

JAN 25 2006

A BILL FOR AN ACT

RELATING TO LEGISLATIVE VACANCIES.

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

1 SECTION 1. Article III, section 5 of the Constitution of
2 the State of Hawaii provides that any vacancy in the legislature
3 must be filled for the unexpired term in a manner as provided by
4 law, or if no provision is made in law, by the appointment by
5 the governor for the unexpired term. To effectuate the
6 constitutional mandate, section 17-3, Hawaii Revised Statutes,
7 provides for the filling of a vacancy for state senator, and
8 section 17-4, Hawaii Revised Statutes, provides for the filling
9 of a vacancy for state representative. In the case the governor
10 is required to make a temporary appointment, both sections
11 require the governor to make the appointment from the same
12 political party as the person the appointee succeeds.

13 The legislature finds that current law on filling a state
14 legislative vacancy is silent on the procedural process of
15 making an appointment by the governor to the senate or house.
16 The legislature further finds that the political parties should
17 be involved in the procedures for making such an appointment.

18 Article XVII of the United States Constitution provides for



1 vacancies in the U.S. Senate to be filled by temporary
2 appointment by the governor until an election is held. Section
3 17-1, Hawaii Revised Statutes, empowers the governor to make
4 such temporary appointment until the next election. The
5 legislature further finds that the political parties should be
6 involved in the procedures for selecting an interim appointment
7 to fill a vacant U.S. Senate position.

8 The purpose of this Act is to clarify the procedural
9 process of making an interim appointment to fill a legislative
10 vacancy in the state senate, state house of representatives, and
11 United States Senate.

12 SECTION 2. Section 17-1, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§17-1 United States senator.** (a) When a vacancy occurs
15 in the office of United States senator the vacancy shall be
16 filled for the unexpired term at the following state general
17 election, provided that the vacancy occurs not later than 4:30
18 p.m. on the sixtieth day prior to the primary for nominating
19 candidates to be voted for at the election; otherwise at the
20 state general election next following. The chief election
21 officer shall issue a proclamation designating the election for
22 filling the vacancy. Pending the election the governor shall



1 make a temporary appointment not less than thirty but no more
2 than forty calendar days following the first day of vacancy to
3 fill the vacancy and the person so appointed shall serve until
4 the election and qualification of the person duly elected to
5 fill the vacancy and shall be a registered member of the same
6 political party as the senator causing the vacancy[-]; provided
7 that:

- 8 (1) The temporary appointment shall be made from a list of
9 three nominees submitted to the governor, not later
10 than thirty calendar days following the first day of
11 vacancy, by the same political party as the senator
12 causing the vacancy; or
- 13 (2) In the case that the senator causing the vacancy is
14 nonpartisan, the governor shall make the temporary
15 appointment of a person who is nonpartisan.

16 All candidates for the unexpired term shall be nominated and
17 elected in accordance with this title.

18 (b) As used in this section, "nonpartisan" means a person
19 who on the date the vacancy occurred is, and through the date of
20 appointment remains, not a member of any political party."

21 SECTION 3. Section 17-3, Hawaii Revised Statutes, is
22 amended to read as follows:

1 "**§17-3 State senator.** (a) Whenever any vacancy in the
2 membership of the state senate occurs, the term of which ends at
3 the next succeeding general election, the governor shall make
4 ~~[an]~~ a temporary appointment ~~[within sixty]~~ not less than thirty
5 but no more than forty calendar days following the first day of
6 vacancy to fill the vacancy for the unexpired term ~~[and the~~
7 ~~appointee shall be of the same political party or~~
8 ~~nonpartisanship as the person the appointee succeeds.]~~; provided
9 that:

10 (1) The temporary appointment shall be made from a list of
11 three nominees submitted to the governor, not later
12 than thirty calendar days following the first day of
13 vacancy, by the same political party as the senator
14 causing the vacancy; or

15 (2) If the senator causing the vacancy is nonpartisan, the
16 governor shall make the temporary appointment of
17 another person who on the date the vacancy occurred,
18 is, and through the date of appointment remains,
19 nonpartisan.

20 If the governor for any reason does not make a temporary
21 appointment by noon on the fortieth day, the president of the
22 senate shall make the temporary appointment on the forty-first



1 calendar day following the first date of vacancy, and shall make
2 it from the same list of three nominees submitted to the
3 governor if the representative causing the vacancy is a member
4 of a political party.

