

# **Amending the Hawaii State Constitution**

***A Citizen's Guide***

prepared by the  
House Majority Staff Office  
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## INTRODUCTION

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### THE HAWAII STATE CONSTITUTION

The Hawaii State Constitution (HSC) was adopted by the people of Hawaii on November 7, 1950. The HSC establishes the basic framework for Hawaii's representative form of government. In addition, the HSC establishes the Office of Hawaiian Affairs (OHA).

The purpose of a constitution is to provide the broad, fundamental outline, and principles of state government. Constitutional provisions are meant to endure over time. Statutes provide the details and are meant to change as the needs of the people change. For example, the HSC mandates limitations on campaign contributions but leaves the details of what these limitations should be to statutes enacted by the Legislature.

Accordingly, amending the HSC generally takes greater effort and requires more time than amending the Hawaii Revised Statutes (HRS). Statutes are amended by the Legislature, through the legislative process. The minimum time needed to amend the HRS can be as little as five days. However, it generally takes at least one session, which lasts four to five months, to pass an HRS amendment, and an additional few weeks for the amendment to be signed into law.

Revisions or amendments to the HSC may either be proposed:

- By the Legislature; or
- By a Constitutional Convention (Con Con).<sup>1</sup>

If proposed by the Legislature, the amendments must be passed in bill form and go through the entire legislative process. The amendments themselves must then be ratified by the electorate at a special or general election.<sup>2</sup> Thus, if the Legislature proposes amendments to the HSC, it would generally take eleven months or more for the amendments to be proposed and adopted.

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<sup>1</sup> HSC Art. XVII, Sec. 1 (Methods of Proposal).

<sup>2</sup> HSC Art. XVII, Sec. 2 (Constitutional Convention).

More than a year would probably be needed to revise the HSC through a Con Con, as follows:

- The Legislature must pass a bill calling for a Con Con, which will typically take about four to five months.
- The question of whether or not to hold a Con Con must then be presented to the electorate for approval.<sup>3</sup>
- Once the electorate approves the Con Con, the Legislature must adopt legislation providing for the funding, facilities, and other needs of the Con Con,<sup>4</sup> which will likely take another four to five months.
- Since delegates may not be elected at the election in which the referendum on the Con Con question is held, delegates must either be elected at a subsequent special election, or at the next scheduled regular election.<sup>5</sup>
- Delegates must then assemble, adopt rules and procedures and a code of ethics, and proceed to develop amendments.<sup>6</sup>
- The public must be given access to the text of the proposed amendments at least 30 days before the public votes on the amendments.<sup>7</sup>

Since the adoption of the original HSC in 1950, the Legislature has proposed over 50 amendments that have been ratified by the voters. In addition, the Constitution has been revised by proposals drafted by the 1968 and 1978 Con Cons.

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<sup>3</sup> HSC Art. XVII, Sec. 2 (Ratification; Appropriations).

<sup>4</sup> HSC Art. XVII, Sec. 2 (Constitutional Convention; Election of Delegates; Ratification; Appropriations).

<sup>5</sup> HSC Art. XVII, Sec. 2 (Election of Delegates).

<sup>6</sup> HSC Art. XIV (Code of Ethics); Art. XVII, Sec. 2 (Organization; Procedure).

<sup>7</sup> HSC Art. XIV, Sec. 2 (Ratification; Appropriations).

## CONSTITUTIONAL AMENDMENTS PROPOSED BY A CONSTITUTIONAL CONVENTION

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### CALLING FOR A CON CON

#### ***Legislature***

The Legislature may "submit" the following question to the electorate at any general or special election:

*"Shall there be a convention to propose a revision of or amendments to the Constitution?"<sup>8</sup>*

#### ***Lieutenant Governor***

If the Legislature does not submit the Con Con question to the electorate for a period of nine years, the Lieutenant Governor must certify the question, which is to be voted on at the next general election following the expiration of the nine-year period.<sup>9</sup>

The Con Con question was last submitted to the voters during the 1998 general election.<sup>10</sup> The nine-year period expired in 2007. In December 2007, Lieutenant Governor Duke Aiona submitted a letter to the Office of Elections, certifying that the Con Con question would be placed on the ballot for the 2008 general election.

