

JAN 18 2013

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# A BILL FOR AN ACT

PROPOSING AN AMENDMENT TO ARTICLE VI OF THE HAWAII CONSTITUTION,  
TO PROVIDE FOR ELECTED SUPREME COURT JUSTICES.

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

1           SECTION 1. Article VI, of the Constitution of the State of  
2 Hawaii is amended by adding a new section to read as follows:

3                   "ELECTION AND TERMS OF SUPREME COURT JUSTICES

4           Section 3. The justices of the supreme court shall be  
5 elected by the qualified electors of the state at large at the  
6 general state election at the times and places at which state  
7 officers are elected, unless some other time be provided by the  
8 legislature. The first election of justices of the supreme court  
9 shall be at the next election upon the adoption of this  
10 amendment to the state constitution. The election of supreme  
11 court justices shall be conducted in a wholly nonpartisan  
12 manner.

13           The justices elected thereat shall be classified by lot, so  
14 that two shall hold their office for the term of three years,  
15 two for the term of five years, and one for the term of seven  
16 years. The lot shall be drawn by the justices who shall assemble



1 and cause the result of the lot to be certified to the chief  
2 election officer, and filed in his office.

3 The supreme court shall select a chief justice from its own  
4 membership to serve for a four-year term at the pleasure of a  
5 majority of the court as prescribed by supreme court rule. The  
6 chief justice shall preside at all sessions of the supreme  
7 court."

8 After the first election, the terms of justices elected  
9 shall be six years from and after the first Monday in December  
10 next succeeding their election. No justice shall be elected to  
11 the supreme court more than twice. If a vacancy occurs in the  
12 office of the supreme court, the temporary judge assigned by the  
13 chief justice shall hold the office for the remainder of the  
14 unexpired term. A judge who temporarily serves on the supreme  
15 court for a remaining unexpired term may not be elected to the  
16 supreme court more than once.

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

19 **"APPOINTMENT OF [~~JUSTICES AND~~] JUDGES**

20 **Section [~~3~~]4.** The governor, with the consent of the  
21 senate, shall fill a vacancy in the [~~office of the chief~~  
22 ~~justice, supreme court,~~] intermediate appellate court and



1 circuit courts, by appointing a person from a list of not less  
2 than four, and not more than six, nominees for the vacancy,  
3 presented to the governor by the judicial selection commission.

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



1 any previous appointment, the appointment shall be made by the  
2 judicial selection commission from the list with the consent of  
3 the senate. The senate must hold a public hearing and vote on  
4 each appointment within thirty days of any appointment. If the  
5 senate fails to do so, the nomination shall be returned to the  
6 commission and the commission shall make the appointment from  
7 the list without senate consent. The chief justice shall appoint  
8 per diem district court judges as provided by law.

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10 **QUALIFICATIONS FOR APPOINTMENT OR ELECTION**

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12 Justices and judges shall be residents and citizens of the  
13 State and of the United States, and licensed to practice law by  
14 the supreme court. A justice of the supreme court, a judge of  
15 the intermediate appellate court and a judge of the circuit  
16 court shall have been so licensed for a period of not less than  
17 ten years preceding nomination. A judge of the district court  
18 shall have been so licensed for a period of not less than five  
19 years preceding nomination.

20 No justice or judge shall, during the term of office,  
21 engage in the practice of law, or run for or hold any ~~other~~  
22 office or position of profit under the United States, the State



1 or its political subdivisions, except for election or reelection  
2 for justice of the supreme court of Hawaii.

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**TENURE; COMPENSATION; RETIREMENT**

5

6 The term of office of [~~justices and~~] judges of the [~~supreme~~  
7 ~~court,~~] intermediate appellate court and circuit courts shall be  
8 ten years. Judges of district courts shall hold office for the  
9 periods as provided by law. At least six months prior to the  
10 expiration of a [~~justice's or~~] judge's term of office, every  
11 [~~justice and~~] judge shall petition the judicial selection  
12 commission to be retained in office or shall inform the  
13 commission of an intention to retire. If the judicial selection  
14 commission determines that the [~~justice or~~] judge should be  
15 retained in office, the commission shall renew the term of  
16 office of such [~~justice or~~] judge for the period provided by  
17 this section or by law.

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1 officers of the State. They shall be retired upon attaining the  
2 age of seventy years. They shall be included in any retirement  
3 law of the State."

4 SECTION 3. Article VI, section 4, of the Constitution of  
5 the State of Hawaii is amended to read as follows:

6 "JUDICIAL SELECTION COMMISSION

7 Section [4]5. There shall be a judicial selection  
8 commission that shall consist of nine members. The governor  
9 shall appoint two members to the commission. No more than one  
10 of the two members shall be a licensed attorney. The president  
11 of the senate and the speaker of the house of representatives  
12 shall each respectively appoint two members to the commission.  
13 The chief justice of the supreme court shall appoint one member  
14 to the commission. Members in good standing of the bar of the  
15 State shall elect two of their number to the commission in an  
16 election conducted by the supreme court or its delegate. No  
17 more than four members of the commission shall be licensed  
18 attorneys. At all times, at least one member of the commission  
19 shall be a resident of a county other than the City and County  
20 of Honolulu.

