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DRAFT 1/22/90 - KBD

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A BILL FOR AN ACT

RELATING TO A NEW POLITICAL SUBDIVISION TO FACILITATE SELF
GOVERNANCE FOR THE HAWAIIAN COMMUNITY

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

SECTION 1. The purpose of this Act is to create a new political subdivision in the State in order to facilitate the *inherent* right of members of the Hawaiian community to govern their own lands, resources, and affairs. This Act recognizes that members of the Hawaiian community, as descendants of the indigenous inhabitants of the Hawaiian islands, hold a unique political and legal status and have unresolved claims to lands and assets ~~now held by the state and federal governments.~~ The special status and rights of members of the Hawaiian community have been recognized repeatedly, in, for instance, the Organic Act of 1900, the Hawaiian Homes Commission Act, the Admissions Act of 1959, Article XII of the Hawaii State Constitution, and Chapter 10 of the Hawaii Revised Statutes. These acts have failed, however, to provide a mechanism to *recognize the inherent right of* ~~allow~~ members of the Hawaiian community to control their assets and to govern themselves, as other native peoples in the United States do.

This Act is enacted pursuant to the powers given to the Legislature in Article VIII, Section 1 of the Hawaii State Constitution, which authorizes the Legislature to create political subdivisions in addition to counties and to confer powers of self governance to these political subdivisions. Under Article VIII, Section 2, each political subdivision created by the Legislature has "the power to frame and adopt a charter for its won self-government within such limits and under such procedures as may be provided by general law."

SECTION 2. Chapter 10, Hawaii Revised Statutes, is amended by adding new sections to be appropriately designated and to read as follows:

Section 10-17 Political subdivision for the Hawaiian community.

(a) It is recognized that the Hawaiians and native Hawaiians who together constitute the Hawaiian community have the ^{inherent} right to govern their land and resources and their affairs pursuant to their culture, their traditions, and their current goals.

(b) A new political subdivision of the State of Hawaii is hereby created in which members of the Hawaiian community can exercise power over their lands, their resources, and their affairs, subject only to laws of general applicability which are not designed to and do not have the effect of reducing the autonomy of the Hawaiian community to exercise authority over their lands, resources, and affairs.

(c) All Hawaiians who are residents of the State of Hawaii are eligible to participate in decision making in this new political subdivision if they are ^{eligible} ~~registered~~ to vote for the Office of Hawaiian Affairs, or enroll subsequently with the new political subdivision, and are eighteen (18) years of age or older.

(d) The name of this new political subdivision shall be selected by registered members of the Hawaiian community pursuant to a democratic process.

Section 10-18 Governing document.

(a) The Trustees of the Office of Hawaiian Affairs will initiate the development of an organic document (such as a charter or constitution) to govern this new political subdivision. **T**his process will consist of the following steps:

(i) The Trustees will appoint a five-person Commission to apportion the Hawaiian population into one hundred (100) single member districts, drawn in relation to traditional geographical divisions and in order to provide approximately equal representation for all members of the Hawaiian community. The recommendations of this Commission will be submitted to the Trustees for approval.

(ii) An election will then be held to select one delegate from each of these districts to attend a gathering to draft the organic document. All persons eligible to vote in Office of Hawaiian Affairs elections will be eligible to vote in this election.

(iii) This gathering will meet within two years after the effective date of this Act; its members will draft a governing document and will then recess for three months during which time hearings will be held in each district to receive comments by members of the Hawaiian community.

(iv) The gathering will then reconvene and consider changes and prepare a final document.

(b) The final document will be voted at the next general election upon by all registered members of the Hawaiian community and must be ratified by a majority of those voting at the ratification election. If this document does not receive a majority vote, another gathering will be held to consider revisions, followed by a second ratification vote.

(c) The governing document must create a governing structure for this new political subdivision that is republican in form and is not repugnant to the Constitutions of the United States or to the principles of the Declaration of Independence.

(d) The structure created by the governing document also shall not be repugnant to the Constitution of the State of Hawaii, including Articles XII, Sections 4, 5 and 6, but the governing document or the governing bodies of the political subdivision could propose amendments to those sections, if desired.

