

File: Subject
Ak. Constitutional
Convention

A NEW CONSTITUTIONAL CONVENTION FOR ALASKA?

THE LESSONS OF HAWAII 1978

prepared for

Interim Committee on the Constitutional Convention
of the Alaska State Legislature
Sen. George Hohman and Rep. Brian Rogers, Co-chairmen

by

Victor Fischer
221 E. 7th Ave., Anchorage, Alaska 99501

March 10, 1980

Preface

This paper is part of a series of studies sponsored by the Alaska Legislature's Interim Committee on the Constitutional Convention to examine issues pertinent to the 1982 referendum on whether or not Alaska should hold a constitutional convention.

Previous papers in the series by this author covered (1) various aspects of calling and arranging a constitutional convention, (2) considerations that need to be taken into account in deciding whether or not to call a convention, and (3) preliminary examination of issues and topics that might be raised in considering revision of Alaska's constitution. The current paper reviews Hawaii's 1978 constitutional convention and the constitutional amendments in which it resulted.

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Introduction

Hawaii has served as a model for Alaskans before, and once more we have something to learn from Hawaii's experience.

When Alaskans were fighting for statehood in the early 1950's, the idea of writing a constitution for the future state was repeatedly considered. A well designed document would prove to the U.S. Congress and the nation that Alaska was politically mature and ready to become a state. Moreover, Hawaii statehood advocates had written a constitution in 1950, and greater parity in the common quest would accrue if Alaskans also drafted a state constitution.

Alaska's constitutional convention met in 1955. Together with the National Municipal League's Model State Constitution, Hawaii's document provided a basic guide on constitutional substance and form: emphasis on fundamental policies and basic governmental structure, streamlined institutions to serve the needs of a modern state and its people, a brief and concise document. These concepts are fully reflected in Alaska's constitution, which contains a number of provisions derived directly from Hawaii's earlier work.

Now, in the 1980's, Hawaii can once more provide invaluable guidance to Alaska. In 1982, Alaskans will vote on whether or not to hold a new constitutional convention. Unlike the 1955-56 convention, which was held in the context of the unifying statehood cause, a divided Alaska and uncertain political environment would face a future constitutional assembly. This problematic situation greatly beclouds the answer as to whether a new convention would be beneficial to the state and its people.

Well, Hawaii held a convention during these frequently confused and disturbed times. Its review and rewriting of the state constitution took place in 1978. It was the post-Watergate era, the period of Proposition 13. Distrust of government, and particularly the legislature, was high. There was conflict between those who believed in a Hawaii for Hawaiians and others who wanted to retain the "aloha spirit" and greet all newcomers. Divisive issues included economic development, environmental protection, Native rights, public employees collective bargaining and right to strike, resources policy.

Hawaii's resultant convention encountered serious problems of organization and functioning. Delegates made more than one hundred changes in the constitution. Some of these changes dealt with truly basic matters, while a very large number are purely legislative in nature. Some revisions are quite significant, while others appear to an outside observer as unimportant and even frivolous. Interestingly, both convention participants and observers are in retrospect highly critical of the work and products of the constitutional convention. Many now believe Hawaii would have been better off without a convention. Others simply wish it had been better.

Rather than drawing simple conclusions out of Hawaii's extremely complex 1978 constitutional convention experience, this paper reviews what transpired and examines the reasons for some of the actions and results. Readers can then draw their own interpretations, based on their own concerns, values, and perceptions.

Learning about Hawaii's 1978 constitutional experience was but one of the personal benefits I derived from preparing this analysis. Greater yet was the pleasure of meeting and communicating with some wonderful Hawaiians, without whose help this would have been a rather dull exercise. I want to

particularly acknowledge the forthright and cooperative sharing provided by these members of the 1978 Hawaii convention: Frenchy De Soto, Paul Di Bianco, Walter Ikeda, William Paty, and John Waihee. Others most helpful were Sandy Ebesu of HGEA, Richard Kosaki and Norman Meller of the University of Hawaii, and Pat Shutt of the League of Women Voters.

