

JAN 22 2016

A BILL FOR AN ACT

RELATING TO JUDICIAL ELECTIONS.

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

PART I

1
2 SECTION 1. The legislature finds that S.B. No. , Regular
3 Session of 2016, proposes an amendment to the Hawaii State
4 Constitution to require all justices and judges to be elected to
5 serve six-year terms and be subject to the consent of the senate
6 for subsequent judicial terms; authorize the governor and chief
7 justice to make interim appointments for vacancies in the
8 offices of the chief justice, supreme court, intermediate
9 appellate court, and circuit courts, or district courts,
10 respectively; and repeal the judicial selection commission.

11 The purpose of this part is to make conforming amendments
12 to carry out the requirements of S.B. No. , Regular Session of
13 2016.

14 SECTION 2. Section 603-6, Hawaii Revised Statutes, is
15 amended to read as follows:



S.B. NO. 2238

1 "§603-6 **Residence of judge.** Every judge of a circuit
2 court shall reside in the circuit for which the judge is
3 [~~appointed.~~] elected."

4 SECTION 3. Section 604-2, Hawaii Revised Statutes, is
5 amended by amending its title and subsection (a) to read as
6 follows:

7 "§604-2 ~~[Appointment]~~ **Election and tenure of district**
8 **judges; per diem district judges.** (a) ~~[The chief justice of~~
9 ~~the supreme court, with the consent of the senate, shall appoint~~
10 ~~district judges.]~~ **District judges shall be elected by the**
11 **qualified voters of this State at a general election as provided**
12 **by law.** Each judge shall reside in the judicial circuit for
13 which the judge is [~~appointed~~] elected and shall have been an
14 attorney licensed to practice in all the courts of the State for
15 at least five years. District judges shall hold office for a
16 term of six years and until their successors are elected or
17 appointed in the interim and qualified; provided that any judge
18 may be reprimanded, disciplined, suspended with or without
19 salary, relieved, or removed from office for misconduct or
20 disability, as provided by rules adopted by the supreme court."

21

PART II

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

10 Approximately twenty-two states select their state judges
11 through partisan or nonpartisan elections rather than merit
12 selection. In partisan elections, judicial candidates usually
13 run initially in a party primary to win nomination.
14 Subsequently, partisan nominees run in the general election in
15 which party affiliation is indicated on the ballot. In
16 nonpartisan elections, voters select a candidate at the polls,
17 but the names of the judicial candidates appear on the ballot
18 without party labels.

19 Proponents of judicial elections often state that the
20 public should have the opportunity to select judicial candidates
21 in open, contested elections as the public selects other



1 government officials. Furthermore, proponents argue that merit
2 selection does not eliminate politics from the selection
3 process, but instead transfers popular politics to behind-the-
4 scene political control. Lastly, proponents express concerns
5 that merit selection may exclude minorities from the bench or
6 diminish their chances of filling judicial seats.

7 Hawaii has a variation of the judicial merit selection plan
8 that includes a nominating committee, but does not require
9 retention elections for subsequent judicial terms. Pursuant to
10 the Hawaii State Constitution, vacancies in the office of the
11 chief justice, supreme court, intermediate appellate court, and
12 circuit courts are appointed by the governor and vacancies in
13 the district courts are appointed by the chief justice, with the
14 consent of the senate, from a list of nominees compiled by the
15 judicial selection commission. Justices and judges are required
16 to petition the judicial selection commission to be retained in
17 office. If the commission determines that the justice or judge
18 should be retained, the commission is authorized to renew the
19 justice's or judge's term.

20 The legislature further finds that S.B. No. , Regular
21 Session of 2016, proposes amendments to the Hawaii State



1 Constitution, to repeal the judicial selection commission and
2 require that all justices and judges be elected by the qualified
3 voters rather than appointed by the governor or chief justice
4 with the consent of the senate. However, discussion and
5 planning are necessary before repealing the State's merit
6 selection system and adopting an election process for state
7 justices and judges. Specifically, further discussion is
8 necessary to ensure that the implementation of a judicial
9 election system is carried out efficiently and effectively
10 without compromising the integrity of the election process or
11 the State's judicial system.

12 The purpose of this part is to require the judiciary,
13 office of elections, and campaign spending commission to study
14 appropriate methods of implementing a judicial election system
15 in the State and submit a written report, including proposed
16 legislation, to the legislature.

