

VETO

THE SENATE
TWENTY-FOURTH LEGISLATURE, 2007
STATE OF HAWAII

S.B. NO. 1063
S.D. 1
H.D. 1

A BILL FOR AN ACT VETO OVERRIDE

ACT No. 57
Approved: [Signature]
Dated: May 1, 2007

RELATING TO LEGISLATIVE VACANCIES.

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

1 SECTION 1. The legislature finds that the current method
2 of filling vacancies in the state legislature and the United
3 States Senate may result in an appointment that compromises the
4 integrity of the election process or that provides ineffective
5 representation of the district's interests. Currently, the
6 governor appoints an individual to fill an unexpired legislative
7 vacancy, subject only to age and residency requirements for the
8 appointee, and membership of the appointee, at the time of
9 appointment, in the political party of the prior incumbent.

10 To guarantee fairness in filling legislative vacancies, the
11 appointment process must:

- 12 (1) Be free of political gamesmanship or controversy;
- 13 (2) Ensure the integrity of the legislative process; and
- 14 (3) Provide for effective representation for the residents
15 of the legislative district of the prior incumbent.

16 It is understandable that a governor may reasonably want to
17 appoint an individual whose views on key issues are "in

1 alignment with" the governor's positions, presumably a more
2 difficult task when the prior incumbent was a member of a
3 different political party than the governor. However, the
4 present appointment process allows the governor to essentially
5 disregard the interests of the prior incumbent's constituents
6 and appoint an individual whose primary qualification seems to
7 be sharing similar political opinions on key issues with the
8 governor. An appointment based solely upon political
9 considerations is viewed with skepticism, may seriously damage
10 the public's trust and confidence in the legislative process,
11 and casts an "aura of mistrust" around the appointee. The
12 appointee becomes an ineffective advocate for constituent
13 interests and is likely to be unproductive in the legislature.
14 Skepticism and mistrust are even stronger when a governor is
15 offered and rejects a list of potential appointees deemed
16 qualified by the political party of the prior incumbent.

17 The legislature further finds that the current method of
18 filling legislative vacancies must be amended to preserve the
19 integrity of the election process and to assure the public in
20 general and residents of the prior incumbent's district in
21 particular that appointments to fill legislative vacancies are
22 not based upon political considerations or self-interest.



1 Because state law requires the appointee to be from the same
2 party as the prior legislator, it is reasonable and logical to
3 direct the appropriate political party to submit to the governor
4 a list of individuals whom the appropriate political party deems
5 qualified to fill the vacancy and require the governor to choose
6 the appointee from the list. The political party of the prior
7 incumbent has a responsibility to the residents of the district
8 to provide the governor with a list of qualified candidates who
9 will be effective in serving the district.

10 In addition, the legislature finds that requiring the
11 governor to make a timely choice from the list submitted by the
12 appropriate political party would eliminate unnecessary delay in
13 filling the vacancy and would ensure that residents of the prior
14 incumbent's district are not without representation during
15 critical legislative proceedings.

16 The legislature believes that requiring the political party
17 of the prior incumbent to provide the governor with a list of
18 qualified nominees from which to choose would not unreasonably
19 restrict the pool of qualified candidates for the vacancy.
20 Rather, such a process would eliminate skepticism and mistrust
21 and increase public trust and confidence in the appurtenant
22 process.



1 The purpose of this Act is to establish a process to fill
2 legislative vacancies that is fair and timely and ensures that
3 the legislative district of the prior incumbent is represented
4 by an individual who is qualified to serve the interests of that
5 district. Specifically, this Act requires the political party
6 of a prior incumbent to submit to the governor a list of
7 qualified candidates from which the governor is required to
8 choose an appointee to fill the unexpired term of a legislative
9 vacancy.

10 SECTION 2. Section 17-1, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§17-1 United States senator.** When a vacancy occurs in
13 the office of United States senator, the vacancy shall be filled
14 for the unexpired term at the following state general
15 election[~~7~~]; provided that the vacancy occurs not later than
16 4:30 p.m. on the sixtieth day prior to the primary for
17 nominating candidates to be voted for at the election; otherwise
18 at the state general election next following. The chief
19 election officer shall issue a proclamation designating the
20 election for filling the vacancy. Pending the election, the
21 governor shall make a temporary appointment to fill the vacancy
22 [~~and the~~] by selecting a person from a list of three prospective



1 appointees submitted by the same political party as the prior
2 incumbent. The [person so appointed] appointee shall serve
3 until the election and qualification of the person duly elected
4 to fill the vacancy and shall be, at the time of appointment,
5 and shall have been, for at least six months immediately prior
6 to the appointment, a [registered] member of the same political
7 party as the [senator causing the vacancy.] prior incumbent.
8 The appointee shall be a resident of the state. If the prior
9 incumbent was not a member of any political party, the governor
10 shall appoint a person who is not and has not been, for at least
11 six months immediately prior to the appointment, a member of any
12 political party. All candidates for the unexpired term shall be
13 nominated and elected in accordance with this title."

