

Honolulu, Hawaii

FEB 16 2017

RE: S.B. No. 673

S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred S.B. No. 673 entitled:

"A BILL FOR AN ACT PROPOSING AMENDMENTS TO THE CONSTITUTION OF THE STATE OF HAWAII TO AMEND THE MANNER IN WHICH JUSTICES AND JUDGES ARE APPOINTED, CONSENTED TO, AND RETAINED,"

begs leave to report as follows:

The purpose and intent of this measure is to propose a constitutional amendment to:

- (1) Extend the required timeframe for certain appointment and consent procedures for justices and judges from thirty to ninety days;
- (2) Conform certain judicial appointment and consent procedures for district court judges with the judicial appointment and consent procedures for Supreme Court justices and Intermediate Court of Appeals and circuit court judges by:
 - (A) Repealing language that requires the Senate to hold a public hearing and vote on each district court judge appointment within a certain time from the appointment; and
 - (B) Adding judicial appointment and consent procedures for district court judges in the event that the Senate fails to reject any district court judge



appointment within the required timeframe or affirmatively rejects any district court judge appointment; and

- (3) Amend the timeframe to renew the term of office of a justice or judge and require consent of the Senate for a justice or judge to renew a term of office.

Your Committee received testimony in support of this measure from one individual. Your Committee received testimony in opposition to this measure from the Judiciary; Office of the Public Defender; Judicial Selection Commission; American Civil Liberties Union of Hawai'i; American College of Trial Lawyers; Americans for Democratic Action Hawaii; American Judicature Society; Common Cause Hawaii; Hawaiian Affairs Caucus of the Democratic Party of Hawai'i; Family Law Section of the Hawaii State Bar Association; Hawaii Appleseed Center for Law and Economic Justice; Hawaii Chapter of the American Board of Trial Advocates; Hawai'i County Bar Association; Hawaii Filipino Lawyers Association; Hawaii State Bar Association; Hawai'i State Trial Judges Association; Japanese American Citizens League; Kalihi Palama Hawaiian Civic Club; Kaua'i Bar Association; Ke One O Kākuhihewa, O'ahu Council of the Association of Hawaiian Civic Clubs; League of Women Voters of Hawaii; Maui County Bar Association; Prince Kūhiō Hawaiian Civic Club; University of Hawaii Professional Assembly; West Hawaii Bar Association; Democratic Party of Hawai'i; Community Alliance on Prisons; Honolulu Hawaii NAACP; International Longshore and Warehouse Union, Local 142; Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO; Life of the Land; State of Hawaii Organization of Police Officers; and eighty-five individuals.

Your Committee finds that the Senate consent provisions of the Hawaii State Constitution relating to the appointment of district court judges are incongruous to those relating to Supreme Court justices and Intermediate Court of Appeals and circuit court judges. In the case of Supreme Court justices and Intermediate Court of Appeals and circuit court judges, if the Senate fails to reject an initial appointment to these courts within thirty days of the appointment, the Senate is deemed to have consented to the appointment. For district court judicial appointees, the exact opposite occurs. The district court judicial appointee is automatically considered rejected if not consented to by the Senate within thirty days of receipt of the district court



judicial appointment. This measure conforms certain judicial appointment and consent procedures for district court judges with the judicial appointment and consent procedures for Supreme Court justices and Intermediate Court of Appeals and circuit court judges.

Your Committee further finds that the Hawaii State Constitution requires every justice or judge to petition the Judicial Selection Commission to be retained in office. Retention proceedings, like all of the Judicial Selection Commission's proceedings, are kept secret by the Commission and all information considered by the Commission is not disclosed. If the Judicial Selection Commission determines that the justice or judge should be retained, the Judicial Selection Commission is authorized by the state constitution to renew the justice's or judge's term. Unlike the original appointment of a justice or judge, Senate consent is not required for a justice's or judge's term renewal. Therefore, only the Senate confirmation process of a justice's or judge's initial appointment is open to public scrutiny.

This measure proposes a constitutional amendment to authorize the Senate, rather than the Judicial Selection Commission, to renew a justice's or judge's term while retaining the Judicial Selection Commission's constitutionally mandated responsibility to determine whether a justice or judge should be retained in office and providing the Judicial Selection Commission ninety days to make its determination then immediately provide written notice to the Senate of its determination and, if applicable, a copy of a petition for retention. The Senate would have ninety days to vote to consent to or reject the petition; otherwise, the Judicial Selection Commission's determination would take effect.

Your Committee has amended this measure by:

- (1) Reinstating language that requires the Senate to hold a public hearing as part of the Senate consent procedures for a district court judge appointee, and extending the timeframe for the Senate to hold this public hearing and vote on each district court judicial appointment from thirty to ninety days; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.



As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 673, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 673, S.D. 1, and be referred to your Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,




GILBERT S.C. KEITH-AGARAN, Chair



The Senate
Twenty-Ninth Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 673	Committee Referral: JDL, WAM	Date: 2/8/17		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KEITH-AGARAN, Gilbert S.C. (C)	✓			
RHOADS, Karl (VC)		✓		
GABBARD, Mike			✓	
KIM, Donna Mercado	✓			
THIELEN, Laura H.			✓	
TOTAL	2	1	2	0
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes