

**NOTICE OF PROPOSED CONSTITUTIONAL AMENDMENTS TO
 THE CONSTITUTION OF THE STATE OF HAWAII**

LEGISLATIVE COMMUNICATIONS

The following communication from the Senate and the House of Representatives regarding the proposed constitutional amendments to be placed on the 2006 ballot were transmitted as follows and also addressed to the following County Clerks:

Ms. Denise DeCosta, City and County of Honolulu;
 Ms. Constance Kiriū, County of Hawaii;
 Mr. Peter A. Nakamura, County of Kauai; and
 Mr. Roy T. Hiraga, County of Maui.

"May 31, 2006

Mr. Dwayne D. Yoshina
 Chief Election Officer
 Office of Elections
 802 Lehua Avenue
 Pearl City, Hawaii 96782

Re: Hawaii State Constitutional Amendments Proposed by the Legislature

Dear Mr. Yoshina:

During the Regular Sessions of 2005 and 2006, Twenty-third Legislature, five (5) measures containing a proposed constitutional amendment were adopted in conformance with the requirements specified in Article XVII, Section 3 of the Hawaii State Constitution.

The constitutional amendment questions with the exact wording as specified in the legislation adopted are as follows:

1. S.B. No. 1256, H.D. 1, entitled:

PROPOSING A CONSTITUTIONAL AMENDMENT TO ARTICLE X, SECTION 6, OF THE HAWAII CONSTITUTION TO MODIFY THE APPOINTMENT PROCESS FOR THE BOARD OF REGENTS.

QUESTION: "Shall the governor be required to select board of regents candidates from a pool of qualified candidates screened and proposed by a candidate advisory council for the board of regents of the University of Hawaii as provided by law?"

S.B. No. 1256, H.D. 1 passed Final Reading in the Senate on April 25, 2005, with 21 members voting in the affirmative and Third Reading in the House of Representatives on April 12, 2005, with 41 members voting in the affirmative.

2. H.B. No. 1917, H.D. 2, S.D. 2, C.D. 1, entitled:

PROPOSING AMENDMENTS TO THE HAWAII CONSTITUTION RELATING TO THE ESTABLISHMENT OF A SALARY COMMISSION.

QUESTION: "Shall the Constitution be amended to provide for a salary commission to review and recommend salaries for justices, judges, state legislators, the governor, the lieutenant governor, the administrative director of the State, state department heads or executive officers of the executive departments, and the deputies or assistants to department

heads of the executive departments, excluding the superintendent of education and the president of the University of Hawaii?"

H.B. No. 1917, H.D. 2, S.D. 2, C.D. 1 passed Final Reading in the House of Representatives on May 2, 2006, with 51 members voting in the affirmative, and Final Reading in the Senate on May 2, 2006, with 20 members voting in the affirmative.

3. S.B. No. 995, S.D. 1, H.D. 1, C.D. 1, entitled:

PROPOSING AN AMENDMENT TO ARTICLE VI, SECTION 3, OF THE HAWAII CONSTITUTION TO REMOVE THE MANDATORY RETIREMENT AGE FOR STATE JUSTICES AND JUDGES.

QUESTION: "Shall the mandatory retirement age of seventy for all state court justices and judges be repealed?"

S.B. No. 995, S.D. 1, H.D. 1, C.D. 1 passed Final Reading in the House of Representatives on May 2, 2006, with 38 members voting in the affirmative, and Final Reading in the Senate on May 2, 2006, with 19 members voting in the affirmative.

4. S.B. No. 2246, S.D. 1, H.D. 2, C.D. 1, entitled:

PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO SEXUAL ASSAULT.

QUESTION: "Shall the Constitution of the State of Hawaii be amended to provide that in continuous sexual assault crimes against minors younger than fourteen years of age, the legislature may define:

- (1) What behavior constitutes a continuing course of conduct; and
- (2) What constitutes the jury unanimity that is required for a conviction?"

S.B. No. 2246, S.D. 1, H.D. 2, C.D. 1 passed Final Reading in the House of Representatives on May 2, 2006, with 51 members voting in the affirmative, and Final Reading in the Senate on May 2, 2006, with 25 members voting in the affirmative.

5. S.B. No. 2479, H.D. 1, C.D. 1, entitled:

PROPOSING AN AMENDMENT TO ARTICLE VII, SECTION 12, OF THE HAWAII STATE CONSTITUTION.

QUESTION: "Shall the State be authorized to issue special purpose revenue bonds and use the proceeds from the bonds to assist agricultural enterprises serving important agricultural lands?"

S.B. No. 2479, H.D. 1, C.D. 1 passed Final Reading in the House of Representatives on May 2, 2006, with 51 members voting in the affirmative, and Final Reading in the Senate on May 2, 2006, with 25 members voting in the affirmative.

