

STAND. COM. REP. NO.

2665

Honolulu, Hawaii

MAR 03 2016

RE: S.B. No. 2498

Honorable Ronald D. Kouchi  
President of the Senate  
Twenty-Eighth State Legislature  
Regular Session of 2016  
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred  
S.B. No. 2498 entitled:

"A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE VI,  
SECTION 3, OF THE CONSTITUTION OF THE STATE OF HAWAII,"

begs leave to report as follows:

The purpose and intent of this measure is to propose a  
constitutional amendment to:

- (1) Require written notice to the Senate for consent to a  
judicial appointment concurrent with the Governor's,  
Chief Justice's, or Judicial Selection Commission's  
appointment of the justice or judge; and
- (2) Clarify that the Senate's thirty-day period to reject a  
judicial appointment begins on the Senate's receipt of  
written notice of the Governor's, Chief Justice's, or  
Judicial Selection Commission's appointment.

Your Committee received testimony in support of this measure  
from one individual.

Your Committee finds that this measure would clarify  
responsibilities and procedures with regard to judicial  
appointments pursuant to article VI, section 3, of the  
Constitution of the State of Hawaii. Specifically, this measure  
would seek to avoid the situation that occurred in 2012 with  
regard to the appointment of a Supreme Court justice by the  
Governor. In that situation, the Governor informed the Senate of

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the appointment thirty-two days after being presented with a list of nominees from the Judicial Selection Commission, which was two days after the expiration of the constitutionally mandated thirty-day time period. However, the appointment was deemed valid by the Attorney General under the reasoning that the Governor's initial press conference to announce the nomination occurred five days prior to the expiration of the thirty-day period and was thus determined to be an open and unequivocal act of providing notice to the Senate. Consequently, the Attorney General's determination of the date of the Governor's appointment effectively shortened the Senate's constitutionally authorized thirty days to consider the appointment.

Thus, your Committee further finds that it would be beneficial for the state constitution to be amended to clarify that written notice of a nomination must be given to the Legislature to ensure that the Senate is provided its full thirty-day period to confirm or reject a judicial nominee. Your Committee also notes that it engaged in discussions regarding whether the Senate's constitutionally mandated thirty-day period to reject a judicial appointment is sufficient for the Senate to appropriately make its decision.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2498 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Labor,

  
GILBERT S.C. KEITH-AGARAN, Chair



The Senate  
 Twenty-Eighth Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Judiciary and Labor**  
**JDL**

Bill / Resolution No.:* <b>SB 2498</b>	Committee Referral: <b>JDL</b>	Date: <b>2/10/16</b>		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <b>YMB</b> <input checked="" type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KEITH-AGARAN, Gilbert S.C. (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
GABBARD, Mike		✓		
██████████				
KIM, Donna Mercado	✓			
THIELEN, Laura H.	✓			
SLOM, Sam				✓
<b>TOTAL</b>	<b>4</b>	<b>1</b>	<b>0</b>	<b>1</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
<b>Distribution:</b> Original      Yellow      Pink      Goldenrod File with Committee Report      Clerk's Office      Drafting Agency      Committee File Copy				

\*Only one measure per Record of Votes