



League of Women Voters of Hawaii
General Election 2018
State Constitutional Convention and Amendment
PROS and CONS



WHAT YOUR VOTE MEANS: A “YES” vote means you are IN FAVOR of the amendment and the State Constitution or County Charter will be changed as proposed. A “NO” vote means you are AGAINST the amendment and the State Constitution or County Charter will not be changed as proposed.

In Hawai`i, a constitutional amendment must win a majority of all votes cast on that particular proposal, AND a majority of the vote of **everyone** voting in that election. This is known as a double majority. Leave the question blank, and you voted “NO.”

State Constitutional Convention

CONSTITUTIONAL CONVENTION: "Shall there be a convention to propose a revision of or an amendment to the Constitution?"

Background: *Per Article XVII, Section I of the Hawai`i State Constitution, there are two ways to propose changes to the Constitution: (1) by proposal adopted by the state Legislature (i.e., a bill), or (2) by proposal recommended by a Constitutional Convention (commonly referred as “ConCon”). In both cases, the voters must ratify any proposed change. In other words, the proposed change will appear on a ballot and voters will decide whether the change will be made to the Constitution¹.*

Section 2 of Article XVII of the Hawai`i Constitution stipulates that a constitutional convention question must be submitted to voters automatically if it has been nine (9) years since such a question last appeared on the ballot. Therefore, the lieutenant governor submitted this question to the State Office of Elections for placement on the ballot. The 2008 General Election was the last election the question appeared on the ballot.

Like a vote on any proposed constitutional amendment, the ConCon question is **approved if both qualifications are met:**

Test 1: YES votes receive a majority of votes tallied, excluding blank and over votes

Test 2: YES votes receive at least fifty percent of the total votes cast, including blank and over votes

If the question receives a majority of votes cast in favor (blank and over votes are counted as “NO” votes), then a Hawai`i constitutional convention will be held. If the question fails, the clock resets and the question of a ConCon is not brought up until it appears on the ballot again.

If the question passes, the legislature will decide the details, such as the number of convention delegates, areas from which they will be elected, the length of the convention, the manner in which the convention will convene, and convention budget. The election of the delegates will be held at the next general election or at a special election, as determined by the legislature.

Twenty-six states and the U.S. Virgin Islands offer another method to propose constitutional amendments: citizen initiative or referendum. Initiative and referendum allow citizens to place measures on the ballot if they collect a specified level of voter signatures. The measure can then be placed on ballot for voters to approve or reject. Counties in Hawai`i allow initiative and referendum.

Only three ConCons have been held in Hawai`i: in 1950 in anticipation of Hawai`i's statehood, in 1968, and in 1978. Since 1978, the question was on the ballot in 1986, 1996 and 2008. The question failed in 1986 and 2008, but it narrowly passed in 1996. However, a ConCon was not held due to a Hawai`i Supreme Court decision that the affirmative vote had to be majority of all votes in the election, which included blanks and over votes as “NO” votes on the question.

The last ConCon in 1978 produced 35 amendments, all of which were voted into law by the electorate. Among the amendments passed were preservation of Important Agricultural Lands (IAL), creation of the Office of Hawaiian Affairs (OHA), term limits for Governor and Lt. Governor, an annual balanced budget requirement, the public trust doctrine, and collective bargaining rights. The 1978 ConCon also launched a new generation of political leaders including former Gov. John Waihee, State Senator Les Ihara, Honolulu City Councilmember Carol Fukunaga, Maui Councilmember Riki Hokama, former State Rep. Joe Souki, and former Hawaii County Mayor Helene Hale.

The 1978 ConCon had a budget of \$2.5 million, with actual expenses of \$2.032 million. The 2008 estimated costs of a ConCon ranged from \$7.5 million to \$48.8 million, depending on the number of delegates, location, duration, and the many other ConCon details.²

At a constitutional convention, proposed constitutional revisions or amendments will be determined and

¹ <http://lrbhawaii.org/par/pub/nl0918.pdf>

² <http://lrbhawaii.org/reports/legrpts/lrb/rpts08/costcon.pdf>

submitted to the Office of Elections for placement on the ballot at either a general election or a special election.

Possible changes to the constitution include: initiative, referendum and recall; automatic voter registration; permitting counties to regulate agriculture; term limits for state legislators; eliminating misleading legislative tactics such as "gut and replace"; establishing the public's right to know; legalizing recreational marijuana; allowing gambling; and decentralizing the school board.

For more information, see <http://lrbhawaii.org/par/pub/nl0918.pdf> and <https://hawaii.concon.info>. A 2-hour forum, "ConCon: To Hold or Not To Hold?", co-sponsored by the League of Women Voters of Hawai'i County and Community Forums, may be viewed at https://www.youtube.com/watch?reload=9&v=2tRvP3ciJ_o&feature=youtu.be

WHAT YOUR VOTE MEANS:

A "YES" vote means you are **IN FAVOR** of the amendment and the constitutional convention will be held as proposed.

A "NO" or **BLANK** vote means you are **AGAINST** the amendment and a constitutional convention will not be held as proposed.

