

JAN 20 2017

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## A BILL FOR AN ACT

PROPOSING AMENDMENTS TO 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:**

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

12           The legislature also finds that the process used by the  
13 judicial selection commission to determine whether a justice or  
14 judge should be retained is made in private and is final and not  
15 appealable. The legislature believes that to promote transparency  
16 in the judicial retention process, the senate should have the power



1 to consent to or reverse the decision of the judicial selection  
2 commission regarding the retention of a justice or judge.

3 The legislature further finds that the senate consent  
4 provisions of the Hawaii State Constitution relating to the  
5 appointment of district court judges are incongruous to those  
6 relating to supreme court justices and intermediate court of  
7 appeals and circuit court judges. In the case of supreme court  
8 justices and intermediate court of appeals and circuit court  
9 judges, if the senate fails to reject an initial appointment to  
10 these courts within thirty days of receiving the appointment  
11 notice, the appointee is automatically considered appointed to the  
12 judicial position. For district court judgeship appointees, the  
13 exact opposite occurs. The appointee is automatically considered  
14 rejected if not consented to by the senate within thirty days of  
15 receipt of the district court judgeship appointment. Furthermore,  
16 unlike in the case of appointments to the supreme court,  
17 intermediate court of appeals, and circuit court where the holding  
18 of a public hearing on an appointment is optional, the senate is  
19 constitutionally mandated to conduct a public hearing for a  
20 district court nominee, regardless of whether the appointment



1 occurs during the regular session or the interim period between  
2 regular sessions.

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

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

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

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

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

17 "APPOINTMENT OF JUSTICES AND JUDGES

18 Section 3. The governor, with the consent of the senate,  
19 shall fill a vacancy in the office of the chief justice, supreme  
20 court, intermediate appellate court and circuit courts, by  
21 appointing a person from a list of not less than four, and not



1 more than six, nominees for the vacancy, presented to the  
2 governor by the judicial selection commission.

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



1 ninety days of presentation, or within ten days of the senate's  
2 rejection of any previous appointment, the appointment shall be  
3 made by the judicial selection commission from the list with the  
4 consent of the senate. [~~The senate shall hold a public hearing~~  
5 ~~and vote on each appointment within thirty days of any~~  
6 ~~appointment. If the senate fails to do so, the nomination shall~~  
7 ~~be returned to the commission and the commission shall make the~~  
8 ~~appointment from the list without senate consent.] If the  
9 senate fails to reject any appointment within ninety days  
10 thereof, it shall be deemed to have consented to the  
11 appointment. If the senate rejects any appointment, the chief  
12 justice shall make another appointment from the list within ten  
13 days thereof. The same appointment and consent procedure shall  
14 be followed until a valid appointment has been made, or failing  
15 this, the judicial selection commission shall make the  
16 appointment from the list, without senate consent.~~

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

19       The judicial selection commission shall disclose to the  
20 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.

3 **QUALIFICATIONS FOR APPOINTMENT**

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

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

16 **TENURE; RETENTION AND RETIREMENT**

17 The term of office of justices and judges of the supreme  
18 court, intermediate appellate court and circuit courts shall be  
19 ten years. Judges of district courts shall hold office for the  
20 periods as provided by law. [~~At least six~~] Between twelve and  
21 nine months prior to the expiration of a justice's or judge's



1 term of office, every justice and judge shall petition the  
2 judicial selection commission to be retained in office or shall  
3 inform the commission of an intention to retire. [~~If the~~  
4 ~~judicial selection commission determines that the justice or~~  
5 ~~judge should be retained in office, the commission shall renew~~  
6 ~~the term of office of the justice or judge for the period~~  
7 ~~provided by this section or by law.]~~

8 Within ninety days of receiving a retention petition, the  
9 commission shall determine whether the justice or judge should  
10 be retained and issue a recommendation to either approve or  
11 reject the retention petition. Upon conclusion of the  
12 commission's proceedings to determine whether a justice or judge  
13 should be retained for another term, the commission shall  
14 immediately transmit written notice of the commission's  
15 determination and a copy of the retention petition to the  
16 senate. Within ninety days of receiving the commission's  
17 determination and the copy of the retention petition, the senate  
18 may vote to consent to or reject the petition. If the senate  
19 consents to or fails to reject the retention petition during the  
20 specified period, the justice or judge shall be retained for  
21 another term or until such time as the justice or judge is no



1 longer qualified to serve in the respective office. If the  
2 senate fails to vote on a retention petition within the  
3 specified time period, or prior to the expiration of the  
4 justice's or judge's current term of office, whichever occurs  
5 earlier, the commission's determination shall be deemed final.

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

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

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

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

16 (2) Harmonize the senate consent procedures for district  
17 court judgeship nominees so that these procedures  
18 mirror the senate consent procedures relating to  
19 supreme court justices and intermediate court of appeals  
20 and circuit court judges; and



1 (3) Authorize the senate to approve or reject the  
2 retention of a justice or judge for a subsequent term  
3 of office?"

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

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

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INTRODUCED BY: ~~ANDREW G. GONZALES~~  
Jill



# S.B. NO. 673

**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. Authorizes the senate to approve or reject subsequent terms of office for 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.

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