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### APPROVING A CON CON

Voters must approve the Con Con question by a majority of the ballots cast on the Con Con question.<sup>11</sup> The HSC does not define the term "ballots cast."<sup>12</sup>

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<sup>8</sup> HSC Art. XVII, Sec. 2 (Constitutional Convention).

<sup>9</sup> HSC Art. XVII, Sec. 2 (Constitutional Convention).

<sup>10</sup> Act 131, SLH 1998.

<sup>11</sup> HSC Art. XVII, Sec. 2 (Election of Delegates).

<sup>12</sup> "Ballots cast" was defined by the Hawaii Supreme Court to include ballots in the affirmative, ballots in the negative, blank ballots, and over votes, i.e., ballots in which both affirmative and negative votes are cast. *Hawaii State AFL-CIO v. Yoshina*, 84 Haw. 374 (1997).

## **DELEGATES**

### ***Number of Delegates***

The Legislature must "provide for" the number of delegates to the Con Con.<sup>13</sup>

### ***Qualifications***

The Legislature determines the area from which delegates are elected.<sup>14</sup> Any qualified voter in the district may be elected, including legislators.<sup>15</sup>

### ***Election***

Con Con delegates are chosen by the voters at the next regular election following approval of the Con Con question, unless the Legislature provides for an earlier special election for this purpose.<sup>16</sup>

### ***Vacancies***

The Governor fills any vacancy by appointing a qualified voter from the concerned district.<sup>17</sup>

### ***Past Con Con Candidates or Delegates***

#### 1950 Con Con:

- 243 candidates ran for a seat in the 1950 Con Con.<sup>18</sup>
- A large percentage of the candidates at the 1950 elections had never before sought office, nor had they been actively identified in any way with partisan party politics.<sup>19</sup>
- 22 incumbent legislators (Hawaii Legislature) ran for a seat and 12 were elected.<sup>20</sup>
- Total elected: 63 delegates from six districts.<sup>21</sup>

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<sup>13</sup> HSC Art. XVII, Sec. 2 (Election of Delegates).

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> HSC Art. XVII, Sec. 2 (Election of Delegates).

<sup>17</sup> HSC Art. XVII, Sec. 2 (Organization; Procedure).

<sup>18</sup> *With an understanding heart: constitution making in Hawaii*, New York: National Municipal League, 1971, at 35.

<sup>19</sup> *With an understanding heart*, at 40.

<sup>20</sup> *With an understanding heart*, at 39.

<sup>21</sup> *With an understanding heart*, at 42.

### 1968 Con Con:

- 378 candidates ran for a seat in the 1968 Con Con.<sup>22</sup>
- A large percentage of the candidates at the 1968 elections had never before sought office, nor had they been actively identified in any way with partisan party politics. Nearly 70 percent of the candidates who filed reported they were political neophytes.<sup>23</sup>
- 45 incumbent legislators (Hawaii Legislature) ran for a seat and 37 were elected. They included George Ariyoshi, Nelson Doi, Frank Fasi, Patricia Saiki, and Nadao Yoshinaga.<sup>24</sup>
- More than half of the delegates were sitting legislators or ex-legislators.<sup>25</sup>
- Total elected: 82 delegates from 18 districts.<sup>26</sup>

### 1978 Con Con:

- Featured a substantial effort to educate the public by the Citizens for Con Con Education Committee. Legislators, council members, and other office holders were discouraged from running as delegates, and as a result, few did.<sup>27</sup>
- Seven delegates had held political office.
- Two delegates were incumbent legislators (Hawaii Legislature):
  - Senator Donald D.H. Ching; and
  - Senator Robert S. Taira.<sup>28</sup>
- Delegates included John Waihee and Jeremy Harris.<sup>29</sup>
- Total elected: 102 delegates from 51 districts.<sup>30</sup>

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## **DIVISION OF RESPONSIBILITIES: LEGISLATURE AND CON CON**

The Legislature is responsible for setting up the convention, must make the necessary appropriations, and may enact legislation for this purpose.<sup>31</sup>

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<sup>22</sup> *With an understanding heart*, at 35.

<sup>23</sup> *With an understanding heart*, at 40.