We write to conform with the provisions of Section 11-119 of the Hawaii Revised Statutes which state in pertinent part:

"Whenever the chief election officer is responsible for the printing of ballots, the exact wording to appear thereon, including, but not limited to, questions and issues shall be submitted to the chief election officer not later than 4:30 p.m. on the sixtieth calendar day prior to the applicable election."

Sincerely,

/s/Paul T. Kawaguchi
Paul T. Kawaguchi
Clerk of the Senate

/s/Patricia Mau-Shimizu
Patricia Mau-Shimizu
Clerk of the House"



NOTICE OF PROPOSED CONSTITUTIONAL AMENDMENTS TO THE CONSTITUTION OF THE STATE OF HAWAII

During the Regular Sessions of 2005 and 2006, Twenty-third Legislature, five (5) measures containing a proposed constitutional amendment were adopted in conformance with the requirements of Article XVII, Section 3 of the Hawaii State Constitution.

S.B. No. 1256, H.D. 1

A BILL FOR AN ACT PROPOSING A CONSTITUTIONAL AMENDMENT TO ARTICLE X, SECTION 6, OF THE HAWAII CONSTITUTION TO MODIFY THE APPOINTMENT PROCESS FOR THE BOARD OF REGENTS.

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

SECTION 1. The purpose of this Act is to propose an amendment to article X, section 6, of the Constitution of the State of Hawaii to modify the University of Hawaii board of regents' appointment process.

It is the intention of the legislature that the existing members of the board of regents of the University of Hawaii serve their full terms of office. As each term expires, the regent will be replaced by an appointed member screened and proposed by the candidate advisory council.

SECTION 2. Article X, section 6, of the Constitution of the State of Hawaii is amended to read as follows:

"BOARD OF REGENTS; POWERS

Section 6. There shall be a board of regents of the University of Hawaii, the members of which shall be nominated and, by and with the advice and consent of the senate, appointed by the governor[-] from pools of qualified candidates presented to the governor by the candidate advisory council for the board of regents of the University of Hawaii, as provided by law. At least part of the membership of the board shall represent geographic subdivisions of the State. The board shall have the power to formulate policy, and to exercise control over the university through its executive officer, the president of the university, who shall be appointed by the board. The board shall also have exclusive jurisdiction over the internal structure, management, and operation of the university. This section shall not limit the power of the legislature to enact laws of statewide concern. The legislature shall have the exclusive jurisdiction to identify laws of statewide concern."

SECTION 3. The question to be printed on the ballot shall be as follows:

"Shall the governor be required to select board of regents candidates from a pool of qualified candidates screened and proposed by a candidate advisory council for the board of regents of the University of Hawaii as provided by law?"

SECTION 4. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

SECTION 5. This part shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

Note: S.B. No. 1256, H.D. 1, passed Third Reading in the House of Representatives on April 12, 2005, with 41 members voting in the affirmative, and passed Final Reading in the Senate on April 25, 2005, with 21 members voting in the affirmative.

Constitutional Question No. 1

"Shall the governor be required to select board of regents candidates from a pool of qualified candidates screened and proposed by a candidate advisory council for the board of regents of the University of Hawaii as provided by law?"

Description of Proposed Amendments

The proposed constitutional amendment would change the selection process of the Board of Regents of the University of Hawaii. The Board of Regents is the governing board of the University of Hawaii system, which includes the respective University of Hawaii campuses (Manoa, Hilo, and West Oahu) as well as all of the community colleges. The Board of Regents has the power, as provided by law, to formulate policy and to exercise control over the University of Hawaii system through its executive officer, the president of the University, who is appointed by the Board of Regents. The Board of Regents also has exclusive jurisdiction over the internal structure, management, and operation of the University of Hawaii system.

The proposed constitutional amendment would modify this selection process by requiring the Governor to nominate and appoint members from a pool of qualified candidates who have been screened and proposed by a Candidate Advisory Council for the Board of Regents of the University of Hawaii, as provided by law.

The proposed amendment will *not* modify existing appointment and advice and consent provisions, requiring appointment by the Governor with the advice and consent of the State Senate. Additionally, the proposed amendment will *not* affect the terms of the existing members of the Board of Regents. The proposed constitutional amendment specifically indicates the Legislature's intent that the existing members of the Board of Regents be allowed to serve their full terms of office and be replaced only as each of their terms expires.

Currently, members of the Board of Regents are nominated and, by and with the advice and consent of the Hawaii State Senate, appointed by the Governor. The Governor has broad discretion to determine whom to appoint. The State Senate may refuse to confirm the appointment if it disapproves of the Governor's nominee.

The composition, qualifications, and specific duties of members of the Candidate Advisory Council for the Board of Regents of the University of Hawaii would be determined by the Legislature by means of the legislative process when and if this constitutional amendment is adopted.

Meaning of a "Yes" Vote

A "yes" vote means that the Hawaii State Constitution will be amended to require that members of the Board of Regents of the University of Hawaii be nominated by the Governor from a pool of qualified candidates presented to the Governor by a Candidate Advisory Council for the Board of Regents of the University of Hawaii, as provided by law.