21 The commission shall be selected and shall operate in a  
22 wholly nonpartisan manner. After the initial formation of the



1 commission, elections and appointments to the commission shall  
2 be for staggered terms of six years each. Notwithstanding the  
3 foregoing, no member of the commission shall serve for more than  
4 six years on the commission.

5 Each member of the judicial selection commission shall be a  
6 resident of the State and a citizen of the United States. No  
7 member shall run for or hold any other elected office under the  
8 United States, the State or its political subdivisions. No  
9 member shall take an active part in political management or in  
10 political campaigns. No member shall be eligible for  
11 appointment to the judicial office of the State so long as the  
12 person is a member of the judicial commission and for a period  
13 of three years thereafter.

14 No act of the judicial selection commission shall be valid  
15 except by concurrence of the majority of its voting members.

16 The judicial selection commission shall select one of its  
17 members to serve as chairperson. The commission shall adopt  
18 rules which shall have the force and effect of law. The  
19 deliberations of the commission shall be confidential.

20 The legislature shall provide for the staff and operating  
21 expenses of the judicial selection commission in a separate  
22 budget. No member of the judicial selection commission shall



1 receive any compensation for commission services, but shall be  
2 allowed necessary expenses for travel, board and lodging  
3 incurred in the performance of commission duties.

4 The judicial selection commission shall be attached to the  
5 judiciary branch of the state government for purposes of  
6 administration."

7 SECTION 4. Article VI, section 5, of the Constitution of  
8 the State of Hawaii is amended to read as follows:

9 **"RETIREMENT; REMOVAL; DISCIPLINE**

10 **Section [5]6.** The supreme court shall have the power to  
11 reprimand, discipline, suspend with or without salary, retire or  
12 remove from office any justice or judge for misconduct or  
13 disability, as provided by rules adopted by the supreme court.

14 The supreme court shall create a commission on judicial  
15 discipline which shall have authority to investigate and conduct  
16 hearings concerning allegations of misconduct or disability and  
17 to make recommendations to the supreme court concerning  
18 reprimand, discipline, suspension, retirement or removal of any  
19 justice or judge."

20 SECTION 5. Article VI, section 6, of the Constitution of  
21 the State of Hawaii is amended to read as follows:

22 **"ADMINISTRATION**





1       **Section [6]7.** The chief justice of the supreme court shall  
2 be the administrative head of the courts. The chief justice may  
3 assign judges from one circuit court to another for temporary  
4 service. With the approval of the supreme court, the chief  
5 justice shall appoint an administrative director to serve at the  
6 chief justice's pleasure."

7       SECTION 6. Article VI, section 7, of the Constitution of  
8 the State of Hawaii is amended to read as follows:

9                               "RULES

10       **Section [7]8.** The supreme court shall have power to  
11 promulgate rules and regulations in all civil and criminal cases  
12 for all courts relating to process, practice, procedure and  
13 appeals, which shall have the force and effect of law."

14       SECTION 7. The question to be printed on the ballot shall  
15 be as follows:

16       "Shall the state constitution be amended to provide for  
17 nonpartisan election of supreme court justices; for the  
18 supreme court justices to serve staggered six year terms,  
19 not more than twice; and for the supreme court chief justice  
20 to be chosen by a majority of the supreme court justices?"

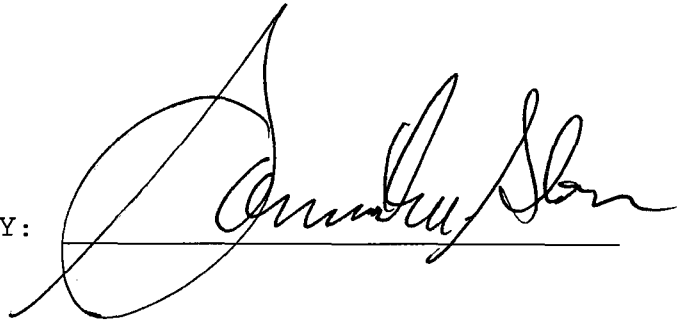


1 SECTION 8. Constitutional material to be repealed is  
2 bracketed and stricken. New constitutional material is  
3 underscored.

4 SECTION 9. This amendment shall take effect upon  
5 compliance with article XVII, section 3, of the Constitution of  
6 the State of Hawaii.

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INTRODUCED BY:

A handwritten signature in black ink, appearing to read "Anthony S. Iwama", is written over a horizontal line. The signature is cursive and extends to the right of the line.



# S.B. NO. 798

**Report Title:**

Elected Supreme Court Justices

**Description:**

Proposes an amendment to the state constitution to provide for elected supreme court justices. Creates provision for selection of chief justice; staggered limited terms; nonpartisan election; and filling vacancies on the court.

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

