiians;
 - (C) Establishment of immediate and long-range goals pursuant to programs and services for native Hawaiians and Hawaiians;
 - (D) Establishment of priorities for program implementation and of alternatives for program implementation; and
 - (E) Organization of administrative and program structure, including the use of facilities and personnel;
- (2) To assist in the development of state and county agency plans for native Hawaiian and Hawaiian programs and services;
- (3) To maintain an inventory of federal, state, county, and private programs and services for Hawaiians and native Hawaiians and act as a clearinghouse and referral agency;
- (4) To advise and inform federal, state, and county officials about native Hawaiian and Hawaiian programs, and coordinate federal, state, and county activities relating to native Hawaiians and Hawaiians;
- (5) To conduct, encourage, and maintain research relating to native Hawaiians and Hawaiians;
- (6) To develop and review models for comprehensive native Hawaiian and Hawaiian programs;

- (7) To act as a clearinghouse for applications for federal or state assistance to carry out native Hawaiian or Hawaiian programs or projects;
- (8) To apply for, accept and administer any federal funds made available or allotted under any federal act for native Hawaiians or Hawaiians; and
- (9) To promote and assist the establishment of agencies to serve native Hawaiians and Hawaiians.

(b) The board shall have any powers which may be necessary for the full and effective performance and discharge of the duties imposed by this chapter, and which may be necessary to fully and completely effectuate the purposes of this chapter.

Sec. -7 Board of trustees. The office of Hawaiian affairs shall be governed by a board to be officially known as the board of trustees, office of Hawaiian affairs. Members of the board shall be elected in accordance with chapter , with reference to sections 11-15, 11-25, 12-5, 12-6, Hawaii Revised Statutes, and vacancies shall be filled in accordance with section 17-

Sec. -8 Organization; quorum; meeting. The board, at its first meeting after an election, shall elect from its own membership a chairperson and a vice-chairperson who shall serve a term of two years. Their election shall be immediately certified by the board to the lieutenant governor.

A majority of all members to which the board is entitled shall constitute a quorum to do business. The concurrence of a majority of all members to which the board is entitled shall be necessary to make any action of the board valid; provided that due notice shall be given to all members.

Meetings shall be called and held at the call of the chair or by a quorum, as often as may be necessary for transaction of the board's business. The board shall meet at least once annually on each of the islands of Hawaii, Maui, Molokai, Lanai, Kauai, and Oahu.

Sec. -9 Compensation; expense. Members of the board shall be allowed:

- (1) Compensation at the rate of \$50 a day for each day's actual attendance at meeting;
- (2) Transportation fares between islands; and
- (3) Personal expenses as provided under section 78-15 while attending board meetings on an island other than the island on which their residence is located.

All payments for compensation, travel, and expenses shall be paid by warrants signed by the chairperson of the board.

Sec. -10 Administrator; appointment, tenure, removal. The board by a majority vote, shall appoint an administrator who shall serve without regard to the provisions of chapters 76 and 77 for a term to be determined by the board. The board, by a two-thirds vote of all members to which it is entitled, may remove the administrator for cause at any time.

Sec. -11 Salary of the administrator. The salary of the administrator shall be \$30,000. The administrator shall be included in any benefit program generally applicable to officers and employees of the State.

Sec. -12 Assistant; staff. The administrator may employ and retain such officers and employees as may be necessary, subject to the approval of the board, to

carry out the functions of the office. Such officers and employees may be hired without regard to chapters 76 and 77, and shall serve at the pleasure of the administrator. Officers and employees of the office of Hawaiian affairs shall be included in any benefit program generally applicable to officers and employees of the State.

Sec. -13 Appropriations; accounts; reports. Moneys appropriated by the legislature for the office shall be payable by the director of finance, upon vouchers approved by the board, or by any officer elected or appointed by the board and authorized by the board to approve such vouchers on behalf of the board. All moneys received by or on behalf of the board shall be deposited with the director of finance and kept separate from moneys in the state treasury; except that any moneys received from the federal government or from private contributions shall be deposited and accounted for in accordance with conditions established by the agencies or persons from whom the moneys are received; and except that with the concurrence of the director of finance, moneys received from the federal government for research, training, and other related purposes of a transitory nature, and moneys in trust or revolving funds administered by the office, shall be deposited in depositories other than the state treasury. Income derived from the sale of goods or services and income from lands and property as described in section -3, shall be credited to special or other funds; provided that upon the recommendation of the office, the comptroller shall establish such other separate accounts or special funds for other designated revenues as may be directed by the board or its authorized representative.

Sec. -14 Budget, auditing. The board shall annually submit a proposed budget for the office to the legislature. The office shall be subject annually to government audit.