Meaning of a "No" Vote

A "no" vote means that the members of the Board of Regents of the University of Hawaii will continue to be nominated by the Governor based upon the Governor's discretion.

Meaning of a "Blank" Vote

A "blank" vote has essentially the same effect as a "no" vote because the number of "yes" votes must exceed the sum of the "no" and "blank" votes in order for the amendment

H.B. No. 1917, H.D. 2, S.D. 2, C.D. 1

A BILL FOR AN ACT PROPOSING AMENDMENTS TO THE HAWAII CONSTITUTION RELATING TO THE ESTABLISHMENT OF A SALARY COMMISSION.

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

SECTION 1. The purpose of this Act is to propose an amendment to the Constitution of the State of Hawaii to establish a salary commission responsible for reviewing and recommending changes to salaries for justices and judges, members of the state legislature, the governor and lieutenant governor, the administrative director of the State, department heads or executive officers of the executive departments, and the deputies or assistants to department heads of the executive departments, excluding the University of Hawaii and the department of education.

SECTION 2. Article XVI of the Constitution of the State of Hawaii is amended by adding a new section to be appropriately designated and to read as follows:

"SALARY COMMISSION

Section . There shall be a commission on salaries as provided by law, which shall review and recommend salaries for the justices and judges of all state courts, members of the legislature, department heads or executive officers of the executive departments and the deputies or assistants to department heads of the executive departments as provided by law, excluding the University of Hawaii and the department of education. The commission shall also review and make recommendations for the salary of the administrative director of the State or equivalent position and the salary of the governor and the lieutenant governor.

Any salary established pursuant to this section shall not be decreased during a term of office, unless by general law applying to all salaried officers of the State.

Not later than the fortieth legislative day of the 2007 regular legislative session and every six years thereafter, the commission shall submit to the legislature its recommendations and then dissolve.

The recommended salaries submitted shall become effective as provided in the recommendation, unless the legislature disapproves the entire recommendation as a whole by adoption of a concurrent resolution prior to adjournment sine die of the legislative session in which the recommendation is submitted; provided that any change in salary which becomes effective shall not apply to the legislature to which the recommendation for the change in salary was submitted."

SECTION 3. Article III, section 9, of the Constitution of the State of Hawaii is amended to read as follows:

"[SALARY; ALLOWANCES; COMMISSION ON LEGISLATIVE SALARY] LEGISLATIVE ALLOWANCE

~~Section 9. The members of the legislature shall receive allowances reasonably related to expenses as provided by law[and a salary prescribed by the commission on legislative salaries pursuant to this section which shall be payable in installments and at such times as provided by law.~~

~~There shall be a commission on legislative salary, which shall be appointed by the governor on or before November 30, 1978, and every eight years thereafter. Not later than the fortieth legislative day of the 1979 regular legislative session and every eight years thereafter, the commission shall submit to the legislature and the governor recommendations for a salary for members of the legislature, and then dissolve. The recommended salary submitted shall become effective as provided in the recommendation unless the legislature disapproves the recommendation by adoption of a concurrent resolution prior to adjournment sine die of the legislative session in which the recommendation is submitted or the governor disapproves the recommendation by a message of disapproval transmitted to the legislature prior to such adjournment. Any change in salary which becomes effective shall not apply to the legislature to which the recommendation for the change in salary was submitted]."~~

SECTION 4. Article VI, section 3, of the Constitution of the State of Hawaii is amended to read as follows:

"APPOINTMENT OF JUSTICES AND JUDGES

Section 3. The governor, with the consent of the senate, shall fill a vacancy in the office of the chief justice, supreme court, intermediate appellate court and circuit courts, by appointing a person from a list of not less than four, and not more than six, nominees for the vacancy, presented to the governor by the judicial selection commission.

If the governor fails to make any appointment within thirty days of presentation, or within ten days of the senate's rejection of any previous appointment, the appointment shall be made by the judicial selection commission from the list with the consent of the senate. If the senate fails to reject any appointment within thirty days thereof, it shall be deemed to have given its consent to such appointment. If the senate shall reject any appointment, the governor shall make another appointment from the list within ten days thereof. The same appointment and consent procedure shall be followed until a valid appointment has been made, or failing this, the commission shall make the appointment from the list, without senate consent.

The chief justice, with the consent of the senate, shall fill a vacancy in the district courts by appointing a person from a list of not less than six nominees for the vacancy presented by the judicial selection commission. If the chief justice fails to make the appointment within thirty days of presentation, or within ten days of the senate's rejection of any previous appointment, the appointment shall be made by the judicial selection commission from the list with the consent of the senate. The senate ~~[must]~~ shall hold a public hearing and vote on each appointment within thirty days of any appointment. If the senate fails to do so, the nomination shall be returned to the commission and the commission shall make the appointment from the list without senate consent. The chief justice shall appoint per diem district court judges as provided by law.

QUALIFICATIONS FOR APPOINTMENT

Justices and judges shall be residents and citizens of the State and of the United States, and licensed to practice law by the supreme court. A justice of the supreme court, a judge of the intermediate appellate court and a judge of the circuit court shall have been so licensed for a period of not less than ten years preceding nomination. A judge of the district court shall have been so licensed for a period of not less than five years preceding nomination.

No justice or judge shall, during the term of office, engage in the practice of law, or run for or hold any other office or position of profit under the United States, the State or its political subdivisions.

TENURE; ~~COMPENSATION;~~ RETIREMENT

The term of office of justices and judges of the supreme court, intermediate appellate court and circuit courts shall be ten years. Judges of district courts shall hold office for the periods as provided by law. At least six months prior to the expiration of a justice's or judge's term of office, every justice and judge shall petition the judicial selection commission to be retained in office or shall inform the commission of an intention to retire. If the judicial selection commission determines that the justice or judge should be retained in office, the commission shall renew the term of office of ~~such~~ the justice or judge for the period provided by this section or by law.

~~[There shall be a salary commission to review and recommend salaries for justices and judges of all state courts. Justices and judges shall have salaries as provided by law. Their compensation shall not be decreased during their respective terms of office, unless by general law applying to all salaried officers of the State. They] Justices and judges shall be retired upon attaining the age of seventy years. They shall be included in any retirement law of the State."~~

SECTION 5. Article V, section 3, of the Constitution of the State of Hawaii is repealed.

~~COMPENSATION; GOVERNOR, LIEUTENANT GOVERNOR~~

~~Section 3. The compensation of the governor and of the lieutenant governor shall be as provided by law, but shall not be less than thirty-three thousand five hundred dollars, and twenty-seven thousand five hundred dollars, respectively, a year. Such compensation shall not be increased or decreased for their respective terms, unless by general law applying to all salaried officers of the State. When the lieutenant governor succeeds to the office of the governor, the lieutenant governor shall receive the compensation for that office."~~

SECTION 6. Article XVIII, section 3, of the Constitution of the State of Hawaii is repealed.

~~SALARIES OF LEGISLATORS~~

~~Section 3. Until otherwise provided by law in accordance with Section 9 of Article III, the salary of each member of the legislature shall be twelve thousand dollars a year."~~

SECTION 7. The question to be printed on the ballot shall be as follows:

"Shall the Constitution be amended to provide for a salary commission to review and recommend salaries for justices, judges, state legislators, the governor, the lieutenant governor, the administrative director of the State, state department heads or executive officers of the executive departments, and the deputies or assistants to department heads of the executive departments, excluding the superintendent of education and the president of the University of Hawaii?"

SECTION 8. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

SECTION 9. This Act shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

Note: H.B. No. 1917, H.D. 2, S.D. 2, C.D. 1, passed Final Reading in the House of Representatives on May 2, 2006, with 51 members voting in the affirmative, and passed Final Reading in the Senate on May 2, 2006, with 20 members voting in the affirmative.

Constitutional Question No. 2

"Shall the Constitution be amended to provide for a salary commission to review and recommend salaries for justices, judges, state legislators, the governor, the lieutenant governor, the administrative director of the State, state department heads or executive officers of the executive departments, and the deputies or assistants to department heads of the executive departments, excluding the superintendent of education and the president of the University of Hawaii?"

Description of Proposed Amendments

The proposed constitutional amendments would consolidate the present work of three separate salary commissions: the judicial salary commission, the commission on legislative salary, and the executive salary commission. Instead, a single salary commission would be established, as provided by law, to review and recommend salaries for judges, legislators, state officers, and high ranking state officials. By the fortieth day of the regular 2007 legislative session, and every six years thereafter, the commission would submit its recommendations to the Legislature and then dissolve. Recommendations would become effective as provided in the recommendations unless the Legislature disapproves the entire recommendation as a whole by adopting a concurrent resolution prior to adjournment of the legislative session. Changes in salaries would not apply to the Legislature to which the recommendations were submitted. Once effective, the salaries could not be decreased during a term of office, unless by general law applying to all salaried officers of the State. The salaries of the Superintendent of Education and the President of the University of Hawaii would remain unaffected by the amendment.

Under the proposed constitutional amendment, the provisions for the new single salary commission would be generally similar to those of the existing three separate salary commissions.

Meaning of a "Yes" Vote

A "yes" vote means that the work of the judicial salary commission, the commission on legislative salary, and the executive salary commission will be combined into one single salary commission. This new salary commission will review and recommend salaries for judges, legislators, state officers, and high ranking state officials at the same time and in the same way every six years, beginning in 2007. The Legislature will have sole power to reject the recommendations.

