

JAN 19 2007

A BILL FOR AN ACT

RELATING TO LEGISLATIVE VACANCIES.

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

1 SECTION 1. The legislature finds that the current method
2 of filling vacancies in the state legislature and the United
3 States Senate may result in an appointment that compromises the
4 integrity of the election process or that provides ineffective
5 representation of the district's interests. Currently, the
6 governor appoints an individual to fill an unexpired legislative
7 vacancy, subject only to age and residency requirements for the
8 appointee, and membership of the appointee, at the time of
9 appointment, in the political party of the prior incumbent.

10 To guarantee fairness in filling legislative vacancies, the
11 appointment process must:

- 12 (1) Be free of political gamesmanship or controversy;
- 13 (2) Ensure the integrity of the legislative process; and
- 14 (3) Provide for effective representation for the residents
15 of the legislative district of the prior incumbent.

16 It is understandable that a governor may reasonably want to
17 appoint an individual whose views on key issues are "in

S.B. NO. 1063

1 alignment with" the governor's positions, presumably a more
2 difficult task when the prior incumbent was a member of a
3 different political party than the governor. However, the
4 present appointment process allows the governor to essentially
5 disregard the interests of the prior incumbent's constituents
6 and appoint an individual whose primary qualification seems to
7 be sharing similar political opinions on key issues with the
8 governor. An appointment based solely upon political
9 considerations is viewed with skepticism, may seriously damage
10 the public's trust and confidence in the legislative process,
11 and casts an "aura of mistrust" around the appointee. The
12 appointee becomes an ineffective advocate for constituent
13 interests and is likely to be unproductive in the legislature.
14 Skepticism and mistrust are even stronger when a governor is
15 offered and rejects a list of potential appointees deemed
16 qualified by the political party of the prior incumbent.

17 The legislature further finds that the current method of
18 filling legislative vacancies must be amended to preserve the
19 integrity of the election process and to assure the public in
20 general and residents of the prior incumbent's district in
21 particular that appointments to fill legislative vacancies are
22 not based upon political considerations or self-interest.

S.B. NO. 1063

1 Because state law requires the appointee to be from the same
2 party as the prior legislator, it is reasonable and logical to
3 direct the appropriate political party to submit to the governor
4 a list of individuals whom the appropriate political party deems
5 qualified to fill the vacancy and require the governor to choose
6 the appointee from the list. The political party of the prior
7 incumbent has a responsibility to the residents of the district
8 to provide the governor with a list of qualified candidates who
9 will be effective in serving the district.

10 In addition, the legislature finds that requiring the
11 governor to make a timely choice from the list submitted by the
12 appropriate political party would eliminate unnecessary delay in
13 filling the vacancy and would ensure that residents of the prior
14 incumbent's district are not without representation during
15 critical legislative proceedings.

16 The legislature believes that requiring the political party
17 of the prior incumbent to provide the governor with a list of
18 qualified nominees from which to choose would not unreasonably
19 restrict the pool of qualified candidates for the vacancy.

20 Rather, such a process would eliminate skepticism and mistrust
21 and increase public trust and confidence in the appurtenant
22 process.



S.B. NO. 1063

1 The purpose of this Act is to establish a process to fill
2 legislative vacancies that is fair and timely and ensures that
3 the legislative district of the prior incumbent is represented
4 by an individual who is qualified to serve the interests of that
5 district. Specifically, this Act requires the political party
6 of a prior incumbent to submit to the governor a list of
7 qualified candidates from which the governor is required to
8 choose an appointee to fill the unexpired term of a legislative
9 vacancy.

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

12 "**§17-1 United States senator.** When a vacancy occurs in
13 the office of United States senator, the vacancy shall be filled
14 for the unexpired term at the following state general
15 election^[7]; provided that the vacancy occurs not later than
16 4:30 p.m. on the sixtieth day prior to the primary for
17 nominating candidates to be voted for at the election; otherwise
18 at the state general election next following. The chief
19 election officer shall issue a proclamation designating the
20 election for filling the vacancy. Pending the election, the
21 governor shall make a temporary appointment to fill the vacancy
22 [and the] by selecting a person from a list of three prospective



S.B. NO. 1063

1 appointees submitted by the same political party as the prior
2 incumbent. The person [æ] appointed shall serve until the
3 election and qualification of the person duly elected to fill
4 the vacancy and, no later than the time of submission of the
5 list of prospective appointees as provided in section 17-3(a) to
6 the governor, shall be a registered member of the same political
7 party as the [senator causing the vacancy.] prior incumbent. If
8 the prior incumbent was not a member of any political party, the
9 governor shall appoint a person who is not a registered member
10 of any political party. All candidates for the unexpired term
11 shall be nominated and elected in accordance with this title."

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

14 "§17-3 State senator. (a) Whenever any vacancy in the
15 membership of the state senate occurs, the term of which ends at
16 the next succeeding general election[~~, the~~]:

17 (1) The governor shall make an appointment within sixty
18 calendar days following the first day of vacancy to
19 fill the vacancy for the unexpired term [~~and the~~
20 ~~appointee shall be of~~] by selecting a person from a
21 list of three prospective appointees submitted by the
22 same political party [or nonpartisanship] as the



S.B. NO. 1063

1 ~~[person the appointee succeeds.]~~ prior incumbent. No
2 later than the time of submission of the list of
3 prospective appointees to the governor, the
4 prospective appointees shall be registered members of
5 the political party. The political party shall submit
6 the list of prospective appointees to the governor
7 within thirty calendar days following the first day of
8 vacancy; and

9 (2) If the prior incumbent was not a member of any
10 political party, the governor, within sixty calendar
11 days following the first day of vacancy, shall appoint
12 a person who is not a registered member of any
13 political party.

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

16 (1) If it occurs not later than on the tenth day prior to
17 the close of filing for the next succeeding primary
18 election, the vacancy shall be filled for the
19 unexpired term at the next succeeding general
20 election. The chief election officer shall issue a
21 proclamation designating the election for filling the
22 vacancy. All candidates for the unexpired term shall



S.B. NO. 1063

1 be nominated and elected in accordance with this
2 title. Pending the election, the governor shall make
3 a temporary appointment to fill the vacancy, and the
4 person so appointed shall serve until the election of
5 the person duly elected to fill the vacancy. The
6 ~~[appointee shall be of]~~ governor shall make the
7 appointment from a list of three prospective
8 appointees submitted by the same political party ~~[or~~
9 ~~nonpartisanship]~~ as the ~~[person the appointee~~
10 ~~succeeds.]~~ prior incumbent. No later than the time of
11 submission of the list of prospective appointees to
12 the governor, the prospective appointees shall be
13 registered members of the political party. If the
14 prior incumbent was not a member of any political
15 party, the governor shall appoint a person who is not
16 a registered member of any political party.

- 17 (2) If it occurs later than on the tenth day prior to the
18 close of filing for the next succeeding primary
19 election but not later than on the sixtieth day prior
20 to the next succeeding primary election, or if there
21 are no qualified candidates for any party or
22 nonpartisan candidates qualified for the primary



S.B. NO. 1063

1 election ballot, nominations for the unexpired term
2 may be filed not later than 4:30 p.m. on the fiftieth
3 day prior to the next succeeding primary election.

4 The chief election officer shall issue a proclamation
5 designating the election for filling the vacancy.

6 Pending the election the governor shall make a
7 temporary appointment to fill the vacancy and the
8 person ~~[æ]~~ appointed shall serve until the election
9 of the person duly elected to fill the vacancy. The

10 ~~[appointee shall be of]~~ governor shall make the
11 appointment from a list of three prospective
12 appointees submitted by the same political party [æ
13 nonpartisanship] as the [person the appointee
14 succeeds.] prior incumbent. No later than the time of
15 submission of the list of prospective appointees to
16 the governor, the prospective appointees shall be
17 registered members of the political party. If the
18 prior incumbent was not a member of any political
19 party, the governor shall appoint a person who is not
20 a registered member of any political party.