SUPPORTERS SAY:

- A ConCon has the potential to introduce new ideas and redefine, restructure and streamline the role of state government.
- A ConCon is direct democracy, offering more direct citizen involvement in the decisions that govern them. A ConCon could rekindle and spark better citizen participation, and address long-ignored issues such as initiative and referendum, automatic voter registration, term limits, plain English financial reports, gambling, county regulation of agriculture, and recreational marijuana.
- Past conventions have been successful and resulted in important legislation such as collective bargaining, Office of Hawaiian Affairs, and partial public financed elections. The last Con-Con in 1978 provided a springboard for a new generation of political leaders.
- The cost of a ConCon is small relative to the \$7.4 billion state budget.

OPPONENTS SAY:

- A ConCon is expensive, time-consuming, and is no guarantee that anything will be accomplished.
- Big money in politics could hijack the ConCon process, from election of delegates to ratification of amendments.
- Hawaii's constitution already reflects the progressive values of its people including the public trust doctrine, conservation and environmental protections, collective bargaining, and Native Hawaiian rights. A ConCon funded by special interests could overturn many of these rights.
- Hawai'i's low voter turnout means a minority will make decisions for the majority.
- 2018 is not 1978. An increasingly polarized electorate could result in a gridlocked ConCon, creating a huge waste of time and money.

General Election ♦ Tuesday, November 6, 2018 ♦ polls open 7 a.m. to 6 p.m.
 October 9 Last day to register to vote
 October 30 Last day to request an absentee ballot
 October 23 – November 3 Period for early walk-in voting-in-person

State Constitutional Amendment

CON AMEND: Relating to Public Education and Investment Property: "Shall the legislature be authorized to establish, as provided by law, a surcharge on investment real property to be used to support public education?"

Background: *The proposed constitutional amendment would change Article VIII Section 3 (Local Government - Taxation and Finance) and Article X Section 1 (Public Education) of the Hawai'i Constitution to authorize the legislature to add a "surcharge" (i.e., tax) on investment real property. The funds generated by the tax would be dedicated to support public education.*

*At the general election, the question is **approved if both qualifications are met:***

- **Test 1: YES votes receive a majority of votes tallied, excluding blank and over votes**
- **Test 2: YES votes receive at least fifty percent of the total votes cast, including blank and over votes**

Unlike public education elsewhere in the U.S., the State of Hawai'i is responsible for its public education system, which serves approximately 180,000 students in grades K-12. The state Department of Education's Fiscal Year 2019 budget is nearly \$2 billion, of which 81% comes from the general funds of the State (total FY19 = \$7.4 billion).³

Currently, Article VIII Section 3 of the Hawai'i Constitution provides the State with all taxing authority, with the exception of the real property tax, which "... shall be exercised exclusively by the counties..." The county's sole authority to tax real property has been in the state Constitution since 1978. The purpose of the amendment was to support "home rule" and provide the counties with a source of revenue to carry out their responsibilities.⁴ There was also a concern that if real property tax revenue were used to support public education, the differences in property values within and among the counties, would affect the amount of revenue raised, and create inequities in funding local education programs.⁵

The State gets revenues from the state income tax, General Excise Tax, Transient Accommodations Tax, and other taxes to pay for public schools, libraries, public welfare, jails, etc.

Counties use real property tax revenues to support property-related services, such as police and fire protection, waste disposal, water and sewer, transportation and roads, and parks and recreation.⁶ Counties have other funding sources (e.g., Fuel Tax and Motor Vehicle Weight Tax, Transient Accommodations Tax, General Excise Tax surcharge), but county budgets are primarily funded by real property taxes (Kauai County 84%; Hawai'i County 76%; City and County of Honolulu 71%; and Maui County 77%).⁷

The proposed constitutional amendment lacks certain details that the state Legislature will need to pass more legislation through the regular legislative process. These details include: the amount and duration of the surcharge; defining what is "investment real property," and how the revenues will "support public education." There are no set limits (floor or ceiling) on property value, no exemption of primary residences, no specified education spending, or, as proposed in an early version of this measure, no tax on "visitor accommodations."

Supporters include: Hawai'i State Teachers Association, Hawai'i Public Charter Schools Network, Americans for Democratic Action Hawai'i, Hawai'i Alliance for Progressive Action, Progressive Democrats of Hawai'i, Oahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i, Hawai'i Appleseed Center for Law & Economic Justice, Parents for Public Schools of Hawai'i, Hui for Excellence in Education, IMUAlliance, Ka Ohana O Na Pua, Civic Education Council, Education Caucus of the Democratic Party of Hawai'i, and Hawai'i Children's Action Network.

