



GOV. MSG. NO. 1396

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 12, 2022

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty-First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty-First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

I am transmitting herewith SB2347 SD1 HD1 CD1, without my approval and with the statement of objections relating to the measure.

SB2347 SD1 HD1 CD1

RELATING TO CONSTITUTIONAL
AMENDMENTS.

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

EXECUTIVE CHAMBERS

HONOLULU

July 12, 2022

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2347

Honorable Members
Thirty-First Legislature
State of Hawai'i

Pursuant to Section 16 of Article III of the Constitution of the State of Hawai'i, I am returning herewith, without my approval, Senate Bill No. 2347, entitled "A Bill for an Act Relating to Constitutional Amendments."

The purpose of this bill is to amend section 11-118.5, Hawaii Revised Statutes, to provide that a constitutional ratification question printed on a ballot must be "simple, concise, and direct to the extent practicable." This bill also amends section 602-5(a), Hawaii Revised Statutes, to authorize the Hawai'i Supreme Court to issue, upon a written request by the Senate President and/or the Speaker of the House of Representatives, a written opinion (1) stating whether a proposed constitutional amendment and the corresponding constitutional ratification question are "simple, concise, and direct to the extent practicable" and (2) if they are not, providing a detailed and specific explanation of the reasons for the court's conclusion. The Supreme Court is to respond within fifteen days of the date of the written request and its opinion shall not be appealable.

This bill is objectionable because it raises a separation of powers issue with respect to the Legislature and the Judiciary. See *Schwab v. Ariyoshi*, 58 Haw. 25, 564 P.2d 135 (1977) (the doctrine of separation of powers prohibits any branch of government from unduly interfering with the constitutional functions of the other branches). Also, this bill is objectionable because it authorizes the presiding officers of the Legislature to request that the Hawaii Supreme Court issue an improper advisory opinion (1) stating whether a proposed constitutional amendment and the corresponding constitutional ratification question are "simple, concise, and direct to the extent practicable" and (2) if they are not, providing a detailed explanation of the reasons for

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SENATE BILL NO. 2347
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the court's conclusion. Advisory opinions generally do not have a detailed factual record or the benefit of prior legal analysis or advocacy from adverse interests regarding the issues that a proposed constitutional amendment often presents. Further, insofar as this bill requires that the Supreme Court respond to the Legislature within fifteen days of the Legislature's written request, it does not afford the Supreme Court with reasonable time to fully consider and research a proposed amendment and issue its opinion, which will not be appealable.

For the foregoing reasons, I am returning Senate Bill No. 2347 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "David Y. Ige", with a stylized flourish at the end.

DAVID Y. IGE
Governor of Hawai'i

A BILL FOR AN ACT

RELATING TO CONSTITUTIONAL AMENDMENTS.

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

1 SECTION 1. Section 11-118.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§11-118.5 Constitutional amendments, proposed; attorney
4 general statement. (a) Any constitutional amendment proposed
5 by the legislature shall include in final form the exact
6 constitutional ratification question to be printed on a ballot.
7 The constitutional ratification question shall be phrased in a
8 manner to enable voters to express their choice on the
9 constitutional amendment by providing a "yes" or "no" response.
10 The language and meaning of a constitutional amendment and a
11 constitutional ratification question shall be ~~[clear and it~~
12 ~~shall be neither misleading nor deceptive.]~~ simple, concise, and
13 direct to the extent practicable.

14 (b) The attorney general, in consultation with the
15 legislative reference bureau, shall prepare a statement in
16 English and Hawaiian for each proposed constitutional amendment
17 in language that is ~~[clear]~~ simple, concise, and direct to the
18 extent practicable and that indicates the purpose, limitations,



1 and effects of the proposed amendment. The attorney general
2 shall distribute each statement to the state office of elections
3 and all county clerks for further distribution. The office of
4 elections and county clerks shall make the statement available
5 to the public at all polling places in the State and on a
6 website operated by the office of elections."

7 SECTION 2. Section 602-5, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) Except as otherwise provided, the supreme court shall
10 have jurisdiction and powers as follows:

11 (1) To hear and determine all questions of law, or of
12 mixed law and fact, [~~which~~] that are properly brought
13 before it by application for a writ of certiorari to
14 the intermediate appellate court or by transfer as
15 provided in this chapter;

16 (2) To answer, in its discretion, any question of law
17 reserved by a circuit court, the land court, or the
18 tax appeal court, or any question or proposition of
19 law certified to it by a federal district or appellate
20 court if the supreme court shall so provide by rule;



- 1 (3) To exercise original jurisdiction in all questions
2 arising under writs directed to courts of inferior
3 jurisdiction and returnable before the supreme court,
4 or if the supreme court consents to receive the case
5 arising under writs of mandamus directed to public
6 officers to compel them to fulfill the duties of their
7 offices; and [~~such~~] any other original jurisdiction as
8 may be expressly conferred by law;
- 9 (4) To issue writs of habeas corpus, or orders to show
10 cause as provided by chapter 660, returnable before
11 the supreme court or a circuit court, and any justice
12 may issue writs of habeas corpus or [~~such~~] any orders
13 to show cause, returnable as above stated;
- 14 (5) To make or issue any order or writ necessary or
15 appropriate in aid of its jurisdiction, and in [~~such~~]
16 that case, any justice may issue a writ or an order to
17 show cause returnable before the supreme court; [~~and~~]
- 18 (6) To make and award [~~such~~] any judgments, decrees,
19 orders, and mandates, issue [~~such~~] any executions and
20 other processes, and do [~~such~~] any other acts and take
21 [~~such~~] any other steps as may be necessary to carry



1 into full effect the powers [~~which~~] that are or shall
2 be given to it by law or for the promotion of justice
3 in matters pending before it ~~[=]~~; and

4 (7) To issue, upon a written request by the president of
5 the senate, the speaker of the house of
6 representatives, or both, a written opinion of the
7 justices of the supreme court, or a majority thereof,
8 stating whether a proposed amendment to the Hawaii
9 State Constitution and the corresponding
10 constitutional ratification question is simple,
11 concise, and direct to the extent practicable, as
12 required by section 11-118.5; provided that:

13 (A) Within fifteen days of receipt of a written
14 request for a written opinion pursuant to this
15 paragraph, the supreme court shall render and
16 deliver a written opinion to the requester or
17 requesters;

18 (B) Any written opinion that finds that the
19 constitutional ratification question
20 corresponding to a proposed amendment to the
21 Hawaii State Constitution is not as simple,



1 concise, and direct to the extent practicable,
2 shall contain a detailed and specific explanation
3 of the reasons for such a finding; and
4 (C) Any decision established in a written opinion
5 rendered pursuant to this paragraph shall not be
6 appealable."

7 SECTION 3. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun before its effective date.

10 SECTION 4. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 5. This Act shall take effect upon its approval.



S.B. NO. 2347
S.D. 1
H.D. 1
C.D. 1


APPROVED this day of , 2022


GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI'I

Date: May 3, 2022
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate
of the Thirty-First Legislature of the State of Hawai'i, Regular Session of 2022.


President of the Senate


Clerk of the Senate

SB No. 2347, SD 1, HD 1, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 03, 2022
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2022.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives