

JAN 20 2023

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.

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

1 SECTION 1. The legislature finds that the Hawaii State
2 Constitution currently requires a justice who wants to be
3 retained in office to petition the judicial selection commission
4 to be retained in office at least six months prior to the
5 expiration of the justice's term of office. If the judicial
6 selection commission determines that the justice should be
7 retained in office, the judicial selection commission is
8 authorized by the Hawaii State Constitution to renew the
9 justice's term. Thus, unlike the initial appointment of a
10 justice, consent of the senate is not currently required to
11 renew a justice's term.

12 The legislature also finds that the process used by the
13 judicial selection commission to determine whether a justice
14 should be retained in office is conducted in private and is
15 final and not appealable. The legislature believes that to
16 promote transparency in the judicial retention process, the



1 senate should have the power to consent to or reverse the
2 decision of the judicial selection commission regarding the
3 retention of a justice.

4 The legislature further finds that the senate consent
5 provisions of the Hawaii State Constitution relating to the
6 appointment of district court judges are incongruous to those
7 relating to supreme court justices and intermediate court of
8 appeals and circuit court judges. In the case of supreme court
9 justices and intermediate court of appeals and circuit court
10 judges, if the senate fails to reject an initial appointment to
11 these courts within thirty days of receiving the appointment
12 notice, the appointee is automatically considered appointed to
13 the judicial position. For district court judgeship appointees,
14 the exact opposite occurs. The appointee is automatically
15 considered rejected if not consented to by the senate within
16 thirty days of receipt of the district court judgeship
17 appointment. Furthermore, unlike in the case of appointments to
18 the supreme court, intermediate court of appeals, and circuit
19 court where the holding of a public hearing on an appointment is
20 optional, the senate is constitutionally mandated to conduct a
21 public hearing for a district court nominee, regardless of



1 whether the appointment occurs during the regular session or the
2 interim period between regular sessions.

3 The purpose of this Act is to propose amendments to article
4 VI, section 3, of the Hawaii State Constitution to:

5 (1) Change the required time frame from thirty to ninety
6 days for certain processes to appoint and consent to a
7 justice's or judge's appointment;

8 (2) Harmonize the senate consent provisions for district
9 court judgeship nominees to mirror the senate consent
10 provisions relating to supreme court justices and
11 intermediate court of appeals and circuit court
12 judges; and

13 (3) Authorize the senate to approve or reject subsequent
14 terms of office for a supreme court justice.

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

17 **"APPOINTMENT OF JUSTICES AND JUDGES**

18 **Section 3.** The governor, with the consent of the senate,
19 shall fill a vacancy in the office of the chief justice, supreme
20 court, intermediate appellate court and circuit courts, by
21 appointing a person from a list of not less than four, and not



1 more than six, nominees for the vacancy, presented to the
2 governor by the judicial selection commission.

3 If the governor fails to make any appointment within
4 [~~thirty~~] ninety days of presentation, or within ten days of the
5 senate's rejection of any previous appointment, the appointment
6 shall be made by the judicial selection commission from the list
7 with the consent of the senate. If the senate fails to reject
8 any appointment within [~~thirty~~] ninety days thereof, it shall be
9 deemed to have [~~given its consent~~] consented to [~~such~~] the
10 appointment. If the senate [~~shall reject~~] rejects any
11 appointment, the governor shall make another appointment from
12 the list within ten days thereof. The same appointment and
13 consent procedure shall be followed until a valid appointment
14 has been made, or failing this, the judicial selection
15 commission shall make the appointment from the list, without
16 senate consent.

17 The chief justice, with the consent of the senate, shall
18 fill a vacancy in the district courts by appointing a person
19 from a list of not less than six nominees for the vacancy
20 presented by the judicial selection commission. If the chief
21 justice fails to make [~~the~~] any appointment within [~~thirty~~]



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1 ninety days of presentation, or within ten days of the senate's
 2 rejection of any previous appointment, the appointment shall be
 3 made by the judicial selection commission from the list with the
 4 consent of the senate. [~~The senate shall hold a public hearing~~
 5 ~~and vote on each appointment within thirty days of any~~
 6 ~~appointment. If the senate fails to do so, the nomination shall~~
 7 ~~be returned to the commission and the commission shall make the~~
 8 ~~appointment from the list without senate consent. The chief~~
 9 ~~justice shall appoint per diem district court judges as provided~~
 10 ~~by law.] If the senate fails to reject any appointment within
 11 ninety days thereof, it shall be deemed to have consented to the
 12 appointment. If the senate rejects any appointment, the chief
 13 justice shall make another appointment from the list within ten
 14 days thereof. The same appointment and consent procedure shall
 15 be followed until a valid appointment has been made, or failing
 16 this, the judicial selection commission shall make the
 17 appointment from the list, without senate consent.~~

18 The judicial selection commission shall disclose to the
 19 public the list of nominees for each vacancy concurrently with
 20 the presentation of each list to the governor or the chief
 21 justice, as applicable.



1 inform the commission of an intention to retire. If the
2 judicial selection commission determines that the [~~justice or~~]
3 judge should be retained in office, the commission shall renew
4 the term of office of the [~~justice or~~] judge for the period
5 provided by this section or by law.

6 For justices, within ninety days of receiving a retention
7 petition, the commission shall determine whether the justice
8 should be retained and issue a recommendation to either approve
9 or reject the retention petition. Upon conclusion of the
10 commission's proceedings to determine whether a justice should
11 be retained for another term, the commission shall immediately
12 transmit written notice of the commission's recommendation and a
13 copy of the retention petition to the senate. Within ninety
14 days of receiving the commission's recommendation and the copy of
15 the retention petition, the senate may vote to consent to or
16 reject the petition. If the senate consents to or fails to
17 reject the retention petition during the specified period, the
18 justice shall be retained for another term or until the justice
19 is no longer qualified to serve in the respective office. If
20 the senate fails to vote on a retention petition within the
21 specified time period, or prior to the expiration of the



1 justice's current term of office, whichever occurs earlier, the
2 commission's determination shall be deemed final.

3 Justices and judges shall be retired upon attaining the age
4 of seventy years. They shall be included in any retirement law
5 of the State."

6 SECTION 3. The question to be printed on the ballot shall
7 be as follows:

8 "Should the process to appoint, consent to, and retain a
9 justice or judge for a term of office be amended to:

- 10 (1) Extend certain time periods relating to appointment
11 and consideration of a justice's or judge's
12 appointment from thirty to ninety days;
- 13 (2) Harmonize the senate consent procedures for district
14 court judgeship nominees so that these procedures
15 mirror the senate consent procedures relating to
16 supreme court justices and intermediate court of appeals
17 and circuit court judges; and
- 18 (3) Authorize the senate to approve or reject the
19 retention of a supreme court justice for a subsequent
20 term of office?"



1 SECTION 4. Constitutional material to be repealed is
2 bracketed and stricken. New constitutional material is
3 underscored.

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

7

INTRODUCED BY: 



S.B. NO. 1074

Report Title:

Constitutional Amendment; Justices; Judges; Judicial Retention; Consent; Senate Consent Procedures; Senate; Term Renewals; Constitutional Amendment; Constitution

Description:

Proposes amendments to the Constitution of the State of Hawaii relating to the appointment and retention of justices and judges. Authorizes the Senate to approve or reject subsequent terms of office for supreme court justices. Changes the required time frames from 30 to 90 days for the process to appoint and consent to a justice or judge. Harmonizes the Senate consent procedures for district court judgeship nominees to mirror the Senate consent procedures relating to supreme court justices and intermediate court of appeals and circuit court judges.

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