21 (3) If it occurs after the sixtieth day prior to the next
22 succeeding primary but not later than on the fiftieth

S.B. NO. 1063

1 day prior to the next succeeding general election, or
2 if there are no qualified candidates for any party or
3 nonpartisan candidates in the primary, the vacancy
4 shall be filled for the unexpired term at the next
5 succeeding general election. The chief election
6 officer shall issue a proclamation designating the
7 election for filling the vacancy. Party candidates
8 for the unexpired senate term shall be nominated by
9 the county committees of the parties not later than
10 4:30 p.m. on the fortieth day prior to the general
11 election; nonpartisan candidates may file nomination
12 papers for the unexpired term not later than 4:30 p.m.
13 on the fortieth day prior to the general election with
14 the nonpartisan candidate who is to be nominated to be
15 decided by lot, under the supervision of the chief
16 election officer. The candidates for the unexpired
17 term shall be elected in accordance with this title.
18 Pending the election, the governor shall make a
19 temporary appointment to fill the vacancy, and the
20 person [sø] appointed shall serve until the election
21 of the person duly elected to fill [such] the vacancy.
22 The [~~appointee shall be of~~] governor shall make the

S.B. NO. 1063

1 appointment from a list of three prospective
2 appointees submitted by the same political party [~~or~~
3 ~~nonpartisanship]~~ as the [~~person the appointee~~
4 ~~succeeds.]~~ prior incumbent. No later than the time of
5 submission of the list of prospective appointees to
6 the governor, the prospective appointees shall be
7 registered members of the political party. If the
8 prior incumbent was not a member of any political
9 party, the governor shall appoint a person who is not
10 or has not been, for at least six months immediately
11 prior to the appointment, a registered member of any
12 political party.

- 13 (4) If it occurs after the fiftieth day prior to the next
14 succeeding general election or if no candidates are
15 nominated, the governor shall make an appointment to
16 fill the vacancy for the unexpired term [~~and the~~
17 ~~appointee shall be of]~~ by selecting a person from a
18 list of three prospective appointees submitted by the
19 same political party [~~or nonpartisanship]~~ as the
20 [~~person the appointee succeeds.]~~ prior incumbent. No
21 later than the time of submission of the list of
22 prospective appointees to the governor, the

S.B. NO. 1063

1 prospective appointees shall be registered members of
2 the political party. If the prior incumbent was not a
3 member of any political party, the governor shall
4 appoint a person who is not and has not been, for at
5 least six months immediately prior to the appointment,
6 a registered member of any political party."

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

9 "**§17-4 State representatives.** (a) Whenever any vacancy
10 in the membership of the state house of representatives occurs,
11 the governor shall make an appointment within sixty calendar
12 days following the first day of vacancy to fill the vacancy for
13 the unexpired term [~~and the appointee shall be of~~] by selecting
14 a person from a list of three prospective appointees submitted
15 by the same political party [~~or nonpartisanship~~] as the [~~person~~
16 ~~the appointee succeeds.~~] prior incumbent. No later than the
17 time of submission of the list of prospective appointees to the
18 governor, the prospective appointees shall be registered members
19 of the political party. The political party shall submit the
20 list of prospective appointees to the governor within thirty
21 calendar days following the first day of vacancy.

S.B. NO. 1063

1 (b) If the prior incumbent was not a member of any
2 political party, the governor, within sixty calendar days
3 following the first day of vacancy, shall appoint a person who
4 is not a registered member of any political party."

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

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

8

INTRODUCED BY:

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Report Title:

Legislative Vacancies; Appointments

Description:

Requires the governor, in filling vacancies in the state senate, state house of representatives, and United States Senate, to select from a list of three prospective appointees nominated by the political party of the prior incumbent; requires prospective appointees to be registered members of nominating political parties at the time of submission of their names to the governor; effective on approval.

