A BILL FOR AN ACT

PROPOSING AMENDMENTS TO ARTICLE VI OF THE CONSTITUTION OF THE STATE OF HAWAII TO AMEND THE MANNER IN WHICH JUSTICES AND JUDGES ARE APPOINTED, CONSENTED TO, AND RETAINED.

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

SECTION 1. The legislature finds that the Constitution of the State of Hawaii currently requires a justice or judge to petition the judicial selection commission to be retained in office at least six months prior to the expiration of the justice's or judge's term of office. If the judicial selection commission determines that the justice or judge should be retained in office, the judicial selection commission is authorized by the Hawaii State Constitution to renew the justice's or judge's term. Thus, unlike the initial appointment of a justice or judge, consent of the senate is not currently required to renew a justice's or judge's term.

The legislature also finds that the process used by the judicial selection commission to determine whether a justice or judge should be retained takes place in private, and its decisions are final and not appealable. The legislature believes that to promote transparency in the judicial retention process, the senate
should have the power to consent to or reverse the decision of the
judicial selection commission regarding the retention of a justice
or judge.

The legislature further finds that the senate consent
provisions of the Hawaii State Constitution relating to the
appointment of district court judges are incongruous to those
relating to supreme court justices and intermediate court of
appeals and circuit court judges. In the case of supreme court
justices and intermediate court of appeals and circuit court
judges, if the senate fails to reject an initial appointment to
these courts within thirty days of receiving the appointment
notice, the appointee is automatically considered appointed to the
judicial position. For district court judgeship appointees, the
exact opposite occurs. The appointee is automatically considered
rejected if not consented to by the senate within thirty days of
receipt of the district court judgeship appointment. Furthermore,
unlike in the case of appointments to the supreme court,
intermediate court of appeals, and circuit court where the holding
of a public hearing on an appointment is optional, the senate is
constitutionally mandated to conduct a public hearing for a
district court nominee, regardless of whether the appointment
occurs during the regular session or the interim period between regular sessions.

The purpose of this Act is to propose amendments to article VI, section 3, of the Constitution of the State of Hawaii to:

(1) Change the required time frame from thirty to ninety days for certain processes to appoint and consent to a justice's or judge's appointment;

(2) Harmonize the senate consent provisions for district court judgeship nominees to mirror the senate consent provisions relating to supreme court justices and intermediate court of appeals and circuit court judges; and

(3) Authorize the senate to approve or reject subsequent terms of office for a justice or judge.

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

"APPOINTMENT OF JUSTICES AND JUDGES

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

If the governor fails to make any appointment within
[thirty] ninety days of presentation, or within ten days of the
senate's rejection of any previous appointment, the appointment
shall be made by the judicial selection commission from the list
with the consent of the senate. If the senate fails to reject
any appointment within [thirty] ninety days thereof, it shall be
deemed to have [given its consent] consented to [such] the
appointment. If the senate [shall reject] rejects any
appointment, the governor shall make another appointment from
the list within ten days thereof. The same appointment and
consent procedure shall be followed until a valid appointment
has been made, or failing this, the judicial selection
commission shall make the appointment from the list, without
senate consent.

The chief justice, with the consent of the senate, shall
fill a vacancy in the district courts by appointing a person
from a list of not less than six nominees for the vacancy
presented by the judicial selection commission. If the chief
justice fails to make [the] any appointment within [thirty]
ninety days of presentation, or within ten days of the senate's rejection of any previous appointment, the appointment shall be made by the judicial selection commission from the list with the consent of the senate. [The senate shall hold a public hearing and vote on each appointment within thirty days of any appointment. If the senate fails to do so, the nomination shall be returned to the commission and the commission shall make the appointment from the list without senate consent.] If the senate fails to reject any appointment within ninety days thereof, it shall be deemed to have consented to the appointment. If the senate rejects any appointment, the chief justice shall make another appointment from the list within ten days thereof. The same appointment and consent procedure shall be followed until a valid appointment has been made, or failing this, the judicial selection commission shall make the appointment from the list, without senate consent.

The chief justice shall appoint per diem district court judges as provided by law.

The judicial selection commission shall disclose to the public the list of nominees for each vacancy concurrently with
the presentation of each list to the governor or the chief
cjustice, as applicable.

QUALIFICATIONS FOR APPOINTMENT

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

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

TENURE; RETENTION AND RETIREMENT

The term of office of justices and judges of the supreme
court, intermediate appellate court and circuit courts shall be
ten years. Judges of district courts shall hold office for the
periods as provided by law. [At least six] Between twelve and
nine months prior to the expiration of a justice's or judge's
term of office, every justice and judge shall petition the judicial selection commission to be retained in office or shall inform the judicial selection commission of an intention to retire. [If the judicial selection commission determines that the justice or judge should be retained in office, the commission shall renew the term of office of the justice or judge for the period provided by this section or by law.]

Within ninety days of receiving a retention petition, the judicial selection commission shall determine whether the justice or judge should be retained and issue a recommendation to either approve or reject the retention petition. Upon conclusion of the judicial selection commission's proceedings to determine whether a justice or judge should be retained for another term, the judicial selection commission shall immediately transmit written notice of its determination and a copy of the retention petition to the senate. Within ninety days of receiving the judicial selection commission's determination and the copy of the retention petition, the senate may vote to consent to or reject the petition. If the senate consents to or fails to reject the retention petition during the specified period, the justice or judge shall be retained for
another term or until the justice or judge is no longer qualified to serve in the respective office. If the senate fails to vote on a retention petition within the specified time period, or prior to the expiration of the justice's or judge's current term of office, whichever occurs earlier, the judicial selection commission's determination shall be deemed final.

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

SECTION 3. The question to be printed on the ballot shall be as follows:

"Should the process to appoint, consent to, and retain a justice or judge for a term of office be amended to:

(1) Extend certain time periods relating to appointment and consideration of a justice's or judge's appointment from thirty to ninety days;

(2) Harmonize the senate consent procedures for district court judgeship nominees so that these procedures mirror the senate consent procedures relating to supreme court justices and intermediate court of appeals and circuit court judges; and
(3) Authorize the senate to approve or reject the retention of a justice or judge for a subsequent term of office?"

SECTION 4. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

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

INTRODUCED BY: [Signature]

By Request
Report Title:
Constitutional Amendment; Justices; Judges; Senate Consent Procedures; Term Renewals

Description:
Proposes amendments to the Constitution of the State of Hawaii relating to the appointment and retention of justices and judges. Changes the required time frames from thirty to ninety days for the process to appoint and consent to a justice or judge. Harmonizes the senate consent procedures for district court judgeship nominees to mirror the senate consent procedures relating to supreme court justices and intermediate court of appeals and circuit court judges. Authorizes the senate to approve or reject subsequent terms of office for justices and judges.

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