(e) The governing document may establish the rights and powers of the new political subdivision, which may include, among others, the right of the new political subdivision to adopt ordinances for the health, safety, and welfare of registered members of the Hawaiian community; the power to levy taxes, zone trust lands, produce income from such lands, and

regulate conduct on trust lands; the power to receive and manage lands, resources, and funds; the power to allot lands to members of the Hawaiian community; and the power to regulate hunting, fishing, gathering, access and other traditions rights and practices of members of the Hawaiian community.

(f) The governing document will include a procedure whereby it can be amended by an appropriate vote of registered members of the Hawaiian community.

Section 10-19 Hawaiian Homelands.

Five years after the governing document is adopted, a plebescite will be held to determine whether title to the Hawaiian Homelands should be transferred to the new political subdivision, along with all functions of the Department of Hawaiian Homelands. This plebescite, will be deemed to have passed if it attains a majority vote of both native Hawaiians and Hawaiians who vote. If the plebescite is passed, the rights of current beneficiaries and those on the waiting list of Hawaiian Homelands may be increased by shall not be diminished or abridged as a result of such transfer. Individual beneficiaries of Hawaiian Homelands may be given beneficial trust title to their lands to allow greater utilization of the land.

Section 10-20 Other matters.

(a) Neither the lands and resources held by the new political subdivision nor the income generated by them shall be subject to taxation by any other governmental body.

(b) The new political subdivision is entitled to fresh water sufficient to ensure the productivity of its lands.

(c) All traditional rights of members of the Hawaiian community, including but not limited to beach access, traditional trail access, fishing, hunting and gathering rights, religious practices, and access to historic and cultural sites, will be preserved in perpetuity for future generations.

(d) This new political subdivision has the authority to seek lands and funds from the federal government pursuant to existing claims and present and future entitlements. This new political subdivision should be recognized by the federal government as the self-governing and self-governed entity of the Hawaiian people. This political subdivision will not, however, be under the jurisdiction of or have any involvement with the U.S. Bureau of Indian Affairs.

(e) All lands of this political subdivision will be held in trust and managed by its governing bodies for the benefit of the Hawaiian community. The governing bodies shall have the power to sell or trade ^{or lease} some of these lands if such a sale or trade would benefit the Hawaiian community. The overall total acreage of lands held in trust by the political subdivision, however, must never be less than ninety (90) percent of its maximum amount.

(f) The political subdivision can decide to transfer beneficial trust title to specific parcels of land, through a fair system of distribution, to individual members of the Hawaiian community or to corporations ^{and perpetually} beneficially controlled by members of the Hawaiian community. The beneficial trust title to these lands could be further transferred, but only to other members of the Hawaiian community or to corporations beneficially controlled by them. Such lands would continue to be considered part of the trust for purposes of paragraph (e) above.

(g) "Beneficial trust title" means title to the land equivalent to fee simple title except that the owner can only alienate the land to a designated category of recipients. As used in this Chapter, persons having "beneficial trust title" to land can alienate it only to individual members of the Hawaiian community or to corporations beneficially controlled by members of the Hawaiian community.

Section 10-21 The public land trust.

(a) 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, 1893 (30 Stat. 7450), 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 there dispositions 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).

(b) Twenty (20) percent of all proprietary funds derived from the 5(b), (c), and (e) lands in the public lands trust shall be transferred to the new political subdivision to be expended pursuant to decisions made by its governing bodies for the benefit of native Hawaiians. The obligations under this section can be met by transferring land areas in the public land trust, instead of the equivalent revenues, to the new political subdivision.

(c) Additional funds and lands derived from the lands of the State shall be transferred to the new political subdivision to be expended pursuant to decision made by its governing bodies for the benefit of Hawaiians.

(d) Funds and lands from the sources identified in paragraphs (b) and (c) above can be matched in order to provide benefit for both Hawaiians and native Hawaiians.

Section 3. Within three years after the governing document for the new political subdivision is adopted pursuant to section 10-18, the governing bodies of the new political subdivision shall recommend to the Legislature how sections 10-1 to 10-16 of the Hawaii Revised Statutes shall be amended, and such recommendations shall be adopted unless both houses of the Legislature vote to defeat the recommendations by a two-thirds vote.