<sup>24</sup> *Time for a tune up*, John Van Dyke, Honolulu Advertiser, May 18, 2008.

<sup>25</sup> *Ibid.*

<sup>26</sup> *With an understanding heart*, at 42.

<sup>27</sup> *Proceedings of the Constitutional Convention of Hawaii of 1978, Vol. I, Journal and Documents* at vii.

<sup>28</sup> Based on list of delegates from *Proceedings of the Constitutional Convention of Hawaii of 1978, Vol. 1* and the list of legislators in the 1978 House and Senate Journals.

<sup>29</sup> *Time for a tune up*.

<sup>30</sup> *Proceedings of the Constitutional Convention of Hawaii of 1978, Vol. I, Journal and Documents* at vii.

<sup>31</sup> HSC Art. XVII, Sec. 2.

The HSC expressly tasks the Legislature with:

- Submitting the Con Con question to the electorate;<sup>32</sup>
- Providing the alternative of electing delegates at a special election;
- Determining the number of delegates to the convention;
- Specifying the areas from which delegates shall be elected;
- Determining the manner in which the convention shall convene;
- Providing the funding and necessary facilities and equipment for the convention;<sup>33</sup> and
- Providing by law for the responsibilities of the Con Con in educating voters about proposed revisions or amendments.<sup>34</sup>

HSC provides, by implication, that the Legislature is responsible for defining the powers and privileges of the Con Con that are not specified in the HSC.<sup>35</sup> HSC requires a Con Con to have the same powers and privileges, as nearly as practicable, as provided for in the 1978 Con Con.<sup>36</sup>

The HSC expressly gives the Con Con responsibility for:

- Determining its own organization and rules of procedure;
- Being the sole judge of the elections, returns, and qualifications of its members;
- By a two-thirds vote, suspending or removing any member for cause;<sup>37</sup>
- Determining the time and manner in which the proposed constitutional revision or amendments shall be submitted to a vote of the electorate;
- Making available for public inspection a full text of the proposed amendments, at least 30 days prior to the submission of these proposals to a vote of the electorate; and
- As provided by law, conducting a program of voter education concerning each proposed revision or amendment.<sup>38</sup>

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<sup>32</sup> HSC Art. XVII, Sec. 2 (Constitutional Convention).

<sup>33</sup> HSC Art. XVII, Sec. 2 (Election of Delegates; Ratification; Appropriations).

<sup>34</sup> HSC Art. XVII, Sec. 2 (Ratification; Appropriations).

<sup>35</sup> See the discussion in the "Con Con Powers and Privileges" section of this guide.

<sup>36</sup> HSC Art. XVII, Sec. 2 (Election of Delegates).

<sup>37</sup> HSC Art. XVII, Sec. 2 (Organization; Procedure).

<sup>38</sup> HSC Art. XVII, Sec. 2 (Ratification; Appropriations).

## **SETTING UP THE CON CON**

### ***Facilities, Equipment, and Funding***

The Legislature must provide for the facilities, equipment, and appropriations necessary for the Con Con, and may enact legislation to facilitate the Con Con.<sup>39</sup>

### ***Appropriations***

The HSC expressly requires the Legislature to appropriate funds to fulfill its responsibilities with regard to the Con Con.<sup>40</sup>

### ***Convening***

The Legislature determines the manner in which the Con Con convenes.<sup>41</sup> The Con Con must be convened not less than five months before the next regularly scheduled general election following the voters' approval.<sup>42</sup> For example, if voters approve the Con Con during the 2008 general election, the Con Con must convene not less than five months before the 2010 general election.

### ***Past Legislation to Implement the Con Con***

The Legislature passed measures to implement the 1950, 1968, and 1978 Con Cons (Act 334, SLH 1949 (Sr. E-313), Act 222, SLH 1967, and Act 17, SSLH 1977).

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## **CON CON POWERS AND PRIVILEGES**

### ***Intent of the Powers and Privileges Provision***

HSC provides that a Con Con is to have "the same powers and privileges, as nearly as practicable, as provided for the convention of 1978."<sup>43</sup> Those powers and privileges are to be granted by legislation. According to Delegate Duke T. Kawasaki, who introduced the amendment during the 1968 Con Con:

*The end effect of the amendment is to write into the Constitution, giving the next constitutional convention, its subcommittees and its delegates the right that they enjoy in this convention which is granted to them by legislative sanction or by enactment of legislation in the last session of the legislature.<sup>44</sup>*

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<sup>39</sup> HSC Art. XVII, Sec. 2 (Election of Delegates; Ratification; Appropriations).

<sup>40</sup> HSC Art. XVII, Sec. 2 (Ratification; Appropriations).

<sup>41</sup> HSC Art. XVII, Sec. 2 (Election of Delegates).

<sup>42</sup> HSC Art. XVII, Sec. 2 (Meeting).

<sup>43</sup> HSC Art. XVII, Sec. 2 (Election of Delegates).

<sup>44</sup> *Proceedings of the Constitutional Convention of Hawaii of 1968, Vol. II, Committee of the Whole Debates*, at 526.

### ***Powers and Privileges to be Preserved***

Delegate Kawasaki, who introduced the powers and privileges provision, said that the rights that the 1968 amendment sought to preserve were "comparable to the rights enjoyed by the legislative subcommittees and their members." They included:

*...the right to require testimony, to administer oaths, for that matter to issue subpoenas, if necessary, to punish members coming before subcommittees for any contempt or conduct on their part.<sup>45</sup>*

### ***1978 Con Con Powers and Privileges***

The enabling Act passed by the Legislature for the 1978 Con Con included this provision:

***Powers.*** *In addition to its inherent powers under the Constitution, the Convention may exercise the powers of the legislative committees as provided for by chapter 21, Hawaii Revised Statutes, as amended, and may appoint staff members without regard to chapters 76 and 77, Hawaii Revised Statutes, as amended, and contract for the legal and consultative services of qualified persons as it may require.*

*Officers and employees of the State shall have the same duty to the convention as prescribed by section 21-16, Hawaii Revised Statutes, with respect to legislative committees.*

Section 21-16, HRS, provides:

***§21-16 Government officer and employees to cooperate.*** *The officers and employees of the State and of each county shall cooperate with any investigating committee or committees or with their representatives and furnish to them or to their representatives such information as may be called for in connection with the research activities of the committees.<sup>46</sup>*

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## **CON CON PROCEDURES AND ORGANIZATION**

The Con Con must decide on its own organization and rules of procedure. It is the sole judge of the elections, returns, and qualifications of its members and, by a two-thirds vote, may suspend or remove any member for cause.<sup>47</sup>

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<sup>45</sup> *Proceedings of the Constitutional Convention of Hawaii of 1968, Vol. II, at 526.*

<sup>46</sup> Sec. 21-2, HRS, provides that "investigating committees" include standing and joint legislative committees.

<sup>47</sup> HSC Art. XVII, Sec. 2 (Organization; Procedure).

### **Rules of Past Con Cons**

Rules were adopted by the 1950, 1968, and 1978 Con Cons.

### **Code of Ethics**

The HSC, in Article XIV, requires the Con Con to adopt a code of ethics.<sup>48</sup> This requirement was added by the 1978 Con Con, which itself adopted a code of ethics.

The HSC requires the State Ethics Commission to administer the Con Con code of ethics.<sup>49</sup> It does so pursuant to chapter 84, HRS. Section 84-2, HRS, provides:

**Applicability.** *This chapter shall apply to every nominated, appointed, or elected officer, employee, and candidate to elected office of the State and for election to the constitutional convention, but excluding justices and judges; provided that in the case of elected delegates and employees of the constitutional convention, this chapter shall apply only to the enforcement and administration of the code of ethics adopted by the constitutional convention.*

Violations of the Con Con code of ethics are punishable only to the extent permitted by the Con Con code of ethics. Section 84-19(c), HRS, provides:

*(c) Any violation of this chapter by an employee, candidate for election to and elected delegate to the constitutional convention shall be punishable only in accordance with the code of ethics adopted by the constitutional convention.*

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## **RATIFYING CON CON AMENDMENTS**

Constitutional amendments proposed by the Con Con must be ratified by the voters.<sup>50</sup>

### **Publication**

At least 30 days before submitting the questions relating to the constitutional revisions and amendments to the voters, the full text of the proposed amendments must be made available for public inspection:

- By every public library;
- By each county clerk's office; and
- By the Chief Elections Officer.