Meaning of a "No" Vote

A "no" vote means that the current law with three separate salary commissions to review and recommend salaries for the described positions will remain in effect.

Meaning of a "Blank" Vote

A "blank" vote has essentially the same meaning as a "no" vote because the number of "yes" votes must exceed the sum of the "no" and "blank" votes in order for the amendments to be approved.

S.B. No. 995, S.D. 1, H.D. 1, C.D. 1

A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE VI, SECTION 3, OF THE HAWAII CONSTITUTION TO REMOVE THE MANDATORY RETIREMENT AGE FOR STATE JUSTICES AND JUDGES.

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

SECTION 1. The legislature finds that in today's society, individuals are living longer, healthier lives, as evidenced by the growing number of older individuals throughout the country as well as the world. The legislature further finds that a benefit of our aging society is the wisdom, experience, and skills that these older individuals possess, which should be both valued and respected, particularly in the workforce.

The legislature determines that the antiquated notion that all individuals are no longer mentally or physically fit to be contributing members of the workforce once they reach a certain age must be abolished. This point is particularly striking when examining the age restriction placed upon Hawaii's justices and judges, who are highly educated individuals who have served as learned members of the bar and now the bench. The wealth of knowledge and experience in interpreting Hawaii's laws that is retained by these individuals is invaluable to the residents of Hawaii.

SECTION 2. The purpose of this Act is to propose an amendment to article VI, section 3, of the Constitution of the State of Hawaii to repeal the mandatory retirement age of seventy for all state court justices and judges.

SECTION 3. Article VI, section 3, of the Constitution of the State of Hawaii is amended to read as follows:

"APPOINTMENT OF JUSTICES AND JUDGES

Section 3. The governor, with the consent of the senate, shall fill a vacancy in the office of the chief justice, supreme court, intermediate appellate court and circuit courts, by appointing a person from a list of not less than four, and not more than six, nominees for the vacancy, presented to the governor by the judicial selection commission.

If the governor fails to make any appointment within thirty days of presentation, or within ten days of the senate's rejection of any previous appointment, the appointment shall be made by the judicial selection commission from the list with the consent of the senate. If the senate fails to reject any appointment within thirty days thereof, it shall be deemed to have given its consent to ~~[such]~~ the appointment. If the senate ~~[shall reject]~~ rejects any appointment, the governor shall make another appointment from the list within ten days thereof. The same appointment and consent procedure shall be followed until a valid appointment has been made, or failing this, the commission shall make the appointment from the list, without senate consent.

The chief justice, with the consent of the senate, shall fill a vacancy in the district courts by appointing a person from a list of not less than six nominees for the vacancy presented by the judicial commission. If the chief justice fails to make the appointment within thirty days of presentation, or within ten days of the senate's rejection of any previous appointment, the appointment shall be made by the judicial selection commission from the list with the consent of the senate. The senate must hold a public hearing and vote on each appointment within thirty days of any appointment. If the senate fails to do so, the nomination shall be returned to the commission and the commission shall make the appointment from the list without senate consent. The chief justice shall appoint per diem district court judges as provided by law.

QUALIFICATIONS FOR APPOINTMENT

Justices and judges shall be residents and citizens of the State and of the United States, and licensed to practice law by the supreme court. A justice of the supreme court, a judge of the intermediate appellate court and a judge of the circuit court shall have been so licensed for a period of not less than ten years preceding nomination. A judge of the district court shall have been so licensed for a period of not less than five years preceding nomination.

No justice or judge shall, during the term of office, engage in the practice of law, or run for or hold any other office or position of profit under the United States, the State or its political subdivisions.

TENURE; COMPENSATION; RETIREMENT

The term of office of justices and judges of the supreme court, intermediate appellate court and circuit courts shall be ten years. Judges of district courts shall hold office for the periods as provided by law. At least six months prior to the expiration of a justice's or judge's term of office, every justice and judge shall petition the judicial selection commission to be retained in office or shall inform the commission of an intention to retire. If the judicial selection commission determines that the justice or judge should be retained in office, the commission shall renew the term of office of ~~[such]~~ the justice or judge for the period provided by this section or by law.

There shall be a salary commission to review and recommend salaries for justices and judges of all state courts. Justices and judges shall have salaries as provided by law. Their compensation shall not be decreased during their respective terms of office, unless by general law applying to all salaried officers of the State. ~~[They shall be retired upon attaining the age of seventy years.]~~ They shall be included in any retirement law of the State."

SECTION 4. The question to be printed on the ballot shall be as follows:

"Shall the mandatory retirement age of seventy for all state court justices and judges be repealed?"

SECTION 5. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

SECTION 6. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

Note: S.B. No. 995, S.D. 1, H.D. 1, C.D. 1, passed Final Reading in the House of Representatives on May 2, 2006, with 38 members voting in the affirmative, and passed Final Reading in the Senate on May 2, 2006, with 19 members voting in the affirmative.