Sec. -15 Annual report. The board shall prepare and make public their annual report which shall include an enumeration of their activities, income, and expenditures during the year. The annual report shall be submitted to the governor and the legislature ten days prior to the convening of each regular session of the legislature. The board shall prepare and submit special reports as may be required by the legislature.

Sec. -16 Suits. (a) The office may sue and be sued in its corporate name. The State shall not be liable for any acts or omissions of the office, its officers, employees, and the members of the board of trustees, except as provided under subsection (b).

(b) In matters of tort, the office, its officers and employees, and the members of the board shall be subject to suit only in the manner provided for suits against the State under chapter 662.

(c) In matters of misapplication of funds and resources in breach of fiduciary duty, board members shall be subject to suit brought by any beneficiary of the public trust entrusted upon the office, either through the office of the attorney general or through private counsel.

(d) In matters involving other forms of remedies, the office, its officers and employees, and the members of the board shall be subject to suit as provided by any other provision of law and by the common law."

SECTION 3. Section 11-1, Hawaii Revised Statutes, is amended by adding a

new definition to be appropriately inserted and to read as follows:

“ ‘Hawaiian’, any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii.”

SECTION 4. Section 11-15, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 11-15 Application to register. (a) Any person qualified to and desiring to register as a voter in any county, may present himself at any time during business hours to the clerk of the county, then and there to be examined under oath as to his qualifications as a voter. Each applicant shall make and subscribe to an application in the form of an affidavit.

The affidavit shall contain the following information:

- (1) Name;
- (2) Social security number;
- (3) Date of birth;
- (4) Residence, including mailing address;
- (5) That the residence stated in the affidavit is not simply because of the person’s presence in the State but that the residence was acquired with the intent to make Hawaii the person’s legal residence with all the accompanying obligations therein;
- (6) That the person is a citizen.

(b) Any person qualified to and desiring to register as a voter for the election of members of the board of trustees of the office of Hawaiian affairs shall make and subscribe to an application in the form of an affidavit which shall state that he is Hawaiian and which shall contain the information required under subsection (a).

(c) The applicant shall swear to the truth of the allegations in his application before the clerk, who is authorized to administer oaths. Unless contested by a qualified voter, the clerk may accept, as prima facie evidence, the allegation of the applicant in information required in the affidavit in item 5 of subsection (a), and the allegation of the applicant that he is Hawaiian required in subsection (b). In any other case where the clerk shall so desire or believe the same to be expedient, he may demand that the applicant furnish substantiating evidence to the allegations of his application.

(d) If the clerk is satisfied that the applicant is entitled to be registered as a voter, the applicant shall then affix his signature to the affidavit and the clerk shall affix his signature; or the clerk shall enter “Unable to sign” and the reason in the space for the applicant’s signature. A voter having once been registered shall not be required to register again for any succeeding election, except as hereinafter provided. The affidavits so approved or accepted by the clerk shall thereupon be numbered appropriately, filed by the clerk and kept in some convenient place so as to be open to public inspection and examination.

(e) The clerk may designate a subordinate or subordinates to act in his place and stead in all matters covered by this section, provided that no parent, spouse, sibling, or offspring of a candidate, nor the candidate, shall be eligible to serve as a subordinate.”

SECTION 5. Section 11-25, Hawaii Revised Statutes, is amended by amend-

ing subsection (b) to read as follows:

“(b) Challenging on election day. Any voter rightfully in the polling place may challenge the right of any person, presenting himself to the precinct officials to vote. The challenge shall be on the grounds that the voter is not the person he alleges himself to be, that the voter is not entitled to vote in that precinct, or in a primary election that the voter is not entitled to vote because he refuses to state his party preference or nonpartisanship except where he desires to vote only for the board of education, or in an election of members of the board of trustees of the office of Hawaiian affairs, that the voter is not Hawaiian. No other or further challenge shall be allowed. The challenge shall be considered and decided immediately by the precinct officials and the ruling announced.”

SECTION 6. Section 12-5, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 12-5 Nomination papers: number of signers.** Nomination papers for candidates for members of Congress, governor, lieutenant governor, and the board of education shall be signed by not less than twenty-five registered voters of the State or of the Congressional district or school board district from which the candidates are running in the case of candidates for the United States House of Representatives or for the board of education.

Nomination papers for candidates for either branch of the legislature and for county office shall be signed by not less than fifteen registered voters of the district or county or subdivision thereof for which the person nominated is a candidate.

Nomination papers for candidates for members of the board of trustees of the office of Hawaiian affairs shall be signed by not less than twenty-five persons registered as prescribed under section 11-15(b).”