³ https://www.hawaiipublicschools.org/DOE%20Forms/budget/LEG18Budget_FY19.pdf

⁴ Chief Clerk of the Convention, *Proceedings of the Constitutional Convention of Hawaii of 1978*, Committee of the Whole Report, Article VIII Local Government, pages 1008-9, at <https://digitalcollections.hawaii.gov/docs/concon/1978/1978%20Con%20Con%20Journal%20Vol-1%20Journal.pdf>

⁵ Mason, Janet Mason, League of Women Voters of Hawai'i, Testimony House Education Committee, April 4, 2018 at

https://www.capitol.hawaii.gov/Session2018/Testimony/SB2922_SD1_TESTIMONY_EDN_04-04-18_PDF

⁶ Machida, Wesley, Director, Department of Budget and Finance. Testimony before the Senate Committees on Judiciary and Labor, and Ways and Means, on SB683 SD1, February 28, 2017 at https://www.capitol.hawaii.gov/Session2017/Testimony/SB683_SD1_TESTIMONY_WAM-JDL_02-28-17_PDF

⁷ Miura, Lisa, Hawai'i County Real Property Tax Administrator, and Finance Director Deanna Sako, *Presentation to Hawaii County Finance Committee Relating to the Constitutional Amendment to Authorize the Legislature to Establish a Surcharge to Increase Public Education Funding*, September 4, 2018 at 26:08 minutes into the video at http://hawaiicounty.granicus.com/ViewPublisher.php?view_id=1

Opponents include: Counties of Hawai'i, Maui, Kauai and City and County of Oahu, Real Property Assessment Division of the County of Maui; Rental By Owner Awareness Association; Hawai'i Lodging & Tourism Association; Marriott Resorts Hawai'i; Aqua-Aston Hospitality, LLC; Trump International Hotel Waikiki; Real Estate Update, Inc.; Maui Hotel & Lodging Association; American Resort Development Association - Hawai'i; Kohala Coast Resort Association; Napili Kai Beach Resort; Highgate Hotels & Resorts Hawai'i; Hawai'i Association of REALTORS; Marriott International, Inc.; Highgate Hotels; and Waikiki Resort Hotel.

WHAT YOUR VOTE MEANS:

A **"YES"** vote means you are **IN FAVOR** of the amendment to authorize the Hawaii State Legislature to assess a surcharge on investment properties, with revenue from the surcharge earmarked for public education.

A **"NO"** vote means you are **AGAINST** the amendment to authorize the Hawaii State Legislature to assess a surcharge on investment properties, with revenue from the surcharge earmarked for public education.

SUPPORTERS SAY:

- *Hawaii is the only state in the U.S. that does not use property taxes to fund education.*
- *Hawaii chronically underfunds public education, resulting in overcrowded classrooms, buildings in need of repair, and cutbacks in arts, vocational education, and after school programs. At the start of the 2018-19 school year, there were over 1,000 teacher vacancies in Hawaii.*
- *Every dollar invested in our public schools is an investment in Hawaii's future.*
- *Hawaii has the lowest property taxes in the nation, enabling out-of-state buyers to purchase expensive properties for investment.*
- *The property surcharge will not take monies away from the counties.*

OPPONENTS SAY:

- *The property surcharge will not take monies away from the counties.*
- *Proposed amendment is poorly written, vague, misleading and fails to meet legal requirements to inform voters of its true impact, including the impact on county finances. There are no guarantees that the tax will be applied to second homes owned by nonresidents.*
- *Legislators could have used a state tax -- income, excise or transient accommodations (hotel) -- for more education money with no constitutional change needed. Real property tax is a constitutionally protected county-only tax.*
- *The amendment's wording allows virtually any property owner to be taxed in any amount, with no guarantee that additional funds for education would result. Also, nothing in this language stops the state legislature from using the new money as a cover to reduce existing general funds for education.*
- *Hawaii's Constitution established a single, state-wide school system, funded from general funds -- not property taxes -- to ensure an egalitarian education for all students. Schools in rural areas, whose residents at that time did not earn as much as urban residents, would have equivalent resources for education.*

NOTE: When this publication went to press, the counties of Hawai'i, Maui and Kaua'i and the City and County of Honolulu jointly filed a petition for extraordinary writ with the Hawai'i Supreme Court, asking the justices to invalidate the proposed constitutional amendment on the November ballot.⁸ The writ alleges that the constitutional amendment is misleading and deceptive, because it fails to mention that the state Legislature seeks to increase its taxing authority to impose a surcharge on investment real property. This is the second attempt by the Counties to invalidate the constitutional amendment question; a first attempt, decided against the plaintiffs, is being appealed.⁹

The League of Women Voters®, a nonpartisan, political organization, encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy.



For more election information, visit our websites
www.vote411.org and www.lwvh.org

⁸ Magin, Janice L, "Hawaii counties ask Supreme Court to invalidate prop tax ballot question," September 27, 2018 at <https://www.bizjournals.com/pacific/news/2018/09/26/hawaii-counties-ask-supreme-court-to-invalidate.html>. See the Petition for Writ at <https://www.tfhawaii.org/wordpress/wp-content/uploads/2018/08/Petition-for-Writ.pdf>

⁹ Lee, Suevon, "Judge: Property Tax Measure For Schools Can Stay On Ballot," Honolulu Civil Beat, September 7, 2018 at <https://www.civilbeat.org/2018/09/judge-property-tax-measure-for-schools-can-stay-on-ballot/>