Very special thanks go to Mike Meriwether, who initiated me to the who's who and the facts of public life in Hawaii and literally opened doors to the people I needed to see. And as always, very special appreciation and love go to my good friend Tom Dinell and his marvelous family, for everything.

I do trust that in the retelling and interpreting of Hawaii's constitutional revision story, I have not done any significant injustice to the differing points of view to which I was exposed. My need was to look at events in terms of what Alaskans could learn from our sister state. So I hope that my friends, old and new, will forgive any transgressions and permit me to someday again visit their warm and delightful state.

Background to 1978 Convention

Hawaii's first constitutional convention was held prior to statehood and was, as Alaska's, part of the quest for statehood. The convention, which met from April 4 to July 22, 1950, consisted of 63 delegates.

The 1950 constitution is a relatively short document (approximately 14,000 words), staying with basic fundamentals: a bicameral legislature of a 25-member senate and 51-member house of representatives, only two statewide officers--governor and lieutenant governor, an executive branch consisting of no more than 20 principal departments, a supreme court and circuit court (where judges are appointed by the governor and subject to confirmation by the senate), and local governments under the control of the state legislature. All in all, Hawaii's 1950 constitution, in the words of Prof. Norman Meller, "showed and was meant to demonstrate how thoroughly the people of the Islands were imbued with American political and cultural traditions."¹

Hawaii held another convention prior to the one that is the primary focus of this paper. A convention was held in 1968 to deal with the U. S. supreme Court mandate that the legislature be reapportioned on a one-man one-vote basis. Aside from legislative apportionment, other amendments proposed by the convention and ratified later in 1968 strengthened certain aspects of the Bill of Rights, liberalized voter qualifications, authorized a presidential preferential primary (not yet implemented by the legislature), made changes in legislative procedures, lengthened the term of justices of the supreme and circuit courts, changed the state

¹ Norman Meller, With an Understanding Heart: Constitution Making in Hawaii. New York: National Municipal League, State Constitutional Convention Studies No. 5, 1971, p. 84.

and county debt limits, gave local governments more control over their internal organizations, required each jurisdictions to adopt a code of ethics, provided for collective bargaining for public employees, and took care of a number of other minor issues. Only one amendment was turned down by the electorate: the proposal to lower the voting age from 20 to 18.²

The 1968 convention had been called through popular referendum held November 8, 1966. Unlike Alaska, a convention cannot be called by the legislature; instead, the legislature is given specific authority to submit to the electorate at any general or special election the question "Shall there be a convention to propose a revision of or amendments to the Constitution?" Further, as in Alaska, provision was made for a periodic referendum: "If any ten-year period shall elapse during which the question shall not have been submitted, the lieutenant governor shall certify the question, to be voted on at the first general election following the expiration of such period."³

A question arose in 1976 as to whether the convention proposition should again be put before the voters at the November 2, 1976 general election or should be held off until the 1978 general election. The Hawaii attorney general ruled that the ten-year period had begun after the last day the question was submitted to the electorate and would,

² Richard H. Kosaki, "Constitutions and Constitutional Conventions of Hawaii," The Hawaiian Journal of History, vol. XII, 1978, pp. 125-126. (Kosaki is a professor of political science at the University of Hawaii. The article was written prior to beginning of convention.)

³ The Constitution of the State of Hawaii, Article XV, Section 2. The ten-year referendum provision varied somewhat from a similar proviso in the Alaska constitution: the proposition had to be put before the voters in Hawaii every time that the question had not been voted on during a 10-year period, while in Alaska the question is put on the ballot only if there has neither been a referendum on the issue nor a constitutional convention during such period.

therefore, not expire until November 8, six days after the 1976 election. As a result, he held that the convention question should not be put until 1978.

However, after a court challenge and strong public expressions in behalf of a referendum, the legislature decided to place the question before the voters in 1976. The result was overwhelming approval: 199,831 (74 percent) in favor, 69,264 against.

Professor Kosaki notes: "This rather large affirmative vote may have surprised some political observers as, unlike the period before the 1950 and 1968 conventions, there appeared to be no single overriding or pressing issue. Perhaps Hawaii shared with the rest of the nation a general dissatisfaction with government following Watergate. Public interest groups such as Common Cause and the League of Women Voters not surprisingly pushed for a constitutional convention as a healthy and democratic device to review basic government organization and procedures. Special interest groups saw yet another opportunity to write their platforms into the Constitution. The Honolulu dailies, particularly the Honolulu Star-Bulletin, editorialized in favor of a constitutional convention. Few political leaders, despite their private reservations as to the "need" for a convention, would publicly oppose the holding of another constitutional convention. As election time approached, most of Hawaii's political leaders said that they favored the holding of a constitutional convention although there seemed to be little agreement as to what major issues should be addressed."⁴

One convention delegate summarized the general opinion that the 1976 referendum vote on holding the convention was so heavily in favor because

⁴ Kosaki, pp. 126-127.

(1) the public generally did not concern itself with specific issues, (2) there were no strong reasons not to have a convention, no one was against it, so why not do it? and (3) it just sounded like a good idea, a "motherhood issue."

The pre-convention period was characterized by extensive preparatory work and attempts to define constitutional issues. The Hawaii Legislative Reference Bureau prepared and widely distributed for the referendum election an informal brochure: "The Constitutional Convention: Yes or No," listing the kinds of subjects that a convention might consider. Subsequently, the Legislative Reference Bureau provided convention delegates with thorough research on constitutional issues in its Hawaii Constitutional Convention Studies 1978.

The League of Women Voters of Hawaii Education Fund conducted a major public education campaign prior to the 1978 convention. A simple popular and well-illustrated brochure described the basic purposes of a convention and summarized key issues that delegates might face. The League held community meetings throughout the state, with the particular aim of involving people who had not usually participated in the political process of revising the state constitution. Each of the meetings considered a variety of issues and covered any topic that participants proposed. Results of these meetings were later reported to the convention. In addition, the League prepared an in-depth issues analysis for the convention, based upon public discussions and related research. Throughout, part of the League's purpose, was to trigger the imagination of delegates and to broaden the scope of their considerations of issues that might not be raised as part of conventional review processes.

Other activities included extensive newspaper coverage and such special projects as a wide-ranging poll of Hawaii public opinion concerning the convention prepared for the First Hawaiian Bank and issued in a 136-page report.

Although "there was general agreement that there was little or no consensus as to specific major issues the convention should address,"⁵ a substantial list of issues did emerge by the time the convention met.

Pre-Convention Issues

The list of questions, problems, and issues raised for possible consideration by Hawaii's 1978 Constitutional Convention is almost endless. The following "laundry list" is presented to show what the convention faced as well as to provide an indication of what might be in store if Alaskans should decide to review and revise their constitution:

Declaration of Rights: Establish a right to privacy; strengthen individual rights regarding search and seizure, wiretapping, etc.; establish right to freedom of choice and self-reliance in all matters of personal nature; include right to a job; redefine role of grand jury; stricter penalties, for crimes, mandatory sentencing, capital punishment.

Legislature: Unicameral versus bicameral, split sessions, limit tenure to two consecutive terms, fix legislative salaries in constitution, limit number of bills that can be introduced in each legislature, provide adequate advance publicity on all proposed laws before final vote, elect legislators in non-partisan elections.

⁵ Kosaki, p. 127.

Executive: Limit tenure of governor and lieutenant governor to two terms, give lieutenant governor more responsibility, elect attorney general and county prosecutors, limit governor's right to withhold appropriated funds, limit governor's control over budget.

Judiciary: Provide merit selection and election of judges, create an appeals court, change existing ten-year appointment of judges.

Elections: Establish open primary, create limit on campaign spending, limit terms of all elected officials.

Apportionment: Provide for true representation of each island and district.