Constitutional Question No. 3

"Shall the mandatory retirement age of seventy for all state court justices and judges be repealed?"

Description of Proposed Amendment

Article VI, section 3, of the Hawaii Constitution presently requires appellate court justices and trial court judges to retire upon attaining the age of seventy years. The proposed constitutional amendment would repeal this requirement. If the voters approve the proposed amendment, neither currently sitting justices and judges nor those appointed after the amendment takes effect would be required to retire at age seventy.

Justices and judges would not be required to retire upon reaching any specific age. All justices and judges who wish to reapply to serve for an additional term must be found qualified to serve by the Judicial Selection Commission.

Meaning of a "Yes" Vote

A "yes" vote means that the Hawaii Constitution will be amended to repeal the requirement that justices and judges retire upon attaining the age of seventy. There would be no mandatory retirement age for justices or judges.

Meaning of a "No" Vote

A "no" vote means that the Hawaii Constitution will not be amended to repeal the requirement that justices and judges retire upon attaining the age of seventy. Thus, the requirement that justices and judges retire at age seventy would remain in effect.

Meaning of a "Blank" Vote

A "blank" vote has essentially the same meaning as a "no" vote because the number of "yes" votes must exceed the sum of the "no" and "blank" votes in order for the amendment to be approved.

S.B. No. 2246, S.D. 1, H.D. 2, C.D. 1

A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO SEXUAL ASSAULT.

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

SECTION 1. The purpose of this Act is to propose an amendment to article I of the Constitution of the State of Hawaii to provide that the legislature may define what behavior constitutes a continuing course of conduct in continuous sexual assault crimes against minors younger than fourteen years of age and what constitutes the jury unanimity that is required for a conviction.

Under current Hawaii law, it is difficult to prosecute those who repeatedly sexually assault a child, because of the difficulty young children have in remembering the individual dates on which they were sexually assaulted. This amendment would allow the legislature to enact a law that would permit juries to convict a person of the continuous sexual assault of a minor younger than fourteen years of age, if each member of the jury was convinced beyond a reasonable doubt that the defendant had sexually assaulted the child the required number of times (such as three), even if there were not unanimity as to the individual assaults. This would make it easier to prosecute those who repeatedly sexually assault a child.

The legislature passed such a law in 1997, but that law was invalidated by the Hawaii supreme court. An amendment similar to this amendment was proposed to the voters in 2004 and the amendment was invalidated by the Hawaii supreme court.

SECTION 2. Article I of the Constitution of the State of Hawaii is amended by adding a new section to be appropriately designated and to read as follows:

"SEXUAL ASSAULT CRIMES AGAINST MINORS"

Section . In continuous sexual assault crimes against minors younger than fourteen years of age, the legislature may define:

1. What behavior constitutes a continuing course of conduct; and

2. What constitutes the jury unanimity that is required for a conviction."

SECTION 3. The question to be printed on the ballot shall be as follows:

"Shall the Constitution of the State of Hawaii be amended to provide that in continuous sexual assault crimes against minors younger than fourteen years of age, the legislature may define:

- (1) What behavior constitutes a continuing course of conduct; and
- (2) What constitutes the jury unanimity that is required for a conviction?"

SECTION 4. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

Note: S.B. No. 2246, S.D. 1, H.D. 2, C.D. 1, passed Final Reading in the House of Representatives on May 2, 2006, with 51 members voting in the affirmative, and passed Final Reading in the Senate on May 2, 2006, with 25 members voting in the affirmative.

Constitutional Question No. 4

"Shall the Constitution of the State of Hawaii be amended to provide that in continuous sexual assault crimes against minors younger than fourteen years of age, the legislature may define:

- (1) What behavior constitutes a continuing course of conduct; and
- (2) What constitutes the jury unanimity that is required for a conviction?"

Description of Proposed Amendment

The proposed amendment would add a section to the Hawaii Constitution specifying that, in continuous sexual assault crimes against minors less than fourteen years of age, the Legislature may define what behavior constitutes a "continuing course of conduct" and what constitutes the jury unanimity required for conviction in these cases. The Legislature previously defined "continuing course of conduct" in the crime of continuous sexual assault of a minor under the age of fourteen years, section 707-733.5, Hawaii Revised Statutes, as three or more acts of sexual penetration or sexual contact committed over a period of time. The Legislature also provided that the jury, to convict, need unanimously agree only that at least three acts of sexual penetration or sexual contact had been committed; the jury need not unanimously agree which specific acts constituted the three acts required by law.

However, the Hawaii Supreme Court held in 2003 that multiple acts of sexual penetration or sexual contact were, "by nature, separate and discrete and therefore may not form the basis of a continuing offense." *State v. Rabago*, 103 Hawaii 236, 253, 81 P.3d 1151, 1168 (2003). Furthermore, the court ruled that letting the jury convict without being unanimous as to which specific acts constituted the three acts required by law violated state constitutional guarantees of due process.

