

JAN 22 2016

A BILL FOR AN ACT

PROPOSING AN AMENDMENT TO ARTICLE VI, SECTION 3, OF THE
CONSTITUTION OF THE STATE OF HAWAII.

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

1 SECTION 1. The legislature finds that in 2012, two days
2 after the constitutionally mandated thirty-day time period
3 expired, the senate received the governor's appointment to fill
4 a vacancy on the supreme court bench. However, the governor and
5 attorney general deemed the appointment to be valid because
6 notification of the appointment was provided at a news
7 conference five days earlier, which was within the thirty-day
8 period constitutionally provided to the governor to make such
9 judicial appointment.

10 The attorney general opined that the news conference met
11 constitutional deadlines because it was an open and unequivocal
12 act. Furthermore, the constitution does not specify that
13 written notice to the senate be given when the appointment is
14 made or that written notice be provided in conjunction with the
15 appointment. As a result, the senate's constitutionally
16 mandated thirty-day period to reject the judicial appointment



1 started at the date of the news conference and not when the
2 senate received the governor's appointment.

3 The purpose of this Act is to propose an amendment to
4 article VI, section 3, of the Constitution of the State of
5 Hawaii to clarify the responsibilities and procedures for
6 judicial appointments.

7 SECTION 2. Article VI, section 3, of the Constitution of
8 the State of Hawaii is amended to read as follows:

9 "APPOINTMENT OF JUSTICES AND JUDGES

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

16 If the governor fails to make any appointment within thirty
17 days of presentation, or within ten days of the senate's
18 rejection of any previous appointment, the appointment shall be
19 made by the judicial selection commission from the list with the
20 consent of the senate. The senate shall receive written notice
21 of the governor's or judicial selection commission's appointment



1 concurrently with the appointment. If the senate fails to
2 reject any appointment within thirty days [~~thereof,~~] of the
3 senate's receipt of written notice of the governor's or judicial
4 selection commission's appointment, it shall be deemed to have
5 given its consent to such appointment. If the senate shall
6 reject any appointment, the governor shall make another
7 appointment from the list within ten days thereof[-] and provide
8 concurrent written notice to the senate. The same appointment
9 and consent procedure shall be followed until a valid
10 appointment has been made, or failing this, the commission shall
11 make the appointment from the list, without senate consent.

12 The chief justice, with the consent of the senate, shall
13 fill a vacancy in the district courts by appointing a person
14 from a list of not less than six nominees for the vacancy
15 presented by the judicial selection commission. If the chief
16 justice fails to make the appointment within thirty days of
17 presentation, or within ten days of the senate's rejection of
18 any previous appointment, the appointment shall be made by the
19 judicial selection commission from the list with the consent of
20 the senate. The senate shall receive written notice of the
21 chief justice's or judicial selection commission's appointment



1 concurrently with the appointment. The senate shall hold a
2 public hearing and vote on each appointment within thirty days
3 of [~~any appointment.~~] the senate's receipt of written notice of
4 the appointment. If the senate fails to do so, the nomination
5 shall be returned to the commission and the commission shall
6 make the appointment from the list without senate consent. The
7 chief justice shall appoint per diem district court judges as
8 provided by law.

9 The judicial selection commission shall disclose to the
10 public the list of nominees for each vacancy concurrently with
11 the presentation of each list to the governor or the chief
12 justice, as applicable.

13 **QUALIFICATIONS FOR APPOINTMENT**

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



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

5 **TENURE; RETIREMENT**

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

18 Justices and judges shall be retired upon attaining the age
19 of seventy years. They shall be included in any retirement law
20 of the State."



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

3 "Shall the senate receive written notice of the governor's,
4 the chief justice's, or the judicial selection commission's
5 appointment, as applicable, concurrently with the
6 appointment and have thirty days from receipt of the
7 written notice, to reject an appointment to the office of
8 chief justice, supreme court, intermediate appellate court,
9 circuit courts, and to consent to an appointment to fill a
10 vacancy in the district courts?"

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

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

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S.B. NO. 2498

Report Title:

Constitutional Amendment; Appointment of Justices and Judges;
Written Notice

Description:

Proposes a constitutional amendment to: (1) require written notice of an appointment to the senate for advice and consent concurrent with the governor, judicial selection commission, or chief justice's making of the appointment; and (2) clarify that the senate's thirty-day period to reject a judicial appointment begins on the senate's receipt of written notice of the governor's, chief justice's, or judicial selection commission's appointment.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