Education, Health, Welfare: Change method of selecting board of education, give counties more power over schools, define powers of university board of regents; establish right to a healthful environment, provide for better and lower cost housing; establish stricter requirements for welfare recipients.

Resources, Environment, Growth: Include more specific provisions about conservation of natural resources, provide better protection of conservation land and preservation of parks, protect agricultural land, increase citizens role in decisions about land; provide for energy conservation; permit individuals to sue to protect resources; limit growth, limit migration, provide referendum on population growth, emphasize quality growth.

Finance: Establish more control of government spending and stricter debt limits; limit amount of property tax on individual homes; require balanced budget; include a financial impact statement with each bill considered by the legislature.

Local Government: Clarify state and county roles, give more power to counties, make each island a separate county, incorporate municipalities, abolish counties, give counties more taxing power.

Initiative and Referendum: Make constitutional provision for initiative, referendum, and recall.

Miscellaneous: Limit right of government workers to strike, limit number of days public and private employees may strike, open government collective bargaining sessions to public; decriminalize marijuana; establish residency requirements for state and local jobs; require a code of ethics for all government employees; establish guidelines for preservation of Hawaiian heritage.

Although there may have been no consensus about major issues to be faced by the 1978 convention, it can be seen that there was no shortage of topics for its consideration. A surprising number of the above-listed items ended up among changes adapted by Hawaii's delegates.

1978 Election; the Delegates⁶

The 35 percent voting turnout in the 1978 special election to select convention is the lowest recorded for elections in Hawaii. Although a low turnout is generally predictable for special elections, most Hawaiian observers were somewhat surprised inasmuch as in 1976 over 70 percent of the registered voters cast ballots on the proposition of holding a constitutional convention, voters approving it by a three-to-one margin. Furthermore, according to the First Hawaiian Bank poll held

⁶ This section, including tables, is largely from Kosaki, pp. 128-132.

less than four months prior to the special election, 67.8 percent of the respondents indicated that they planned to vote in the delegate election.

The convention size was fixed at 102, double the membership of the state house of representatives. In the 1978 special election, at least two convention seats were allocated to each house district; four or six were allotted to the larger districts. A total of 697 candidates filed for the 102 delegate seats. The smallest number of candidates in any district was 6. One district had a high of 30 candidates; and seven districts had more than 20 candidates for the two seats. With each district averaging over 3,000 registered voters, the highest vote getter in the 1978 election obtained 1,982 votes, or 76.7 percent of those voting in the district. The delegate elected with the fewest votes had 363, receiving 19.8 percent of the votes in the district. In view of the large number of candidates in each district, it is not surprising that the great majority (89) of the elected delegates received less than 50 percent of the votes cast in their district.

The composition of the 1978 convention is extremely interesting, especially in comparison with the 1950 and 1968 conventions. Unlike the earlier conventions, the 1978 convention did not contain many familiar faces. Only two incumbent legislators chose to run and were elected to the convention. In addition, two ex-legislators became delegates. Thus, incumbent and ex-legislators constituted only 4 percent of all delegates in 1978, as against 51 percent of the 1968 convention. Six delegates had seen service in the 1968 constitutional convention, and one delegate had served in the 1950 convention.

The delegates were, on the average, younger than their predecessors. The median age in 1968 was 42, while it was 35 in 1978. The respective age distributions of the 1968 and 1978 conventions were as follows:

Age Group	1968 Delegates		1978 Delegates	
	No.	Percent	No.	Percent
50+	18	22.0%	24	23.5%
31-50	55	67.1%	45	44.1%
20-30	7	8.5%	33	32.4%
Unknown	2	2.4%	0	
Total	82		102	

Another change in delegate composition was the significantly larger number of women delegates elected in 1978:

1950	5 of 63 delegates	(7.9%)
1968	8 of 82 delegates	(9.8%)
1978	20 of 102 delegates	(29.4%)

In his book about Hawaii's first two conventions, Norman Meller offers a classification of delegates by occupation. Kosaki updated Meller's analysis with the following results:

