

ACT 210

H. B. NO. 8

A Bill for an Act Relating to Retirement and Removal of Justices and Judges.

Be It Enacted by the Legislature of the State of Hawaii:

PART I**COMMISSION FOR JUDICIAL QUALIFICATION**

SECTION 1. Commission for judicial qualification established; composition. There is established within the office of the governor for administrative purposes only a commission to be known as the Commission for Judicial Qualification. The commission shall consist of five members to be appointed by the governor, subject to confirmation by the state senate, from a panel of ten persons who shall be nominated by the judicial council. Each member shall have been a citizen of the United States and a resident of the State of Hawaii for at least five years next preceding his appointment.

The chairman of the commission shall be appointed by the governor. The term of each member shall be four years, provided that of the five members initially appointed, two members shall hold office for two years, two members for three years and one member for four years. No person shall be appointed consecutively to more than two terms as a member of the commission. Vacancies shall be filled for the remainder of any unexpired term in the same manner as original appointments except that the judicial council shall nominate two persons for each vacancy.

SECTION 2. Duties of commission; complaint, hearing, determination. The commission shall have the following powers and duties:

(1) It shall initiate, receive and consider charges concerning alleged misconduct or incapacity of a supreme court justice or a circuit court judge.

(2) It may subpoena witnesses, administer oaths and take testimony relating to matters before the commission.

SECTION 3. Commission procedure. (a) Any charges concerning a justice or judge must be in writing, signed by the person making the charge under oath, except that any charge initiated by the commission must be signed by at least two members of the commission. The commission may notify in writing every justice or judge against whom a charge is received and afford him an op-

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portunity to explain the alleged charges. The commission shall investigate all charges on a confidential basis, having available all the powers herein provided, and proceedings shall not be public. If a majority of the members of the commission determine that there is probable cause for belief that a justice or judge appears to be so incapacitated as substantially to prevent him from performing his judicial duties or has acted in a manner that constitutes wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute, the commission shall certify its findings to the governor within thirty days after such determination.

(b) Any commission member or individual, including the individual making the charge, who divulges information concerning the charge prior to the certification of the charge by the commission to the governor, or if the investigation discloses that the certification should not be issued by the commission, at any time divulges any information concerning the original charge, or divulges the contents or disclosures, except as permitted by this Act, shall be guilty of a felony which shall be punishable by a fine of not more than \$5,000 or imprisonment of not more than five years, or both.

PART II

BOARD OF JUDICIAL REMOVAL

SECTION 4. Board of judicial removal; composition.

The governor upon receipt of the commission's certification of its findings shall appoint a board to adjudicate the charge. The board shall consist of three members appointed by the governor of which one member shall be the chief justice or any associate justice as designated by the governor who shall act as chairman of the board.

SECTION 5. Board procedure. (a) The board shall conduct hearings. It may subpoena witnesses, administer oaths and take testimony relating to matters before the board and order the production for examination of any books or papers relative to any matter under investigation or in question before the board.

(b) The board shall set a time and place for a hearing, giving notice to the complainant and justice or judge involved. All parties shall have an opportunity (1) to be heard, (2) to subpoena witnesses and require the production of any books or papers relative to the proceedings, (3) to be represented by counsel, and (4) to have the right of cross-examination. All witnesses shall testify under oath and the hearings shall be closed to the public unless the party complained against requests an open hearing. The board shall not be bound by the strict rules of evidence but the board's findings must be based upon competent and substantial evidence.

(c) The findings and recommendations of the board shall be in writing and shall be signed by at least two members of the board. The board shall dissolve upon recommendation to the governor.

SECTION 6. Removal or retirement by governor. If the board recom-

mends that the justice or judge should not remain in office, the governor shall remove or retire him from office within thirty days after receipt of the certification of the board's findings. A justice or judge retired by the governor shall be considered to have retired voluntarily. A justice or judge removed by the governor shall be ineligible for any judicial office.

SECTION 7. Rules and regulations. All the hearings and proceedings by the commission and board shall be governed by this Act and by the rules and regulations adopted by the commission and board, respectively.

SECTION 8. No compensation. The members of the commission and the board shall serve without compensation and shall be allowed all actual and necessary expenses incurred in the performance of their duties.

SECTION 9. Staff. The commission and the board may employ and at pleasure remove such persons as it may deem necessary for the performance of its functions and fix their compensation within the amounts made available by appropriation therefor. The employees of the commission and the board shall be exempt from the provisions of chapters 3 and 4 of the Revised Laws of Hawaii 1955.

SECTION 10. Severability. If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 11. This Act shall take effect on January 1, 1970.

(Approved July 14, 1969.)