

ACT 27

S.B. NO. 7-S

A Bill for an Act Relating to Elections.

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

SECTION 1. The legislature finds that the December, 1992, report by the task force on the duties of the lieutenant governor indicated, among other things, that there is public dissatisfaction with having the lieutenant governor serve as the chief election officer of the State. While the task force acknowledged that the present elections system incorporates a multitude of built-in safeguards to ensure integrity, it found that there remains the appearance of possible conflicts of interest on the part of lieutenant governors. The task force strongly believed that having an individual, rather than a board or commission, responsible for administering elections is a key factor in promoting accountability and effective management of elections, but recommended that the individual be appointed by an independent panel rather than be an elected official.

The purpose of this Act is to establish a temporary office of elections, to be administratively attached to the office of the lieutenant governor and administered by a chief election officer who serves at the pleasure of an elections appointment panel. The office of elections is established for the special purpose of assuming the rights, powers, functions, and duties of the existing elections division of the office of the lieutenant governor.

The responsibility for administration of the elections is currently assigned to the lieutenant governor, the general administrator of the elections division, and the director of elections. It is the intent of this Act that the elections-related duties and functions of the lieutenant governor, the duties and functions of the general administrator of the elections division, and the duties and functions of the director of elections be performed by the chief election officer.

SECTION 2. Chapter 11, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

“§11- **Office of elections established.** There is established an office of elections to provide support to the chief election officer. The office shall be attached to the office of the lieutenant governor for purposes of administration. The chief election officer shall be the administrator of the office of elections. Except for exercising the right to vote, the full-time employees of the office of elections shall not support, advocate, or aid in the election or defeat of any candidate for public office.

§11- **Elections appointment panel established; composition; term; removal; operations.** (a) There is established an elections appointment panel, consisting of five members who shall be assembled every four years beginning July 1, 1995, whose sole purpose is to select and appoint the chief election officer.

(b) The governor shall appoint the five members of the elections appointment panel. Four of the five members shall be selected from lists, each consisting of five nominees, submitted by the following:

- (1) The president of the senate;
- (2) The speaker of the house of representatives;
- (3) The members of the senate belonging to the party or parties different from that of the president of the senate; and
- (4) The members of the house of representatives belonging to the party or parties different from that of the speaker of the house of representatives.

The governor shall select one person from each of these four lists. The fifth member shall be selected with the governor's complete discretion.

(c) The term of each member shall be four years. No person shall be appointed consecutively to more than two terms as a member of the panel. Vacancies shall be filled for the remainder of any unexpired term in the same manner as the original appointment.

(d) The governor may remove or suspend any member of the panel, upon the filing of a written finding with the panel and upon service of a copy of the written finding on the member removed or suspended.

(e) The chairperson of the panel shall be selected by a majority vote of the panel from among its members. The panel shall act by majority vote of its membership and shall establish its own procedures, except as may be provided by law.

(f) The members of the panel shall serve without compensation but shall be reimbursed for reasonable expenses, including travel expenses, incurred in the discharge of their duties.

(g) No panel member shall be eligible for appointment as chief election officer so long as the person is a member of the elections appointment panel and for a period of one year thereafter.

(h) The elections appointment panel shall be attached to the office of the lieutenant governor for purposes of administration.

§11- Elections appointment panel; political activities. (a) No panel member shall take an active part in political management or in political campaigns.

(b) Each panel member shall retain the right to:

- (1) Register and vote as the panel member chooses in any election;
- (2) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;
- (3) Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;
- (4) Make a financial contribution to a political party or organization;
- (5) Serve as an election judge or clerk or in a similar position to perform nonpartisan election duties as prescribed by law; and
- (6) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise the panel member's efficiency or integrity as a panel member or the neutrality, efficiency, or integrity of the elections appointment panel.

(c) A panel member may request an advisory opinion from the state ethics commission to determine whether a particular activity constitutes or would constitute a violation of the code of ethics or this section.

§11- Appointment of the chief election officer; requirements; term; restrictions; salary; reappointment; removal. (a) The chief election officer shall be appointed by the elections appointment panel, without regard to chapters 76 and

77. The elections appointment panel shall select and appoint the chief election officer in an odd-numbered year. The appointment shall not be subject to the advice and consent of the senate. In the event of a vacancy, the panel shall meet expeditiously to select and appoint a new chief election officer to serve the remainder of the unexpired term.

(b) The person so appointed shall be a citizen of the United States, a resident of the State, and a registered voter of the State.

(c) The chief election officer shall serve for a term of four years. The term shall begin on February 1 following the appointment, except that the term for the first appointed chief election officer shall commence ninety days following the date of appointment, or on February 1, 1996, whichever comes first, and shall end on January 31, 1999.

(d) The chief election officer shall devote full time to the duties of the office and shall hold no other public office during the individual's term of office. Except for exercising the right to vote, the individual shall not support, advocate, or aid in the election or defeat of any candidate for public office. The chief election officer shall refrain from financial and business dealings that tend to reflect adversely on the individual's impartiality, interfere with the proper performance of election duties, or exploit the individual's position. Subject to the requirements above, the individual may hold and manage investments, including real estate, and engage in other remunerative activity, but shall not serve as an officer, director, manager, advisor, or employee of any business.

(e) The chief election officer shall be paid a salary set at the maximum salary payable to deputies or assistants to department heads as established by section 26-53.

(f) The chief election officer may be reappointed by the panel. The chief election officer may hold office until a successor is appointed.

(g) The chief election officer may be removed by the panel at any time and for any cause."

SECTION 3. Section 11-1, Hawaii Revised Statutes, is amended by amending the definition of "chief election officer" to read as follows:

““Chief election officer,” the [lieutenant governor as set forth in section 11-2] individual appointed by the elections appointment panel pursuant to section 11- to supervise state elections.”

SECTION 4. Section 11-2, Hawaii Revised Statutes, is amended to read as follows:

“**§11-2 Chief election officer[.]; duties.** (a) The [lieutenant governor shall be the chief election officer for the administration of this title. The lieutenant governor] chief election officer shall supervise all state elections. The chief election officer may delegate responsibilities in state elections within a county to the clerk of that county or to other specified persons.

(b) The chief election officer shall be responsible for the maximization of registration of eligible electors throughout the State. In maximizing registration, the chief election officer shall make an effort to equalize registration between districts, with particular effort in those districts in which the chief election officer determines registration is lower than desirable. The chief election officer, in carrying out this function, may make surveys, carry on house to house canvassing, and assist or direct the clerk in any other area of registration.

(c) The chief election officer shall maintain data concerning registered voters, elections, apportionment, and districting. The chief election officer shall use

this data to assist the reapportionment commission provided for under Article IV of the Constitution.

(d) The chief election officer shall be responsible for public education with respect to voter registration and information.

(e) The chief election officer shall adopt rules governing elections in accordance with chapter 91.”

SECTION 5. Section 11-5, Hawaii Revised Statutes, is amended to read as follows:

“**§11-5 Employees.** The chief election officer may employ a [permanent] staff[, subject to the provisions of] without regard to chapters 76 and 77, to supervise state elections; maximize registration of eligible voters throughout the State; maintain data concerning registered voters, elections, apportionment, and districting; and to perform other duties as prescribed by law. The chief election officer or county clerk may employ precinct officials and other election employees as the chief election officer or county clerk may find necessary, none of whom shall be subject to [the provisions of] chapters 76 and 77.”

SECTION 6. Section 11-193, Hawaii Revised Statutes, is amended by amending the title and subsection (a) to read as follows:

“**§11-193 Duties of the [lieutenant governor;] chief election officer; commission.** (a) The principal duty of [the lieutenant governor as] the chief election officer is to regulate the election process. Under this subpart the [lieutenant governor’s] chief election officer’s duties are:

- (1) To develop and adopt reporting forms required by this subpart;
- (2) To adopt and publish a manual for all candidates and committees, describing the requirements of this subpart, including uniform and simple methods of recordkeeping;
- (3) To preserve all reports required by this subpart for at least five years from the date of receipt;
- (4) To permit the inspection, copying, or duplicating of any report required by this subpart pursuant to rules adopted by the commission; provided that no information or copies from the reports shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose.”

SECTION 7. Sections 11-191, 11-194, 11-195, and 11-216, Hawaii Revised Statutes, are amended by substituting the words “chief election officer” wherever the words “lieutenant governor” appear, as the context requires.

SECTION 8. Section 12-8, Hawaii Revised Statutes, is amended to read as follows:

“**§12-8 Nomination papers: challenge; evidentiary hearings and decisions.** (a) All nomination papers filed in conformity with section 12-3 shall be deemed valid unless objection is made thereto by a registered voter, chief election officer or county clerk in writing not later than 4:30 p.m. on the thirtieth day or the next earliest working day prior to that election day. An objection in a primary or special election by a registered voter or county clerk shall be filed not later than 4:30 p.m. on the thirtieth day or the next earliest working day prior to that primary or special election day. In case objection is made, notice thereof shall be given

including the placement of the notice in the mail by registered or certified mail to the candidate objected thereto.

(b) The chief election officer or the clerk in the case of county offices shall have the necessary powers and authority to reach a preliminary decision on the merits of the objection; provided that nothing in this subsection shall be construed to extend to the candidate a right to an administrative contested case hearing as defined in section 91-1(5). The chief election officer or the clerk in the case of county offices shall render a preliminary decision not later than five working days after the objection is filed.

(c) If the chief election officer or clerk in the case of county offices determines that the objection may warrant the disqualification of the candidate, the chief election officer or clerk shall file a complaint in the circuit court for a determination of the objection; provided that such complaint shall be filed with the clerk of the circuit court not later than 4:30 p.m. on the seventh working day after the objection was filed.

(d) If the chief election officer or clerk in the case of county offices files a complaint in the circuit court, the circuit court clerk shall issue to the defendants named in the complaint a summons to appear before the court not later than 4:30 p.m. on the fifth day after service thereof.

(e) The circuit court shall hear the complaint in a summary manner and at the hearing the court shall cause the evidence to be reduced to writing and shall not later than 4:30 p.m. on the fourth day after the return give judgment fully stating all findings of fact and of law. The judgment shall decide the objection presented in the complaint, and a certified copy of the judgment shall forthwith be served on the chief election officer or the clerk, as the case may be.

(f) If the judgment disqualifies the candidate, the chief election officer or the clerk shall follow the procedures set forth in sections 11-117 and 11-118 regarding the disqualifications of candidates.

[(g) If an objection is made to the nomination papers of any candidate for the office of lieutenant governor pursuant to this section, the incumbent lieutenant governor shall be excused and the attorney general shall execute this section. The attorney general shall render a preliminary decision not later than five working days after the objection is filed.]'

SECTION 9. Section 26-1, Hawaii Revised Statutes, is amended to read as follows:

“§26-1 Office of the lieutenant governor. (a) Except as otherwise provided by law, the lieutenant governor is designated the secretary of [State] state for intergovernmental relations and shall perform the duties and functions heretofore exercised by the secretary of Hawaii. The duties and functions shall include, but not be limited to, [supervision of elections,] recordation of all legislative and gubernatorial acts, certification of state documents, and maintenance of an official file of rules [and regulations promulgated] adopted by state departments as provided in chapter 91. The lieutenant governor may employ staff as necessary without regard to [the provisions of] chapters 76 and 77[, except for six permanent election positions pursuant to section 11-5].

(b) The lieutenant governor, with the approval of the governor, may designate some other officer of the government of the State to authenticate documents on behalf of the lieutenant governor during the lieutenant governor's temporary absence without the State or during the lieutenant governor's illness whenever the documents require the signature of the lieutenant governor. The person shall affix the person's own signature to the document with the words, “for the lieutenant governor” following and the signature shall be deemed to satisfy the requirement of the

lieutenant governor's signature on the document. The designation and approval shall be in writing and shall be filed in the office of the governor and a copy thereof, certified by the governor, shall be filed with the public archives. The person so designated shall serve without additional compensation and the lieutenant governor shall be responsible and liable on the lieutenant governor's official bond for all acts done by the person so designated in the performance of the duties on behalf of the lieutenant governor.

(c) Nothing in this section shall be construed to authorize the person to exercise and discharge the powers and duties of the office of the governor as provided by the first paragraph of Article V, section 4 of the Constitution of the State. The person shall not be authorized to exercise any powers whenever a successor to the lieutenant governor assumes the duties of the lieutenant governor pursuant to Article V, section 4 of the Constitution.

(d) The governor shall identify and direct other duties as necessary to the lieutenant governor."

SECTION 10. Effective upon the commencement of the term of the first chief election officer appointed by the elections appointment panel, the functions and authority heretofore exercised by the lieutenant governor as chief election officer shall be transferred to the first chief election officer appointed by the elections appointment panel.

SECTION 11. All rights, powers, functions, and duties of the existing elections division of the office of the lieutenant governor are transferred to the office of elections established by this Act.

All officers and employees of the elections division shall be transferred to the office of elections established by this Act except that the positions of the deputy executive officer (general administrator of the elections division) and the director of elections shall be abolished.

Tenured employees transferred to the new office of elections by this Act shall not suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act; provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

Employees who, prior to this Act, were exempt from civil service, and who are transferred by this Act to the new office of elections, shall continue to retain their exempt status after transfer and shall suffer no loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act.

If an office or position held by a civil service officer or employee having tenure is abolished as a result of this Act, the officer or employee shall have the right to placement through applicable reduction-in-force laws and rules or reemployment through a recall list.

All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, computer software and data, authorizations, and other personal property previously made, used, acquired, or held by the office of the lieutenant governor relating to the functions transferred to the office of elections shall be transferred with the function to which they relate.

SECTION 12. There is hereby appropriated out of the general revenues of the State of Hawaii the sum of \$5,000, or so much thereof as may be necessary, for fiscal year 1995-1996, to carry out the purposes of this Act. The sums appropriated shall be expended by the office of the lieutenant governor.

SECTION 13. Sections 11-5, 11-193, and 26-1, Hawaii Revised Statutes, as amended by this Act, shall be amended to conform to amendments made to those sections by any acts passed by the legislature during the regular session of 1995, whether the effective dates of those acts are before or after the effective date of this Act.

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 15. This Act shall take effect on July 1, 1995; provided that on June 30, 1999, this Act shall be repealed and sections 11-1, 11-2, 11-5, 11-191, 11-193, 11-194, 11-195, 11-216, 12-8, and 26-1, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.

(Approved June 29, 1995.)

Note

1. Edited pursuant to HRS §23G-16.5.