Occupation	1950		1968		1978	
	No.	%	No.	%	No.	%
Lawyers	19	30	25	30	20	19.6
Business	25	40	35	43	26	25.5
Educators	7	11	6	7	14	13.7
Doctors, etc.	5	8	2	2	0	
Housewives	3	5	2	2	3	2.9
Union Organizers	2	3	2	2	1	1.0
Full-Time Public Officers	1	2	2	2	1	1.0
Retired	1	2	2	2	6	5.9
Student	0		1	1	7	6.9
Civil Service Employees	0		5	6	13	12.7
Unemployed	0		0		6	5.9
Others or Unknown	0		0		5	4.9
Total	63		82		102	100.0

What is noteworthy in the "occupation" table is the decrease in 1978 of lawyers, businessmen, and doctors, and the increase in educators, retirees, students, and civil service employees. Also interesting is the fact that six delegates just before the convention described themselves as "unemployed;" the majority of these worked as legal researchers in the recently adjourned legislature.

Election Sidelights

Interviews provided some insights behind the statistics covered in the preceding section.

A number of explanations were given of the intriguing fact that only two legislators ran for the constitutional convention. (1) There was a wide consensus that the legislature was out to assure that the convention would not succeed. Although unable under the constitution to limit subject matter considered by the convention, the legislature created some serious timing roadblocks. As a result, legislators, did not want to be associated with a convention bound to fail. (2) Specifically, the convention was held from July 5 to September 21. It would be difficult for a legislator to campaign for the early October primary and still perform convention duties. (Supposedly, the timing was so designed to discourage delegates from challenging incumbent legislators in the primary election.) (3) Legislators might have been beaten in the convention election. Some fairly strong local people not ordinarily in politics became candidate for delegate and that, together with possible public resentment against legislators not sticking to their lawmaking business, could have resulted in a legislator losing out both for the convention and in a subsequent legislative reelection bid.

Generally, the constitutional convention election was very much a grassroots election. The vast majority of candidates were making their first bid for public office. With many unknown and inexperienced candidates in the running, relatively small organizational and financial support could make a great difference.

The most active role in delegate elections was played by the Hawaii Government Employees Association (HGEA); other organizations were not particularly active. The basic criterion of HGEA support was opposition to Initiative and Referendum. This opposition grew out of a concern about anti-labor initiatives, as well as possible use of the initiative device for fiscal purposes (such as Proposition 13) or restrictions on social programs (welfare, abortion). HGEA screened all candidates for endorsement. Where the union was not satisfied with declared candidates, its representatives encouraged and helped selected people to file. HGEA gave active support to candidates in a variety of ways: money, use of mailing lists, provision of mailing and other facilities, campaign organization and strategy, etc. HGEA supported and helped elect 60-70 percent of the delegates, including some who ended up in the minority. According to one estimate, 40 of the 102 delegates were "fully controlled" by HGEA. Among those elected were 13 HGEA members.

(By the way, a prevalent way of campaigning in Hawaii is for candidates to stand on freeway overpasses during rush hour and wave placards or banners with their name to attract commuters' attention!)

Organizing Convention

Legislative provisions for the convention specified that the delegate election be held May 20 and the convention begin July 5, 1978. Maximum

stipend per delegate was set at \$1,000 per month, the total not to exceed \$4,000. Delegate pay began the day after the election; thus, the last day of pay would be September 20.

Starting pay the day after election was designed to limit the period during which the convention could be held. With a convention beginning date of July 5, the session was effectively limited to 75 days, including weekends and any time off for hearings or recess. In addition to legislatively set limitations, the lieutenant governor also urged completion of convention work no later than September 21 so that proposed amendments could be printed and put on the November general election ballot. Those interviewed believed that this left completely inadequate time to deal with substantive aspects of constitutional revision.

During the period of May 21 to July 5, elected delegates were just "milling around" and organizing. A number of preliminary meetings of delegates were held to select a temporary chairman, establish initial committees, make convention arrangements, agree on a location for the convention, and the like. No substantive constitutional issues were addressed during this period.