17 SECTION 5. The judiciary shall review state laws
18 applicable to justices and judges and study appropriate methods
19 of accommodating justices and judges who are elected rather than
20 appointed. Specifically, the judiciary shall:



- 1 (1) Review applicable state laws applicable to justices
2 and judges, including but not limited to chapters 571,
3 601, 602, 603, 604, and 604A, Hawaii Revised Statutes,
4 and determine the potential impact that electing,
5 rather than appointing, justices and judges may have
6 on existing laws and the judiciary;
- 7 (2) Study the judicial election laws of other
8 jurisdictions that have judicial election systems and
9 determine whether those systems may be appropriate for
10 Hawaii's judicial system;
- 11 (3) Determine appropriate methods of implementing a
12 program for the election of justices and judges,
13 including any proposed legislation; and
- 14 (4) Determine methods to implement an election program in
15 the period between the general elections of 2018 and
16 2020, if S.B. No. , Regular Session of 2016, is
17 ratified during the general election of 2018.
- 18 The judiciary shall submit a written report of its findings and
19 recommendations, including any proposed legislation, to the
20 legislature no later than twenty days prior to the convening of
21 the regular session of 2017.



1 SECTION 6. The office of elections shall review chapter
2 11, Hawaii Revised Statutes, and study appropriate methods of
3 implementing a program for the election of justices and judges.
4 Specifically, the office of elections shall:

- 5 (1) Review chapter 11, Hawaii Revised Statutes, and
6 determine the potential impact that a judicial
7 election system may have on existing election laws;
- 8 (2) Study the election laws of other jurisdictions that
9 have judicial election systems;
- 10 (3) Determine appropriate methods of implementing a
11 program for the election of justices and judges,
12 including any proposed legislation; and
- 13 (4) Determine methods to implement an election program in
14 the period between the general elections of 2018 and
15 2020, if S.B. No. , Regular Session of 2016, is
16 ratified during the general election of 2018.

17 The office of elections shall submit a written report of its
18 findings and recommendations, including any proposed
19 legislation, to the legislature no later than twenty days prior
20 to the convening of the regular session of 2017.

1 SECTION 7. The campaign spending commission shall review
2 part XIII of chapter 11, Hawaii Revised Statutes, and study
3 appropriate methods of implementing a campaign finance program
4 for judicial elections. Specifically, the campaign spending
5 commission shall:

6 (1) Review part XIII of chapter 11, Hawaii Revised
7 Statutes, and determine the potential impact that a
8 judicial election system may have on existing campaign
9 finance laws;

10 (2) Study the campaign finance laws of other jurisdictions
11 that have judicial election systems;

12 (3) Determine appropriate methods of implementing a
13 campaign finance program for judicial elections,
14 including any proposed legislation; and

15 (4) Determine methods to implement a campaign finance
16 program in the period between the general elections of
17 2018 and 2020, if S.B. No. , Regular Session of
18 2016, is ratified during the general election of 2018.

19 The campaign spending commission shall submit a written report
20 of its findings and recommendations, including any proposed



1 legislation, to the legislature no later than twenty days prior
2 to the convening of the regular session of 2017.

3 SECTION 8. In the course of discussion and study, the
4 judiciary, office of elections, and campaign spending commission
5 may consult and collaborate to determine appropriate methods of
6 implementing a judicial election system in the State.

7 PART III

8 SECTION 9. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 10. This Act shall take effect upon its approval;
11 provided that part I of this Act shall take effect upon its
12 approval and upon ratification of a constitutional amendment
13 requiring all justices and judges to be elected to serve six-
14 year terms and be subject to the consent of the senate for
15 subsequent judicial terms, authorizing the governor and chief
16 justice to make interim appointments for vacancies in the
17 offices of the chief justice, supreme court, intermediate
18 appellate court, and circuit courts, or district courts,
19 respectively, and repealing the judicial selection commission.

20

INTRODUCED BY:

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Clarence Mitchell



S.B. NO. 2238

Michelle Anderson
Francis R. Brown



S.B. NO. 2238

Report Title:

Elections; Judges; Judiciary; Office of Elections; Campaign Spending Commission

Description:

Makes conforming amendments to implement a constitutional amendment that establishes judicial elections. Requires the judiciary, office of elections, and campaign spending commission to study appropriate methods of implementing a judicial election system in the State and submit a written report, including proposed legislation, to the legislature.

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

