
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 of
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 appointment concurrently with the appointment.



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

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



1 senate's receipt of written notice of the appointment. If the
2 senate fails to do so, the nomination shall be returned to the
3 commission and the commission shall make the appointment from
4 the list without senate consent. The chief justice shall
5 appoint per diem district court judges as provided by law.

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

10 QUALIFICATIONS FOR APPOINTMENT

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

19 No justice or judge shall, during the term of office,
20 engage in the practice of law, or run for or hold any other



1 office or position of profit under the United States, the State
2 or its political subdivisions.

3 **TENURE; RETIREMENT**

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

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

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



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

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

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

14



Report Title:

Constitutional Amendment; Appointment of Justices and Judges;
Written Notice

Description:

Proposes a constitutional amendment to clarify the senate's thirty day period to reject an appointment to the office of chief justice, supreme court, intermediate appellate court, circuit courts, and to consent to an appointment to fill a vacancy in the district courts. (SD1)

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