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<sup>48</sup> HSC Art. XIV (Code of Ethics).

<sup>49</sup> Ibid.

<sup>50</sup> HSC Art. XVII, Sec. 2 (Ratification; Appropriations).

On Election Day, the full text of the proposed amendments must also be available for public inspection at every polling place.<sup>51</sup>

### ***Voter Education***

The Con Con, as provided by law, is responsible for a program of voter education concerning each proposed amendment.<sup>52</sup> This requirement was added to the HSC in 1980<sup>53</sup> and has yet to be implemented by the Legislature and a Con Con. The Conference Committee Report of this provision stated that it:

*...should provide the broad authority to give the Convention the power to provide for a voter education program and that the statutes should fill in the details of that program.*<sup>54</sup>

### ***Time and Manner of Ratification***

The Con Con decides the time and manner that the proposed constitutional revisions and amendments will be submitted to the voters.<sup>55</sup>

Each amendment must be in the form of a question embracing but one subject.<sup>56</sup> Each question must have designated spaces marked "YES" or "NO" on the amendment.<sup>57</sup>

### ***Margin by Which Ratified***

If the amendment is voted on at a general election, it must be approved by a majority of the votes tallied at the election, consisting of at least 50 percent of the total vote cast. If at a special election, it must be approved by at least 30 percent of the total number of registered voters.<sup>58</sup> The HSC does not define "votes tallied" or "total vote cast."<sup>59</sup>

### ***Conflicting Con Con and Legislatively Proposed Constitutional Amendments***

When a Con Con proposed amendment conflicts with a legislatively proposed constitutional amendment, and both are approved by the voters at the same election, the Con Con amendment prevails.<sup>60</sup>

If the Con Con offers conflicting constitutional amendments, or if the Legislature offers conflicting constitutional amendments, and both are approved by the voters at the same election, the amendment that receives the highest number of votes prevails.<sup>61</sup>

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<sup>51</sup> HSC Art. XVII, Sec. 2 (Ratification; Appropriations).

<sup>52</sup> Ibid.

<sup>53</sup> S.B. No. 1703, SLH 1980 at 965.

<sup>54</sup> 1980 Hse. Journ., Conf. Com. Rep. No. 3-80 at 1069.

<sup>55</sup> HSC Art. XVII, Sec. 2 (Ratification; Appropriations).

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> HSC Art. XVII, Sec. 2 (Ratification; Appropriations).

<sup>59</sup> Compare "ballots cast," the phrase used in connection with the vote on whether to call a Con Con in HSC Art. XVII, Sec. 2 (Election of Delegates).

<sup>60</sup> HSC Art. XVII, Sec. 5 (Conflicting Revisions or Amendments).

<sup>61</sup> Ibid.

### ***Governor May Not Veto Constitutional Amendments***

The Governor has no power to veto a constitutional amendment proposed by either a Con Con or the Legislature.<sup>62</sup> Thus, the Legislature should not couple constitutional amendments with statutory amendments in the same bill.<sup>63</sup>

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## **ISSUES ADDRESSED BY PAST CON CONS**

Hawaii has had three Con Cons, held in 1950, 1968, and 1978.

### ***Reasons for Calling the Con Cons***

The 1950 Con Con was convened when the Territory of Hawaii was lobbying to become a state. Hawaii had held Territory status since June of 1900, but Congress repeatedly failed to pass an Act enabling statehood.<sup>64</sup> The adoption of a state constitution served as a statement to the rest of the country that Hawaii was a serious and organized candidate for statehood.<sup>65</sup> The HSC was submitted to the voters at the general election of November 7, 1950, and ratified by the voters.<sup>66</sup> Hawaii was admitted into the Union under Public Law 3 of the 86<sup>th</sup> Congress, on March 18, 1959.<sup>67</sup>

The 1968 Con Con was centered around the subject of apportionment. In 1964 the reapportionment formula used for the Hawaii Legislature was found by the U.S. District Court to be in conflict with the federal constitution. To correct the problem, the court ordered, among other things, that the Legislature submit the question of whether a Con Con should be called, to the voters. In 1967 the question as to whether or not a Con Con should be held was placed on the ballot and the voters endorsed the holding of a Con Con in 1968.<sup>68</sup>

Unlike the previous two Con Cons, the 1978 Con Con was not held to lay the way for statehood or to tackle a single topic like apportionment.<sup>69</sup> It did cover many important topics and shaped the face of politics today, including:

- Limiting the Governor and Lieutenant Governor to two consecutive four-year terms;
- Creating the Judicial Selection Commission;
- Creating the Tax Review Commission;

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<sup>62</sup> HSC Art. XVII, Sec. 4 (Veto).