SECTION 7. Section 12-6, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 12-6 Nomination papers: time for filing; fees.** Nomination papers shall be filed as follows:

- (1) For members of Congress, state, and county offices, and the board of trustees of the office of Hawaiian affairs, with the chief election officer, or clerk in case of county offices, not later than 4:30 p.m. on the sixtieth calendar day prior to the primary, special primary, or 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); provided that any state candidate from the counties of Hawaii, Maui, and Kauai may file his declaration of candidacy with his respective clerk. The clerk shall transmit to the office of the chief election officer the state candidate's declaration of candidacy without delay. However, if a special primary or special election is to be held by a county and the county charter requires that the council shall issue a proclamation calling for the election to be held within a specified period of time, and if that requirement would not allow the filing of nomination papers with the appropriate office by the sixtieth calendar day prior to the day for holding such primary or special election, the council shall establish the deadline for the filing of nomination papers in the proclamation calling for the election.

- (2) There shall be deposited with each nomination a fee on account of the expenses attending the holding of the primary, special primary, or special election which shall be paid into the treasury of the State, or county, as the case may be, as a realization:
 - (A) For governor, lieutenant governor, United States senators, and United States representatives-\$75;
 - (B) For mayor-\$50; and
 - (C) For all other offices-\$25.
- (3) Upon the receipt by the chief election officer or the clerk of the nomination paper of a candidate, the day, hour, and minute when it was received shall be endorsed thereon.
- (4) The chief election officer or clerk shall waive the filing fee in the case of a person who declares himself, by affidavit, to be indigent and who has filed a petition signed by at least one-half of one per cent of the total voters registered at the time of filing in the respective district or districts which correspond to the specific office for which the indigent person is a candidate. This petition shall be submitted on the form prescribed and provided by the chief election officer together with the nomination paper required by this chapter.”

SECTION 8. Title 2, Hawaii Revised Statutes, is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
BOARD OF TRUSTEES, OFFICE OF HAWAIIAN AFFAIRS**

Sec. -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 who are Hawaiian. Of the nine members to be elected, one shall reside on the island of Hawaii; one shall reside on the island of Maui; 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.

Sec. -2 Qualifications of board members. No person shall be eligible for election or appointment to the board unless he is qualified and registered to vote under the provisions of section -3 and, where residency on a particular island is a requirement, a resident on the island for which seat he is seeking election or appointment. No member of the board shall hold 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.

Sec. -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 he 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 he meets the following qualifications:

- (1) The person is Hawaiian;

- (2) 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
 (3) 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 present himself at any location designated by the clerk of the county, then and there to be examined under oath as to his 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 his 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.

Sec. -4 Election of board members. Members of the board of trustees shall be elected at a special election held in conjunction with 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.

(a) Nomination papers. 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 he is seeking a seat requiring residency on a particular island or a seat without such residency requirement.

(b) Ballot. The board of trustees ballot shall be prepared in such a manner that every voter qualified and registered under section -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.

Sec. -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 of the year in which they are elected and ending on the day of 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- .”

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

“**Sec. 17- Board of trustees, office of Hawaiian affairs.** (a) Whenever any vacancy in the membership of the board of trustees occurs, the term of which ends at the next succeeding 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. 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 general election:

(1) If it occurs not later than on the tenth day prior to the next succeeding general election, the vacancy shall be filled for the unexpired term at the next succeeding general election. The chief election officer shall issue a proclamation designating the election for filling the vacancy. All candidates for the unexpired term shall be 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). The person so appointed shall reside on the island from which the vacancy occurred, and shall serve until the election of the person duly elected to fill such vacancy.

(2) If it occurs after the tenth day prior to the next succeeding general election, the board or the governor shall make an appointment to fill the vacancy in the manner prescribed under subsection (a). The person so appointed shall reside on the island from which the vacancy occurred, and shall serve for the duration of the unexpired term.

(c) All appointments made by the board or the governor under this section shall be made without consideration of the appointee's party preference or nonpartisanship."

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$125,000, or so much thereof as may be necessary, to be expended in fiscal year 1980-81 by the office of Hawaiian affairs for the purposes of this Act.

There is appropriated out of the general revenues of the State of Hawaii the sum of \$105,000, or so much thereof as may be necessary, to be expended in fiscal year 1979-80 and the sum of \$65,000, or so much thereof as may be necessary, to be expended in fiscal year 1980-81 by the office of the lieutenant governor to conduct the election of board members in 1980, and to reimburse the counties for the work of the clerks under section 8 of this Act.

Any unexpended or unencumbered balance of any appropriation made by this Act as of the close of business on June 30, 1981 shall lapse into the general fund.

SECTION 11. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of the Act are severable.

SECTION 12. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 13. This Act shall take effect upon its approval.

(Approved June 7, 1979.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.