5 (b) In the case of a vacancy, the term of which does not
6 end at the next succeeding general election:

7 (1) If it occurs not later than on the tenth day prior to
8 the close of filing for the next succeeding primary
9 election, the vacancy shall be filled for the
10 unexpired term at the next succeeding general
11 election. The chief election officer shall issue a
12 proclamation designating the election for filling the
13 vacancy. All candidates for the unexpired term shall
14 be nominated and elected in accordance with this
15 title. Pending the election the governor shall make a
16 temporary appointment to fill the vacancy pursuant to
17 subsection (a), and the person so appointed shall
18 serve until the election of the person duly elected to
19 fill the vacancy [~~. The appointee shall be of the same~~
20 ~~political party or nonpartisanship as the person the~~
21 ~~appointee succeeds];~~



1 (2) If it occurs later than on the tenth day prior to the
2 close of filing for the next succeeding primary
3 election but not later than on the sixtieth day prior
4 to the next succeeding primary election, or if there
5 are no qualified candidates for any party or
6 nonpartisan candidates qualified for the primary
7 election ballot, nominations for the unexpired term
8 may be filed not later than 4:30 p.m. on the fiftieth
9 day prior to the next succeeding primary election.

10 The chief election officer shall issue a proclamation
11 designating the election for filling the vacancy.

12 Pending the election the governor shall make a
13 temporary appointment to fill the vacancy pursuant to
14 subsection (a), and the person so appointed shall
15 serve until the election of the person duly elected to
16 fill the vacancy [~~.—The appointee shall be of the same~~
17 ~~political party or nonpartisanship as the person the~~
18 ~~appointee succeeds.] ;~~

19 (3) If it occurs after the sixtieth day prior to the next
20 succeeding primary but not later than on the fiftieth
21 day prior to the next succeeding general election, or
22 if there are no qualified candidates for any party or



1 nonpartisan candidates in the primary, the vacancy
2 shall be filled for the unexpired term at the next
3 succeeding general election. The chief election
4 officer shall issue a proclamation designating the
5 election for filling the vacancy. Party candidates
6 for the unexpired senate term shall be nominated by
7 the ~~[county committees of the]~~ their respective
8 parties not later than 4:30 p.m. on the fortieth day
9 prior to the general election; nonpartisan candidates
10 may file nomination papers for the unexpired term not
11 later than 4:30 p.m. on the fortieth day prior to the
12 general election with the nonpartisan candidate who is
13 to be nominated to be decided by lot, under the
14 supervision of the chief election officer. The
15 candidates for the unexpired term shall be elected in
16 accordance with this title. Pending the election the
17 governor shall make a temporary appointment to fill
18 the vacancy pursuant to subsection (a), and the person
19 so appointed shall serve until the election of the
20 person duly elected to fill such vacancy [~~.—The~~
21 ~~appointee shall be of the same political party or~~



1 ~~nonpartisanship as the person the appointee~~
2 ~~succeeds.]~~; and

3 (4) If it occurs after the fiftieth day prior to the next
4 succeeding general election or if no candidates are
5 nominated, the governor shall make an appointment to
6 fill the vacancy pursuant to subsection (a) for the
7 unexpired term [~~and the appointee shall be of the same~~
8 ~~political party or nonpartisanship as the person the~~
9 ~~appointee succeeds]~~."

10 SECTION 4. Section 17-4, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§17-4 State representatives.** [~~Whenever~~] In the case any
13 vacancy in the membership of the state house of representatives
14 occurs[~~7~~] of a member belonging to a political party, the
15 governor shall make [~~an~~] a temporary appointment within [~~sixty~~]
16 thirty calendar days following the first day of vacancy to fill
17 the vacancy for the unexpired term [~~and the appointee shall be~~
18 ~~of the same political party or nonpartisanship as the person the~~
19 ~~appointee succeeds.]~~; provided that:

20 (1) The temporary appointment shall be made from a list of
21 three nominees submitted to the governor, not later
22 than twenty calendar days following the first date of

1 vacancy, by the same political party as the
 2 representative causing the vacancy; or
 3 (2) If the representative causing the vacancy is
 4 nonpartisan, the governor shall make the temporary
 5 appointment of another person who, on the date the
 6 vacancy occurred, is, and through the date of
 7 appointment remains, nonpartisan.

8 If the governor for any reason does not make a temporary
 9 appointment by noon on the thirtieth day, the speaker of the
 10 house of representatives shall make the temporary appointment on
 11 the thirty-first calendar day following the first date of
 12 vacancy, and shall make it from the same list of three nominees
 13 submitted to the governor if the representative causing the
 14 vacancy is a member of a political party."

15 SECTION 5. Statutory material to be repealed is bracketed
 16 and stricken. New statutory material is underscored.

17 SECTION 6. This Act shall take effect upon its approval.

18

INTRODUCED BY: Shiranne Chun Oakland

Clement F. ...

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SB. NO. 2619

Report Title:

Legislative Vacancies; Interim Appointments

Description:

Clarifies the process of filling legislative vacancies for the state senate, state house, and U.S. Senate to require the governor to select an interim appointment from a list of three candidates nominated by the same political party as the person the appointee succeeds; reduces from 60 to 40 days following the date of the vacancy the time in which the governor may make the temporary appointment for state senate or state house; provides procedures for nonpartisan vacancies.