If the voters approve the proposed constitutional amendment, substantially the same language previously codified in section 707-733.5, Hawaii Revised Statutes, and found

unconstitutional by the Hawaii Supreme Court would be reenacted pursuant to Act 60, Session Laws of Hawaii 2006. The criminal offense created by that legislation would be a class A felony. Felony offenses are those punishable by more than one year in prison. There are three classes of felonies, A, B, and C, with A felonies being the most serious of these. Murder, an unclassified felony, is the most serious of all felonies.

Meaning of a "Yes" Vote

A "yes" vote means that the Hawaii Constitution will be amended to provide that in continuous sexual assault crimes against minors younger than fourteen years of age the Legislature may define what behavior constitutes a "continuing course of conduct" and what constitutes the jury unanimity that is required for a conviction.

Meaning of a "No" Vote

A "no" vote means that the Hawaii Constitution will not be amended to provide that in continuous sexual assault crimes against minors younger than fourteen years of age the Legislature may define what behavior constitutes a "continuing course of conduct" and what constitutes the jury unanimity that is required for a conviction.

Meaning of a "Blank" Vote

A "blank" vote has essentially the same meaning as a "no" vote because the number of "yes" votes must exceed the sum of the "no" and "blank" votes in order for the amendment to be approved.

S.B. No. 2479, H.D. 1, C.D. 1

A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE VII, SECTION 12, OF THE HAWAII STATE CONSTITUTION.

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

SECTION 1. The purpose of this Act is to propose an amendment to Article VII, section 12, of the Hawaii State Constitution, to authorize the State to issue special purpose revenue bonds and use the proceeds from the bonds to assist agricultural enterprises serving important agricultural lands.

SECTION 2. Article VII, section 12, of the Constitution of the State of Hawaii is amended to read as follows:

"DEFINITIONS; ISSUANCE OF INDEBTEDNESS

Section 12. For the purposes of this article:

1. The term "bonds" shall include bonds, notes and other instruments of indebtedness.

2. The term "general obligation bonds" means all bonds for the payment of the principal and interest of which the full faith and credit of the State or a political subdivision are pledged and, unless otherwise indicated, includes reimbursable general obligation bonds.

3. The term "net revenues" or "net user tax receipts" means the revenues or receipts derived from:

- a. A public undertaking, improvement or system remaining after the costs of operation, maintenance and repair of the public undertaking, improvement or system, and the required payments of the principal of and interest on all revenue bonds issued therefor, have been made; or

- b. Any payments or return on security under a loan program or a loan thereunder, after the costs of operation and administration of the loan program, and the required payments of the principal of and interest on all revenue bonds issued therefor, have been made.

4. The term "person" means an individual, firm, partnership, corporation, association, cooperative or other legal entity, governmental body or agency, board, bureau or other instrumentality thereof, or any combination of the foregoing.

5. The term "rates, rentals and charges" means all revenues and other moneys derived from the operation or lease of a public undertaking, improvement or system, or derived from any payments or return on security under a loan program or a loan thereunder; provided that insurance premium payments, assessments and surcharges, shall constitute rates, rentals and charges of a state property insurance program.

6. The term "reimbursable general obligation bonds" means general obligation bonds issued for a public undertaking, improvement or system from which revenues, or user taxes, or a combination of both, may be derived for the payment of the principal and interest as reimbursement to the general fund and for which reimbursement is required by law, and, in the case of general obligation bonds issued by the State for a political subdivision, general obligation bonds for which the payment of the principal and interest as reimbursement to the general fund is required by law to be made from the revenue of the political subdivision.

7. The term "revenue bonds" means all bonds payable from the revenues, or user taxes, or any combination of both, of a public undertaking, improvement, system or loan program and any loan made thereunder and secured as may be provided by law, including a loan program to provide loans to a state property insurance program providing hurricane insurance coverage to the general public.

8. The term "special purpose revenue bonds" means all bonds payable from rental or other payments made to an issuer by a person pursuant to contract and secured as may be provided by law.

9. The term "user tax" means a tax on goods or services or on the consumption thereof, the receipts of which are substantially derived from the consumption, use or sale of goods and services in the utilization of the functions or services furnished by a public undertaking, improvement or system; provided that mortgage recording taxes shall constitute user taxes of a state property insurance program.

The legislature, by a majority vote of the members to which each house is entitled, shall authorize the issuance of all general obligation bonds, bonds issued under special improvement statutes and revenue bonds issued by or on behalf of the State and shall prescribe by general law the manner and procedure for such issuance. The legislature by general law shall authorize political subdivisions to issue general obligation bonds, bonds issued under special improvement statutes and revenue bonds and shall prescribe the manner and procedure for such issuance. All such bonds issued by or on behalf of a political subdivision shall be authorized by the governing body of such political subdivision.