<sup>63</sup> See *Taomae v. Lingle*, 108 Haw. 245, 252 (2005) (Title of bill must state that the bill proposes to amend the constitution).

<sup>64</sup> *Proceedings of the Constitutional Convention of Hawaii of 1950, Vol. I, Journal and Documents* at v-vi.

<sup>65</sup> *With an Understanding Heart*, at 4.

<sup>66</sup> *Proceedings of the Constitutional Convention of Hawaii of 1950, Vol. I* at xi.

<sup>67</sup> *Ibid.*

<sup>68</sup> *With an Understanding Heart*, at 6-8; *Proceedings of the Constitutional Convention of Hawaii of 1968, Vol. I* at vii.

<sup>69</sup> See *Proceedings of the Constitutional Convention of Hawaii of 1978, Vol I* at vii.

- Creating the Council on Revenues;
- Providing a requirement for an annual balanced budget;
- Giving the counties power over real property taxation;
- Creating OHA; and
- Adopting the Hawaiian language as the official state language of Hawaii.

### ***1950 Con Con: Proposed Amendments and Issues Considered***

#### Amendments Voted On by the Electorate:

The electorate ratified the 1950 HSC proposed by the 1950 Con Con. This document was subsequently amended by the federal law admitting Hawaii into the Union, and these amendments were ratified by the electorate when Hawaii became a state in 1959.

#### Some of the Issues Considered by the 1950 Con Con:

- Initiative.
- Referendum.
- Recall.
- Appointment of judges.
- Number of members in the legislative houses.
- Reapportionment every ten years.
- Inclusion of the Hawaiian Homes Commission Act in the HSC.
- Refusing public office to any person belonging to a subversive organization.
- Apportionment of two congressional districts.
- Civil service employment.
- Decentralized school system.
- Establishing a "Commissioner of Finance" to improve budgeting procedures.
- Universal enforcement of a 40-hour work week.
- Historic preservation.

### ***1968 Con Con: Proposed Amendments and Issues Considered***

#### Amendments Voted On by the Electorate:<sup>70</sup>

- Apportionment and districting of the Legislature.
- Provisions for future reapportionment.
- Minimum representation for basic island units.

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<sup>70</sup> Italics = amendment that did not pass.

- Guarantees against unreasonable invasions of privacy.
- Allow courts to dispense with bail under certain conditions.
- Counsel for indigents.
- Payment for certain damages to private property.
- *Eighteen year old vote.*
- Voting rights of felons.
- Eliminating the literacy requirement to vote.
- Authorization for presidential preference primary.
- Minimum age of legislators.
- Legislative sessions, powers, rights, and procedures.
- Legislative compensation.
- Eligibility of Governor, compensation of Governor and Lieutenant Governor, removal of single executives and certain other officers, and resident requirement for appointed officials.
- Judicial administration, term of office, and compensation.
- State and county debt limits.
- Two year budgeting and appropriations.
- Local government, charter, and effective date.
- Collective bargaining for public employees.
- Code of ethics and disqualification for disloyalty.
- Revisions and amendments to the constitution.
- Technical, transitional, style, and other changes.

Some of the Issues Considered by the 1968 Con Con:

- Apportionment and districting of the Legislature.
- Provision for future reapportionment.
- Minimum representation for Neighbor Islands.
- Invasion of privacy.
- Dispensing with bail.
- Counsel for indigents charged with criminal offenses.
- Condemnation of private property.
- Reduction of voting age to 18 years.
- Voting rights of felons.
- Literacy as a voting requirement.
- Presidential preference primary.

- Minimum age of legislators.
- Legislative detail.
- Legislative compensation.
- Executive branch of government.
- The courts.
- Debt ceiling.
- Local government: charters.
- Collective bargaining for public employees.
- Codes of ethics: disloyalty disqualification.
- Revision and amendments to the constitution.
- Technical and transitional amendments.

***1978 Con Con: Proposed Amendments and Issues Considered***

Amendments Voted On by the Electorate:<sup>71</sup>

- Twelve member jury and civil case amount.
- Independent grand jury counsel.
- Right to privacy.
- Open primary election.
- Resignation of candidates for public office.
- Elections, partial public financing, and spending and contribution limits.
- Legislative terms, functions and procedures, and salary commission.
- Reapportionment procedures.
- Executive departments: term limits.
- Courts: judicial selection and discipline.
- State spending limit and tax refund.
- Debt limitation and exclusions.
- Special purpose revenue bonds.
- Revenues, budget, and post-audit.
- Tax review and tax conformance.
- County power to tax real property.
- Public health and welfare.
- Population growth management.

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<sup>71</sup> All proposed amendments were ratified.

- Board of Education (BOE).
- Education: Hawaiian studies.
- University Board of Regents.
- Water resources: protection and control.
- Environment and resource protection.
- Land management: agricultural land.
- Control of marine resources.
- Restrictions on nuclear energy.
- Department of Hawaiian Home Lands.
- OHA.
- Traditional and customary rights.
- Code of ethics.
- Preamble, state boundaries, and motto.
- Limits on adverse possession.
- Miscellaneous revisions.

Some of the Issues Considered by the 1978 Con Con:

GOVERNMENT SERVICES

- Population control: restrict growth, limit immigration, residency requirement for state and local jobs.
- Services for the elderly: cost of living allowance for state retirees, eliminate tax on drugs and food for elderly, more help for senior citizens.
- Welfare concerns: stricter requirements for welfare recipients, abolish welfare recipients' no-fault insurance, more humane treatment for social agencies, more food stamps, cost of living increase in salary, and day care for everybody, state funds should not be used for abortions.
- Jobs: Do something about unemployment, right to a job in the bill of rights, spend government money to provide jobs.
- Better Housing: funds for housing projects, more decent homes and living conditions, no more rent increases in Hawaii Public Housing Authority and U.S. Housing and Urban Development housing.
- Education: Retain the elected BOE, decentralize the power over the schools, local school boards, all four counties should be represented at the BOE, better quality education, more alternative schools for dropouts, more help for handicapped children, more help for Hawaiian children, offer Hawaiian language in schools, spend more money on schools.

- Control over environment.
- Spend more money for government programs.

#### CITIZENS' ACCESS TO AND PARTICIPATION IN GOVERNMENT

- Recall.
- Referendum.
- Initiative.
- Elect everyone in top government jobs.
- Elect Public Utilities Commission.

#### ELECTIONS

- Open primary.
- Limit on campaign spending.

#### CODE OF ETHICS

#### CRIME

- Punishment: Stricter penalties, mandatory sentencing, limit power of judicial branch, capital punishment, parental responsibility for actions of minors.
- Selecting judges: elect judges, panel nominates judge candidates for election, merit selection for judges, four-year term.
- Selecting AG / county prosecutors: elect AG, elect county prosecutors.
- More crime prevention: protect victims of crimes, better police protection, police should be given more authority.
- Stricter laws.
- Decriminalize marijuana.

#### EXECUTIVE

- Limit term of Governor and Lieutenant Governor to two terms.
- More responsibility for Lieutenant Governor.

#### LAND USE

- Agricultural land: greater protection of agricultural land, one goal of State to encourage self-sufficiency in agriculture, keep agricultural land zoned for a minimum of five years.
- Citizens' role in decisions about land: referendum for land use changes, people should have major voice in rezoning decisions, referendum on population growth, hold public hearings in the communities affected by land use changes, and make land studies public.

- Conservation: define and adopt "aloha aina" as state policy, greater protection of conservation land, preservation of parks.
- Public access.
- Quality growth.

#### HAWAIIAN LAND CONCERNS

- Separate dual role of chairman / director of Hawaiian Homes Commission.
- One-quarter Hawaiian blood line should qualify for Hawaiian Homestead land.
- Native claims.
- Establish guidelines for preservation of the Hawaiian heritage.

#### LEGISLATURE

- Unicameral Legislature.
- Retain bicameral Legislature.
- Split sessions.
- Roll call votes by Legislature.
- Limit terms.
- Limit office-holders to two consecutive terms.
- Legislative salary fixed in the HSC.
- Allow time for public reaction to changes in pay and benefits for legislators.
- No legislative power to vote pay raise for themselves.
- Limit on number of bills introduced by each Legislature.
- Adequate advance publicity on all proposed laws before final vote.

#### FINANCE

- Governor's power: Governor must release appropriated funds, limit Governor's control over budget.
- Taxes: hotel tax, tourist tax, tax religious property, limit amount of property tax on a person's home.
- Financial situation of state: more control of government spending, lower debt limit for State and counties, keep State solvent, operate on a balanced budget, seal government salaries, each bill should include a financial impact statement.

#### COLLECTIVE BARGAINING

- Right to strike.
- Right to collective bargaining for government employees.
- Government collective bargaining sessions should be open to the public.

- Limit right to strike.
- Limit number of days public and private employees can strike.

#### STATE / COUNTY RELATIONS

- More power to counties.
- Clarify State and county roles.
- Molokai should be a separate county.
- Each island should be a separate county.
- Incorporate municipalities.

#### BILL OF RIGHTS

- Retain bill of rights.
- Retain equal rights amendment.
- Right to freedom of choice and self-reliance in all matters of personal nature.
- Create a bill of individual rights.
- Stronger rights regarding search and seizure, wire tapping, etc.

#### APPORTIONMENT

- There should be true representation of each island and district.
- Molokai should have a delegate to the Con Con.

## AMENDMENTS PROPOSED BY THE LEGISLATURE

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### ADOPTION

The Legislature must adopt proposed constitutional amendments in the manner required for legislation, by a two-thirds vote of each house on final reading at any session.<sup>72</sup> The Legislature must also give the Governor notice of the proposed amendment in either of the following ways:

- Written notice of the final form of the proposed amendment provided at least ten days before adoption of the proposed amendment;<sup>73</sup> or
- Notice by a majority vote of each house on final reading at each of two successive sessions.<sup>74</sup>

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### RATIFICATION

#### ***Publication***

Proposed amendments adopted by the Legislature must be entered in the journals, with the ayes and noes.<sup>75</sup> Proposed amendments must be published once in each of four successive weeks in at least one newspaper of general circulation in each senatorial district where the newspaper is published, within the two months immediately preceding the next general election.<sup>76</sup>

In addition, because the conditions of and requirements for ratifying the proposed amendments are the same as for ratification of amendments proposed by a Con Con at a general election,<sup>77</sup> at least 30 days before submitting the questions relating to the constitutional revisions and amendments to the voters, the full text of the proposed amendments must be made available for public inspection:

- By every public library;
- By each county clerk's office; and
- By the Chief Elections Office.

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<sup>72</sup> HSC Art. XVII, Sec. 3 (Amendments Proposed by Legislature).

<sup>73</sup> Ibid.

<sup>74</sup> Ibid; Att. Gen. Op. 64-41.

<sup>75</sup> HSC Art. XVII, Sec. 3 (Amendments Proposed by the Legislature).

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

On Election Day, the full text of the proposed amendments must also be available for public inspection at every polling place.<sup>78</sup>

***Submitting Proposals to the Voters at the Election***

At the general election the proposed amendments must be submitted to the voters for approval on a separate ballot.<sup>79</sup>

***Governor May Not Veto Constitutional Amendments***

The Governor has no power to veto a constitutional amendment proposed by either a Con Con or the Legislature.<sup>80</sup> Thus, the Legislature should not couple constitutional amendments with statutory amendments in the same bill.<sup>81</sup>

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<sup>78</sup> HSC Art. XVII, Sec. 2 (Ratification; Appropriations).

<sup>79</sup> HSC Art. XVII, Sec. 3 (Amendments Proposed by Legislature).

<sup>80</sup> HSC Art. XVII, Sec. 4 (Veto).

<sup>81</sup> See *Taomae v. Lingle*, 108 Haw. 245, 252 (2005) (Title of bill must state that the bill proposes to amend the constitution).