
A BILL FOR AN ACT

PROPOSING AN AMENDMENT TO ARTICLE VI OF THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO THE SELECTION AND RETENTION OF JUSTICES AND JUDGES.

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

1 SECTION 1. The legislature finds that according to a
2 December 2013 article for the National Center for State Courts,
3 the 1970s and 1980s marked the rise of merit selection for
4 judges. Merit selection is a commission-based appointment where
5 a nominating commission screens applicants and selects the most
6 highly qualified candidates for a judicial vacancy. An elected
7 official, usually the governor, appoints one of the recommended
8 candidates. Most merit selection plans include the use of a
9 retention election after the selected judge has served for a
10 specified period. However, there has been a trend in the last
11 decade to eliminate the merit selection of judges or alter its
12 components.

13 This recent trend of moving away from the merit selection
14 includes adopting a quasi-federal system where the executive
15 appoints, one or both houses of the legislature confirm, and the
16 judges are subject to retention elections thereafter. This type



1 of system was adopted for the Kansas Court of Appeals in 2013.
2 In 2014, the voters of Tennessee voted to adopt the Tennessee
3 Plan, a quasi-federal system, for the Tennessee Supreme Court,
4 Court of Appeals, and Court of Criminal Appeals. Furthermore,
5 there have been efforts in other states to alter the merit
6 selection system's three key components:

7 (1) The candidates for judicial office are screened by a
8 nominating commission;

9 (2) Select candidates are then submitted to the appointing
10 authority who must choose one candidate amongst them;
11 and

12 (3) The appointee is subject only to retention elections
13 for subsequent terms.

14 Lastly, happening simultaneously with moving away from merit
15 selection has been, to a lesser degree, movement toward a merit
16 or nonpartisan selection method in some states. A somewhat
17 related push involves an effort to end partisan elections and
18 move toward nonpartisan elections.

19 Hawaii has a variation of the judicial merit selection plan
20 that includes a nominating committee, but does not require
21 retention elections for subsequent judicial terms. Pursuant to



1 the Hawaii State Constitution, vacancies in the office of the
2 chief justice, supreme court, intermediate appellate court, and
3 circuit courts are appointed by the governor and vacancies in
4 the district courts are appointed by the chief justice, with the
5 consent of the senate, from a list of nominees compiled by the
6 judicial selection commission. The term of office for justices
7 and judges of the supreme court, intermediate appellate court,
8 and circuit courts are ten years while the term of office for
9 district court judges are provided by law for a term of six
10 years. Justices and judges are required to petition the
11 judicial selection commission to be retained in office. If the
12 commission determines that the justice or judge should be
13 retained, the commission is authorized to renew the justice's or
14 judge's term. Consent from the senate is not required for a
15 judicial term renewal.

16 The purpose of this Act is to propose an amendment to
17 article VI of the Constitution of the State of Hawaii to reflect
18 the growing trend of eliminating or altering the judicial merit
19 selection system by requiring justices and judges to be elected
20 to serve six-year terms and be subject to the consent of the
21 senate for subsequent judicial terms, authorizing the governor



1 and chief justice to make interim appointments for vacancies in
2 the offices of the chief justice, supreme court, intermediate
3 appellate court, and circuit courts, or district courts,
4 respectively, and repealing the judicial selection commission.

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

7 " ~~[APPOINTMENT]~~ ELECTION OF JUSTICES AND JUDGES

8 Section 3. ~~[The governor, with the consent of the senate,~~
9 ~~shall fill a vacancy in the office of the chief justice, supreme~~
10 ~~court, intermediate appellate court and circuit courts, by~~
11 ~~appointing a person from a list of not less than four, and not~~
12 ~~more than six, nominees for the vacancy, presented to the~~
13 ~~governor by the judicial selection commission.~~

14 ~~If the governor fails to make any appointment within thirty~~
15 ~~days of presentation, or within ten days of the senate's~~
16 ~~rejection of any previous appointment, the appointment shall be~~
17 ~~made by the judicial selection commission from the list with the~~
18 ~~consent of the senate. If the senate fails to reject any~~
19 ~~appointment within thirty days thereof, it shall be deemed to~~
20 ~~have given its consent to such appointment. If the senate shall~~
21 ~~reject any appointment, the governor shall make another~~



1 ~~appointment from the list within ten days thereof. The same~~
2 ~~appointment and consent procedure shall be followed until a~~
3 ~~valid appointment has been made, or failing this, the commission~~
4 ~~shall make the appointment from the list, without senate~~
5 ~~consent.~~

6 ~~The chief justice, with the consent of the senate, shall~~
7 ~~fill a vacancy in the district courts by appointing a person~~
8 ~~from a list of not less than six nominees for the vacancy~~
9 ~~presented by the judicial selection commission. If the chief~~
10 ~~justice fails to make the appointment within thirty days of~~
11 ~~presentation, or within ten days of the senate's rejection of~~
12 ~~any previous appointment, the appointment shall be made by the~~
13 ~~judicial selection commission from the list with the consent of~~
14 ~~the senate. The senate shall hold a public hearing and vote on~~
15 ~~each appointment within thirty days of any appointment. If the~~
16 ~~senate fails to do so, the nomination shall be returned to the~~
17 ~~commission and the commission shall make the appointment from~~
18 ~~the list without senate consent. The chief justice shall~~
19 ~~appoint per diem district court judges as provided by law.~~

20 ~~The judicial selection commission shall disclose to the~~
21 ~~public the list of nominees for each vacancy concurrently with~~



1 ~~the presentation of each list to the governor or the chief~~
2 ~~justice, as applicable.]~~ The justices and judges shall be
3 elected by the qualified voters of this State at a general
4 election as provided by law.

5 In the case of a vacancy in the office of the chief
6 justice, supreme court, intermediate appellate court or circuit
7 courts occurring no later than six months immediately preceding
8 the next general election, the governor shall fill the vacancy
9 with an interim appointee within thirty days of the date of
10 vacancy. The interim appointment term for the office of the
11 chief justice, supreme court, intermediate appellate court and
12 circuit courts shall expire on the date of the next general
13 election. In the case of a vacancy in the district courts
14 occurring no later than six months immediately preceding the
15 next general election, the chief justice shall fill the vacancy
16 with an interim appointee within thirty days of the date of
17 vacancy. The interim appointment term for the district courts
18 shall expire on the date of the next general election. The
19 chief justice shall appoint per diem district court judges as
20 provided by law.

21 **QUALIFICATIONS FOR [APPOINTMENT] ELECTION**



1 Justices and judges shall be residents and citizens of the
2 State and of the United States, and licensed to practice law by
3 the supreme court. A justice of the supreme court, a judge of
4 the intermediate appellate court and a judge of the circuit
5 court shall have been so licensed for a period of not less than
6 ten years preceding nomination. A judge of the district court
7 shall have been so licensed for a period of not less than five
8 years preceding nomination.

9 No justice or judge shall, during the term of office,
10 engage in the practice of law, or run for or hold any other
11 office or position of profit under the United States, the State
12 or its political subdivisions.

13 **TENURE; RETIREMENT**

14 The term of office of justices and judges of the supreme
15 court, intermediate appellate court and circuit courts shall be
16 [~~ten~~] six years. Judges of district courts shall hold office
17 for [~~the~~] periods [~~as provided by law.~~] of six years. At least
18 six months prior to the expiration of a justice's or judge's
19 term of office, every justice and judge shall petition the
20 [~~judicial selection commission~~] senate to be retained in office
21 or shall inform the [~~commission~~] senate of an intention to



1 retire. The senate shall hold a public hearing and vote to
2 consent or not consent to retention of each petitioning justice
3 or judge. If the [~~judicial selection commission~~] senate
4 determines that the justice or judge should be retained in
5 office, the [~~commission~~] senate shall renew the term of office
6 of the justice or judge for the period provided by this section
7 [~~or by law~~].

8 Justices and judges shall be retired upon attaining the age
9 of seventy years. They shall be included in any retirement law
10 of the State."

11 SECTION 3. Article VI, section 4, of the Constitution of
12 the State of Hawaii is repealed.

13 [~~"JUDICIAL SELECTION COMMISSION~~

14 ~~Section 4.~~ There shall be a judicial selection commission
15 that shall consist of nine members. The governor shall appoint
16 two members to the commission. No more than one of the two
17 members shall be a licensed attorney. The president of the
18 senate and the speaker of the house of representatives shall
19 each respectively appoint two members to the commission. The
20 chief justice of the supreme court shall appoint one member to
21 the commission. Members in good standing of the bar of the



1 ~~State shall elect two of their number to the commission in an~~
2 ~~election conducted by the supreme court or its delegate. No~~
3 ~~more than four members of the commission shall be licensed~~
4 ~~attorneys. At all times, at least one member of the commission~~
5 ~~shall be a resident of a county other than the City and County,~~
6 ~~of Honolulu.~~

7 ~~The commission shall be selected and shall operate in a~~
8 ~~wholly nonpartisan manner. After the initial formation of the~~
9 ~~commission, elections and appointments to the commission shall~~
10 ~~be for staggered terms of six years each. Notwithstanding the~~
11 ~~foregoing, no member of the commission shall serve for more than~~
12 ~~six years on the commission.~~

13 ~~Each member of the judicial selection commission shall be a~~
14 ~~resident of the State and a citizen of the United States. No~~
15 ~~member shall run for or hold any other elected office under the~~
16 ~~United States, the State or its political subdivisions. No~~
17 ~~member shall take an active part in political management or in~~
18 ~~political campaigns. No member shall be eligible for~~
19 ~~appointment to the judicial office of the State so long as the~~
20 ~~person is a member of the judicial commission and for a period~~
21 ~~of three years thereafter.~~



1 ~~No act of the judicial selection commission shall be valid~~
2 ~~except by concurrence of the majority of its voting members.~~

3 ~~The judicial selection commission shall select one of its~~
4 ~~members to serve as chairperson. The commission shall adopt~~
5 ~~rules which shall have the force and effect of law. The~~
6 ~~deliberations of the commission shall be confidential.~~

7 ~~The legislature shall provide for the staff and operating~~
8 ~~expenses of the judicial selection commission in a separate~~
9 ~~budget. No member of the judicial selection commission shall~~
10 ~~receive any compensation for commission services, but shall be~~
11 ~~allowed necessary expenses for travel, board and lodging~~
12 ~~incurred in the performance of commission duties.~~

13 ~~The judicial selection commission shall be attached to the~~
14 ~~judiciary branch of the state government for purposes of~~
15 ~~administration."]~~

16 SECTION 4. The question to be printed on the ballot shall
17 be as follows:

18 "Shall all justices and judges be elected to serve six-year
19 terms and be subject to the consent of the senate for
20 subsequent judicial terms, the governor and chief justice
21 be authorized to make interim appointments for vacancies in



H.B. NO. 2139

1 the offices of the chief justice, supreme court,
 2 intermediate appellate court, and circuit courts, or
 3 district courts, respectively, and the judicial selection
 4 commission be repealed?"

5 SECTION 5. Constitutional material to be repealed is
 6 bracketed and stricken. New constitutional material is
 7 underscored.

8 SECTION 6. This amendment shall take effect upon
 9 compliance with article XVII, section 3, of the Constitution of
 10 the State of Hawaii; provided that ratification shall take
 11 effect upon the general election of 2018.

12

INTRODUCED BY: *[Signature]*

By Request

JAN 22 2016



H.B. NO. 2139

Report Title:

Constitutional Amendment; Justices and Judges; Election; Interim Appointments; Tenure; Judicial Selection Commission

Description:

Proposes a constitutional amendment to require justices and judges be elected to serve six-year terms and be subject to the consent of the senate for subsequent judicial terms, authorize the governor and chief justice be authorized to make interim appointments for vacancies in the offices of the chief justice, supreme court, intermediate appellate court, and circuit courts, or district courts, respectively, and repeal the judicial selection commission. Ratification upon general election of 2018.

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