Special purpose revenue bonds shall only be authorized or issued to finance facilities of or for, or to loan the proceeds of such bonds to assist:

1. Manufacturing, processing, or industrial enterprises;
2. Utilities serving the general public;
3. Health care facilities provided to the general public by not-for-profit corporations;

4. Early childhood education and care facilities provided to the general public by not-for-profit corporations;
5. Low and moderate income government housing programs; [øf]
6. Not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges and universities[;]; or
7. Agricultural enterprises serving important agricultural lands.

each of which is hereinafter referred to in this paragraph as a special purpose entity.

The legislature, by a two-thirds vote of the members to which each house is entitled, may enact enabling legislation for the issuance of special purpose revenue bonds separately for each special purpose entity, and, by a two-thirds vote of the members to which each house is entitled and by separate legislative bill, may authorize the State to issue special purpose revenue bonds for each single project or multi-project program of each special purpose entity; provided that the issuance of such special purpose revenue bonds is found to be in the public interest by the legislature; and provided further that the State may combine into a single issue of special purpose revenue bonds two or more proposed issues of special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities, separately authorized as aforesaid, in the total amount of not exceeding the aggregate of the proposed separate issues of special purpose revenue bonds. The legislature may enact enabling legislation to authorize political subdivisions to issue special purpose revenue bonds. If so authorized, a political subdivision by a two-thirds vote of the members to which its governing body is entitled and by separate ordinance may authorize the issuance of special purpose revenue bonds for each single project or multi-project program of each special purpose entity; provided that the issuance of such special purpose revenue bonds is found to be in the public interest by the governing body of the political subdivision. No special purpose revenue bonds shall be secured directly or indirectly by the general credit of the issuer or by any revenues or taxes of the issuer other than receipts derived from payments by a person or persons under contract or from any security for such contract or contracts or special purpose revenue bonds and no moneys other than such receipts shall be applied to the payment thereof. The governor shall provide the legislature in November of each year with a report on the cumulative amount of all special purpose revenue bonds authorized and issued, and such other information as may be necessary."

SECTION 3. The question to be printed on the ballot shall be as follows:

"Shall the State be authorized to issue special purpose revenue bonds and use the proceeds from the bonds to assist agricultural enterprises serving important agricultural lands?"

SECTION 4. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

Note: S.B. No. 2479, H.D. 1, C.D. 1, passed Final Reading in the House of Representatives on May 2, 2006, with 51 members voting in the affirmative, and passed Final Reading in the Senate on May 2, 2006, with 25 members voting in the affirmative.

Constitutional Question No. 5

"Shall the State be authorized to issue special purpose revenue bonds and use the proceeds from the bonds to assist agricultural enterprises serving important agricultural lands?"

Description of Proposed Amendment

The proposed amendment would authorize the State to issue special purpose revenue bonds to assist agricultural enterprises serving important agricultural lands.

Special purpose revenue bonds are tax exempt and would allow agricultural enterprises to enjoy tax savings not available through other means of financing. Special purpose revenue bonds do not involve any state appropriation or expenditure and are not secured by the full faith and credit of the State.

Currently, the State Constitution allows the following entities to use special purpose revenue bonds:

1. Manufacturing, processing or industrial enterprises;
2. Utilities serving the general public;
3. Healthcare facilities;
4. Early childhood education and care facilities;
5. Low and moderate income government housing programs; and
6. Not-for-profit private nonsectarian and sectarian schools and colleges.

The proposed amendment would add agricultural enterprises serving "important agricultural lands" to this list. The term important agricultural lands is defined under Act 183, Session Laws of Hawaii 2005, and generally means lands that:

1. Are capable of producing sustained high agricultural yields;
2. Contribute to the State's economic base; and
3. Are needed to promote the expansion of agricultural activities.

The State's important agricultural lands, however, have not yet been identified. Pursuant to a state constitutionally mandated process of providing standards and criteria to "conserve and protect agricultural lands [and] ... assure the availability of agriculturally suitable lands," the State and the counties have recently undertaken a comprehensive and lengthy administrative process to identify important agricultural lands. The on-going process includes requiring the State or counties to identify eligible lands, creating appropriate land maps, providing an appeals process for farmers, inviting public input, and reclassifying eligible lands as necessary.

Meaning of a "Yes" Vote

A "yes" vote means that agricultural enterprises would be allowed to utilize special purpose revenue bonds to finance projects on important agricultural lands.

Meaning of a "No" Vote

A "no" vote means that agricultural enterprises would not be allowed to utilize special purpose revenue bonds to finance projects on important agricultural lands.

Meaning of a "Blank" Vote

A "blank" vote has essentially the same effect as a "no" vote because the number of "yes" votes must exceed the sum of the "no" and "blank" votes in order for the amendment to be ratified.

PATRICIA MAU-SHIMIZU
Clerk of the House of Representatives

PAUL T. KAWAGUCHI
Clerk of the Senate

(10/3, 10/10, 10/17, 10/24/06)

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