

ACT 57

S.B. NO. 1063

A Bill for an Act Relating to Legislative Vacancies.

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

SECTION 1. The legislature finds that the current method of filling vacancies in the state legislature and the United States Senate may result in an appointment that compromises the integrity of the election process or that provides ineffective representation of the district's interests. Currently, the governor appoints an individual to fill an unexpired legislative vacancy, subject only to age and residency requirements for the appointee, and membership of the appointee, at the time of appointment, in the political party of the prior incumbent.

To guarantee fairness in filling legislative vacancies, the appointment process must:

- (1) Be free of political gamesmanship or controversy;
- (2) Ensure the integrity of the legislative process; and
- (3) Provide for effective representation for the residents of the legislative district of the prior incumbent.

It is understandable that a governor may reasonably want to appoint an individual whose views on key issues are "in alignment with" the governor's positions, presumably a more difficult task when the prior incumbent was a member of a different political party than the governor. However, the present appointment process allows the governor to essentially disregard the interests of the prior incumbent's constituents and appoint an individual whose primary qualification seems to be sharing similar political opinions on key issues with the governor. An appointment based solely upon political considerations is viewed with skepticism, may seriously damage the public's trust and confidence in the legislative process, and casts an "aura of mistrust" around the appointee. The appointee becomes an ineffective advocate for constituent interests and is likely to be unproductive in the legislature. Skepticism and mistrust are even stronger when a governor is offered

and rejects a list of potential appointees deemed qualified by the political party of the prior incumbent.

The legislature further finds that the current method of filling legislative vacancies must be amended to preserve the integrity of the election process and to assure the public in general and residents of the prior incumbent's district in particular that appointments to fill legislative vacancies are not based upon political considerations or self-interest. Because state law requires the appointee to be from the same party as the prior legislator, it is reasonable and logical to direct the appropriate political party to submit to the governor a list of individuals whom the appropriate political party deems qualified to fill the vacancy and require the governor to choose the appointee from the list. The political party of the prior incumbent has a responsibility to the residents of the district to provide the governor with a list of qualified candidates who will be effective in serving the district.

In addition, the legislature finds that requiring the governor to make a timely choice from the list submitted by the appropriate political party would eliminate unnecessary delay in filling the vacancy and would ensure that residents of the prior incumbent's district are not without representation during critical legislative proceedings.

The legislature believes that requiring the political party of the prior incumbent to provide the governor with a list of qualified nominees from which to choose would not unreasonably restrict the pool of qualified candidates for the vacancy. Rather, such a process would eliminate skepticism and mistrust and increase public trust and confidence in the appurtenant process.

The purpose of this Act is to establish a process to fill legislative vacancies that is fair and timely and ensures that the legislative district of the prior incumbent is represented by an individual who is qualified to serve the interests of that district. Specifically, this Act requires the political party of a prior incumbent to submit to the governor a list of qualified candidates from which the governor is required to choose an appointee to fill the unexpired term of a legislative vacancy.

SECTION 2. Section 17-1, Hawaii Revised Statutes, is amended to read as follows:

**“§17-1 United States senator.** When a vacancy occurs in the office of United States senator, the vacancy shall be filled for the unexpired term at the following state general election<sup>[5]</sup>; provided that the vacancy occurs not later than 4:30 p.m. on the sixtieth day prior to the primary for nominating candidates to be voted for at the election; otherwise at the state general election next following. The chief election officer shall issue a proclamation designating the election for filling the vacancy. Pending the election, the governor shall make a temporary appointment to fill the vacancy ~~and the~~ by selecting a person from a list of three prospective appointees submitted by the same political party as the prior incumbent. The ~~person so appointed~~ appointee shall serve until the election and qualification of the person duly elected to fill the vacancy and shall be, at the time of appointment, and shall have been, for at least six months immediately prior to the appointment, a ~~registered~~ member of the same political party as the ~~senator causing the vacancy.~~ prior incumbent. The appointee shall be a resident of the state. If the prior incumbent was not a member of any political party, the governor shall appoint a person who is not and has not been, for at least six months immediately prior to the appointment, a member of any political party. All candidates for the unexpired term shall be nominated and elected in accordance with this title.”

SECTION 3. Section 17-3, Hawaii Revised Statutes, is amended to read as follows:

“§17-3 State senator. (a) Whenever any vacancy in the membership of the state senate occurs, the term of which ends at the next succeeding general election[; the]:

- (1) The governor shall make an appointment within sixty calendar days following the first day of vacancy to fill the vacancy for the unexpired term [and the appointee shall be of] by selecting a person from a list of three prospective appointees submitted by the same political party [or nonpartisanship] as the [person the appointee succeeds.] prior incumbent. The appointee shall be at the time of appointment, and for at least six months immediately prior to the appointment, a member of the political party. The appointee shall, at the time of appointment, be a resident of the same senate district as the prior incumbent. The political party shall submit the list of prospective appointees to the governor within thirty calendar days following the first day of vacancy; and
- (2) If the prior incumbent was not a member of any political party, the governor shall, within sixty calendar days following the first day of vacancy, appoint a person who is at the time of appointment a resident of the same senate district as the prior incumbent and who is not, and has not been for at least six months prior to the appointment, a member of any political party.

(b) In the case of a vacancy, the term of which does not end at the next succeeding general election:

- (1) If it occurs not later than on the tenth day prior to the close of filing for the next succeeding primary election, the vacancy shall be filled for the unexpired term at the next succeeding general election. The chief election officer shall issue a proclamation designating the election for filling the vacancy. All candidates for the unexpired term shall be nominated and elected in accordance with this title. Pending the election, the governor shall make a temporary appointment to fill the vacancy, and the person so appointed shall serve until the election of the person duly elected to fill the vacancy. The [appointee shall be of] governor shall make the appointment from a list of three prospective appointees submitted by the same political party [or nonpartisanship] as the [person the appointee succeeds.] prior incumbent. The appointee shall be, at the time of the appointment, and shall have been, for at least six months immediately prior to the appointment, a member of the political party. The appointee shall, at the time of appointment, be a resident of the same senate district as the prior incumbent. If the prior incumbent was not a member of any political party, the governor shall appoint a person who is at the time of appointment a resident of the same senate district as the prior incumbent and is not and has not been, for at least six months immediately prior to the appointment, a member of any political party;
- (2) If it occurs later than on the tenth day prior to the close of filing for the next succeeding primary election but not later than on the sixtieth day prior to the next succeeding primary election, or if there are no qualified candidates for any party or nonpartisan candidates qualified for the primary election ballot, nominations for the unexpired term may be filed not later than 4:30 p.m. on the fiftieth day prior to the next succeeding primary election. The chief election officer shall issue a proclamation designating the election for filling the vacancy. Pending the election the governor shall make a temporary appointment to fill the vacancy and the person [sø] appointed shall serve until the election of the person duly elected to fill the vacancy. The [appointee shall be of]

governor shall make the appointment from a list of three prospective appointees submitted by the same political party [or nonpartisanship] as the [person the appointee succeeds.] prior incumbent. The appointee shall be, at the time of the appointment, and shall have been, for at least six months immediately prior to the appointment, a member of the political party. The appointee shall, at the time of appointment, be a resident of the same senate district as the prior incumbent. If the prior incumbent was not a member of any political party, the governor shall appoint a person who is at the time of appointment a resident of the same senate district as the prior incumbent and is not and has not been, for at least six months immediately prior to the appointment, a member of any political party;

- (3) If it occurs after the sixtieth day prior to the next succeeding primary but not later than on the fiftieth day prior to the next succeeding general election, or if there are no qualified candidates for any party or nonpartisan candidates in the primary, the vacancy shall be filled for the unexpired term at the next succeeding general election. The chief election officer shall issue a proclamation designating the election for filling the vacancy. Party candidates for the unexpired senate term shall be nominated by the county committees of the parties not later than 4:30 p.m. on the fortieth day prior to the general election; nonpartisan candidates may file nomination papers for the unexpired term not later than 4:30 p.m. on the fortieth day prior to the general election with the nonpartisan candidate who is to be nominated to be decided by lot, under the supervision of the chief election officer. The candidates for the unexpired term shall be elected in accordance with this title. Pending the election, the governor shall make a temporary appointment to fill the vacancy, and the person [sø] appointed shall serve until the election of the person duly elected to fill [such] the vacancy. The [appointee shall be of] governor shall make the appointment from a list of three prospective appointees submitted by the same political party [or nonpartisanship] as the [person the appointee succeeds.] prior incumbent. The appointee shall be, at the time of the appointment, and shall have been, for at least six months immediately prior to the appointment, a member of the political party. The appointee shall, at the time of appointment, be a resident of the same senate district as the prior incumbent. If the prior incumbent was not a member of any political party, the governor shall appoint a person who is at the time of appointment a resident of the same senate district as the prior incumbent and is not and has not been, for at least six months immediately prior to the appointment, a member of any political party;
- (4) If it occurs after the fiftieth day prior to the next succeeding general election or if no candidates are nominated, the governor shall make an appointment to fill the vacancy for the unexpired term [and the appointee shall be of] by selecting a person from a list of three prospective appointees submitted by the same political party [or nonpartisanship] as the [person the appointee succeeds.] prior incumbent. The appointee shall be, at the time of the appointment, and shall have been, for at least six months immediately prior to the appointment, a member of the political party. The appointee shall, at the time of appointment, be a resident of the same senate district as the prior incumbent. If the prior incumbent was not a member of any political party, the governor shall appoint a person who is at the time of appointment a resident of the same senate district as the prior incumbent and is not and has not been,

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for at least six months immediately prior to the appointment, a member of any political party.”

SECTION 4. Section 17-4, Hawaii Revised Statutes, is amended to read as follows:

“§17-4 State representatives. (a) Whenever any vacancy in the membership of the state house of representatives occurs, the governor shall make an appointment within sixty calendar days following the first day of vacancy to fill the vacancy for the unexpired term [and the appointee shall be of] by selecting a person from a list of three prospective appointees submitted by the same political party [or nonpartisanship] as the [person the appointee succeeds.] prior incumbent. The appointee shall be, at the time of appointment, and shall have been, for at least six months immediately prior to the appointment, a member of the political party. The appointee shall, at the time of appointment, be a resident of the same state representative district as the prior incumbent. The political party shall submit the list of prospective appointees to the governor within thirty calendar days following the first day of vacancy.

(b) If the prior incumbent was not a member of any political party, the governor, within sixty calendar days following the first day of vacancy, shall appoint a person who is at the time of appointment a resident of the same state representative district as the prior incumbent and is not and has not been, for at least six months immediately prior to the appointment, a member of any political party.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Vetoed by Governor and veto overridden by Legislature on May 1, 2007.)