

# S . B. NO. 1323

JAN 22 2007

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## A BILL FOR AN ACT

PROPOSING AN AMENDMENT TO ARTICLE XVII OF THE CONSTITUTION OF  
THE STATE OF HAWAII REGARDING CHALLENGES TO CONSTITUTIONAL  
AMENDMENTS.

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

1           SECTION 1. The purpose of this Act is to propose an  
2 amendment to article XVII of the Constitution of the State of  
3 Hawaii to require that any challenge to a proposed amendment to  
4 the State Constitution be promptly filed with and decided by the  
5 Hawaii supreme court by (1) requiring such a challenge to be  
6 filed within thirty days after the adoption of the proposed  
7 amendment by the legislature or the adjournment of a  
8 constitutional convention and (2) by requiring a decision on  
9 such a challenge within thirty days of the filing.

10           The supreme court of the State of Hawaii on September 1,  
11 2005, in Taomae v. Lingle, 108 Haw. 245, invalidated a  
12 constitutional amendment proposed by the legislature during the  
13 regular session of 2004. The supreme court for the first time  
14 interpreted the phrase, "in the manner required for  
15 legislation," as it appears in section 3 of article XVII of the  
16 State Constitution and concluded that the constitutional  
17 amendment was not properly proposed by the legislature and that

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1 the constitutional amendment should not have been presented to  
2 the voters in the general election of 2004. Unfortunately, the  
3 Hawaii supreme court's invalidation of the constitutional  
4 amendment occurred ten months after the voters, by 65.6 percent  
5 of the votes cast, approved the constitutional amendment. The  
6 legislature finds that it is in the public's interest to avoid  
7 the time and expense incurred in submitting amendments to the  
8 voters that are subsequently challenged, and instead to provide  
9 a process to expeditiously resolve challenges to proposed  
10 constitutional amendments before they are submitted to the  
11 voters for ratification.

12 SECTION 2. Article XVII of the Constitution of the State  
13 of Hawaii is amended by adding a new section to be appropriately  
14 designated and to read as follows:

15 "CHALLENGES TO AMENDMENTS

16 Section . Any challenge to an amendment to the  
17 constitution, whether founded upon the procedures utilized to  
18 propose the amendment, or the language or wording of the  
19 proposed amendment, or the language or wording of the question  
20 to be printed on the ballot, or the program of voter education  
21 developed by a convention, or any other cause, must be brought  
22 within thirty days after the adoption of the amendment by the

1 legislature, or the adjournment of the constitutional  
2 convention, or be barred. Any challenge must be brought as an  
3 original proceeding in the supreme court, and must be decided by  
4 the supreme court within thirty days of when it is filed.

5 An amendment shall be valid unless the supreme court  
6 determines otherwise in the original proceeding.

7 The provisions of this section shall not apply to an  
8 election contest challenging the result of the vote on an  
9 amendment and setting forth a cause or causes including provable  
10 fraud, overages, or underages that could have caused a  
11 difference in the election result."

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

14 "Shall the Constitution of the State of Hawaii be amended  
15 to require that any challenge to a proposed amendment to  
16 the State Constitution be promptly filed with and decided  
17 by the Hawaii Supreme Court by (1) requiring such a  
18 challenge to be filed within thirty days after the adoption  
19 of the proposed amendment by the Legislature or the  
20 adjournment of a constitutional convention and (2) by  
21 requiring a decision on such a challenge within thirty days  
22 of the filing?"

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1 SECTION 4. New constitutional material is underscored.

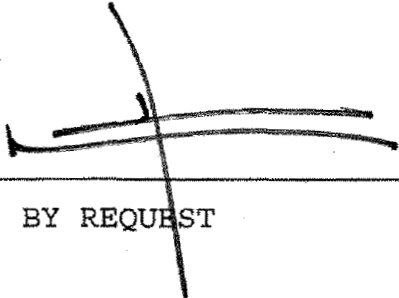
2 SECTION 5. This amendment shall take effect upon  
3 compliance with section 3 of article XVII of the Constitution of  
4 the State of Hawaii.

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INTRODUCED BY: \_\_\_\_\_

  
BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE XVII OF THE CONSTITUTION OF THE STATE OF HAWAII REGARDING CHALLENGES TO CONSTITUTIONAL AMENDMENTS.

PURPOSE: To require that any challenge to a proposed amendment to the State Constitution be promptly filed with and decided by the Hawaii Supreme Court by (1) requiring such a challenge to be filed within thirty days after the adoption of the proposed amendment by the Legislature or the adjournment of a constitutional convention and (2) by requiring a decision on such a challenge within thirty days of the filing.

MEANS: Add a new section to article XVII of the Constitution of the State of Hawaii.

JUSTIFICATION: The Supreme Court of the State of Hawaii on September 1, 2005, in Taomae v. Lingle, 108 Haw. 245, invalidated a constitutional amendment proposed by the Legislature during the regular session of 2004. The Supreme Court for the first time interpreted the phrase, "in the manner required for legislation," as it appears in section 3 of article XVII of the State Constitution and concluded that the constitutional amendment was not properly proposed by the Legislature and that the constitutional amendment should not have been presented to the voters in the general election of 2004. Unfortunately, the Hawaii Supreme Court's invalidation of the constitutional amendment occurred ten months after the voters, by 65.6 percent of the votes cast, approved the constitutional amendment.

Impact on the public: It is in the public's interest to avoid the time and expense incurred in submitting amendments to the

voters that are subsequently challenged, and instead to provide a process to expeditiously resolve challenges to proposed constitutional amendments before they are submitted to the voters for ratification.

Impact on the department and other agencies:  
It is in the department's interest to have legal challenges to proposed constitutional amendments be made and decided promptly.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: Judiciary.

EFFECTIVE DATE: Upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.