14 SECTION 3. Section 17-3, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§17-3 State senator.** (a) Whenever any vacancy in the
17 membership of the state senate occurs, the term of which ends at
18 the next succeeding general election[~~, the~~]:

19 (1) The governor shall make an appointment within sixty
20 calendar days following the first day of vacancy to
21 fill the vacancy for the unexpired term [and the
22 appointee shall be of] by selecting a person from a



1 list of three prospective appointees submitted by the
2 same political party [~~or nonpartisanship~~] as the
3 [~~person the appointee succeeds.~~] prior incumbent. The
4 appointee shall be at the time of appointment, and for
5 at least six months immediately prior to the
6 appointment, a member of the political party. The
7 appointee shall, at the time of appointment, be a
8 resident of the same senate district as the prior
9 incumbent. The political party shall submit the list
10 of prospective appointees to the governor within
11 thirty calendar days following the first day of
12 vacancy; and

13 (2) If the prior incumbent was not a member of any
14 political party, the governor shall, within sixty
15 calendar days following the first day of vacancy,
16 appoint a person who is at the time of appointment a
17 resident of the same senate district as the prior
18 incumbent and who is not, and has not been for at
19 least six months prior to the appointment, a member of
20 any political party.

21 (b) In the case of a vacancy, the term of which does not
22 end at the next succeeding general election:



1 (1) If it occurs not later than on the tenth day prior to
2 the close of filing for the next succeeding primary
3 election, the vacancy shall be filled for the
4 unexpired term at the next succeeding general
5 election. The chief election officer shall issue a
6 proclamation designating the election for filling the
7 vacancy. All candidates for the unexpired term shall
8 be nominated and elected in accordance with this
9 title. Pending the election, the governor shall make
10 a temporary appointment to fill the vacancy, and the
11 person so appointed shall serve until the election of
12 the person duly elected to fill the vacancy. The
13 ~~[appointee shall be of]~~ governor shall make the
14 appointment from a list of three prospective
15 appointees submitted by the same political party ~~[or~~
16 ~~nonpartisanship]~~ as the ~~[person the appointee~~
17 ~~succeeds-]~~ prior incumbent. The appointee shall be,
18 at the time of the appointment, and shall have been,
19 for at least six months immediately prior to the
20 appointment, a member of the political party. The
21 appointee shall, at the time of appointment, be a
22 resident of the same senate district as the prior



1 incumbent. If the prior incumbent was not a member of
2 any political party, the governor shall appoint a
3 person who is at the time of appointment a resident of
4 the same senate district as the prior incumbent and is
5 not and has not been, for at least six months
6 immediately prior to the appointment, a member of any
7 political party;

- 8 (2) If it occurs later than on the tenth day prior to the
9 close of filing for the next succeeding primary
10 election but not later than on the sixtieth day prior
11 to the next succeeding primary election, or if there
12 are no qualified candidates for any party or
13 nonpartisan candidates qualified for the primary
14 election ballot, nominations for the unexpired term
15 may be filed not later than 4:30 p.m. on the fiftieth
16 day prior to the next succeeding primary election.
17 The chief election officer shall issue a proclamation
18 designating the election for filling the vacancy.
19 Pending the election the governor shall make a
20 temporary appointment to fill the vacancy and the
21 person [se] appointed shall serve until the election
22 of the person duly elected to fill the vacancy. The



1 ~~[appointee shall be of]~~ governor shall make the
2 appointment from a list of three prospective
3 appointees submitted by the same political party [~~or~~
4 nonpartisanship] as the [~~person the appointee~~
5 succeeds.] prior incumbent. The appointee shall be,
6 at the time of the appointment, and shall have been,
7 for at least six months immediately prior to the
8 appointment, a member of the political party. The
9 appointee shall, at the time of appointment, be a
10 resident of the same senate district as the prior
11 incumbent. If the prior incumbent was not a member of
12 any political party, the governor shall appoint a
13 person who is at the time of appointment a resident of
14 the same senate district as the prior incumbent and is
15 not and has not been, for at least six months
16 immediately prior to the appointment, a member of any
17 political party;

- 18 (3) If it occurs after the sixtieth day prior to the next
19 succeeding primary but not later than on the fiftieth
20 day prior to the next succeeding general election, or
21 if there are no qualified candidates for any party or
22 nonpartisan candidates in the primary, the vacancy



1 shall be filled for the unexpired term at the next
2 succeeding general election. The chief election
3 officer shall issue a proclamation designating the
4 election for filling the vacancy. Party candidates
5 for the unexpired senate term shall be nominated by
6 the county committees of the parties not later than
7 4:30 p.m. on the fortieth day prior to the general
8 election; nonpartisan candidates may file nomination
9 papers for the unexpired term not later than 4:30 p.m.
10 on the fortieth day prior to the general election with
11 the nonpartisan candidate who is to be nominated to be
12 decided by lot, under the supervision of the chief
13 election officer. The candidates for the unexpired
14 term shall be elected in accordance with this title.
15 Pending the election, the governor shall make a
16 temporary appointment to fill the vacancy, and the
17 person ~~[ee]~~ appointed shall serve until the election
18 of the person duly elected to fill ~~[such]~~ the vacancy.
19 The ~~[appointee shall be of]~~ governor shall make the
20 appointment from a list of three prospective
21 appointees submitted by the same political party ~~[or~~
22 nonpartisanship] as the ~~[person the appointee~~



1 ~~succeeds.]~~ prior incumbent. The appointee shall be,
2 at the time of the appointment, and shall have been,
3 for at least six months immediately prior to the
4 appointment, a member of the political party. The
5 appointee shall, at the time of appointment, be a
6 resident of the same senate district as the prior
7 incumbent. If the prior incumbent was not a member of
8 any political party, the governor shall appoint a
9 person who is at the time of appointment a resident of
10 the same senate district as the prior incumbent and is
11 not and has not been, for at least six months
12 immediately prior to the appointment, a member of any
13 political party;

- 14 (4) If it occurs after the fiftieth day prior to the next
15 succeeding general election or if no candidates are
16 nominated, the governor shall make an appointment to
17 fill the vacancy for the unexpired term [~~and the~~
18 ~~appointee shall be of]~~ by selecting a person from a
19 list of three prospective appointees submitted by the
20 same political party [~~or nonpartisanship]~~ as the
21 [~~person the appointee succeeds.]~~ prior incumbent. The
22 appointee shall be, at the time of the appointment,



1 and shall have been, for at least six months
2 immediately prior to the appointment, a member of the
3 political party. The appointee shall, at the time of
4 appointment, be a resident of the same senate district
5 as the prior incumbent. If the prior incumbent was
6 not a member of any political party, the governor
7 shall appoint a person who is at the time of
8 appointment a resident of the same senate district as
9 the prior incumbent and is not and has not been, for
10 at least six months immediately prior to the
11 appointment, a member of any political party."

12 SECTION 4. Section 17-4, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§17-4 State representatives.** (a) Whenever any vacancy
15 in the membership of the state house of representatives occurs,
16 the governor shall make an appointment within sixty calendar
17 days following the first day of vacancy to fill the vacancy for
18 the unexpired term [~~and the appointee shall be of~~] by selecting
19 a person from a list of three prospective appointees submitted
20 by the same political party [~~or nonpartisanship~~] as the [person
21 ~~the appointee succeeds.~~] prior incumbent. The appointee shall
22 be, at the time of appointment, and shall have been, for at



1 least six months immediately prior to the appointment, a member
2 of the political party. The appointee shall, at the time of
3 appointment, be a resident of the same state representative
4 district as the prior incumbent. The political party shall
5 submit the list of prospective appointees to the governor within
6 thirty calendar days following the first day of vacancy.

7 (b) If the prior incumbent was not a member of any
8 political party, the governor, within sixty calendar days
9 following the first day of vacancy, shall appoint a person who
10 is at the time of appointment a resident of the same state
11 representative district as the prior incumbent and is not and
12 has not been, for at least six months immediately prior to the
13 appointment, a member of any political party."

14 SECTION 5. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 6. This Act shall take effect upon its approval.