In early June, delegates held their first formal meeting and elected William Paty as interim president. He received the votes of about three-fourths of the delegates. Paty set up the rules committee, credential committee, and other administrative committees. The pre-convention period was also used to prepare the delegates for the issues they would be dealing with during the convention. Groups such as the League of Women Voters, a county organization, savings and loan association, and others ran seminars and briefings for delegates.

When the convention met in its first regular session, Paty was elected permanent convention president. He then proceeded to appoint committee members and chairmen. Delegates also elected a secretary and an assistant secretary.

Vice-presidents were elected by delegate caucuses from each of Hawaii's seven senate districts. These vice-presidents were supposed to represent their district in administrative affairs. However, since several of the seven vice-presidents were members of the "minority", their role in the convention became minimal.

Committee structure was essentially similar to that of the 1968 convention. New committees were established to deal with ethics and Hawaiian affairs, while the subject of environment was added to the title of the committee dealing with agriculture, conservation, and land. In all, there were sixteen committees, and each delegate was assigned to serve on five or six of them.

An advisory/steering group functioned during the initial stages of the convention. It consisted of about ten people who had put together the ruling coalition and managed to get Paty elected president. The group participated in various early decisions, particularly appointment of committee members and chairmen. Once the convention was organized, Paty let committees function on their own. As a result, the initial steering group fell apart.

About half-way through the convention, it became apparent that problems were developing because no one kept tabs on the whole convention. John Waihee, a young Native Hawaiian delegate established an unofficial organization and process to coordinate convention activities and assure that basic components of their program were reflected in convention products.

Although convention work started slowly, delegates worked until one or two a.m. during the last several weeks. The crush was so great at the end that apparently it was hard to see the totality of what was happening in the convention and to relate all amendments. In view of the time crunch they experienced, one of the new constitutional amendments adopted by the delegates provides for more adequate time for future conventions to do their work.

How the Convention Came to Be Organized

There was one basic issue around which the convention organized -- Initiative and Referendum. This issue ran so deep, it was so basic, that it caused a major split among the delegates and prevented the convention from ever coming together as a single, unified body.

Initiative and Referendum became the key issue because of the times during which constitutional revision was being considered: society in turmoil, people's concerns focused on immediate problems, most groups pursuing single-interest causes and solutions. The public was frustrated, disenchanted with government, and distrustful of institutions and leaders. In this situation, Initiative and Referendum appeared to many a simple solution -- if people could only vote on the matters of concern to them, direct democracy might solve all problems. (Actually, however, polls showed that popular sentiment was not particularly concerned with Initiative and Referendum. People were worried about crime, high taxes, government expenditures, economic problems, and the like.)

Reform groups such as the League of Women Voters and Common Cause worked in behalf of these devices of direct legislation. Principally,

however, the Initiative and Referendum issue seemed to have been pursued by the media. Much of the cause behind that was frustration with the legislature, which seemed highly unresponsive. The constitution was seen as providing an easier vehicle than the legislative process for resolving social, economic and political frustrations. While some viewed Initiative and Referendum as a basic plank in a reform platform, others saw it as a potential danger to the established order, to their special interests, and to Hawaiian lifestyles. Thus, the convention's organizing thrust grew out of this opposition to Initiative and Referendum.

Rallying around opposition to Initiative and Referendum, one of the convention's two state legislators (Sen. Donald Ching) and the Hawaii Government Employees Association (led by HGEA president David Trask) structured a coalition to assure that Hawaii's constitution would not be amended to permit direct legislation. The coalition was an amalgam of union people and those supported by labor, individuals with ties to larger business interests (though there were not many of these), and a group of younger delegates, mostly Native and graduates of the University of Hawaii Law School, a number of them also legislative staffers.

Architects of the coalition chose William Paty to become convention president. A sugar plantation manager and a republican, Paty had stature and commanded respect. His public prestige helped overcome HGEA's negative media image.

Out of the convention total of 102 delegates, the coalition had 56 solid votes on Initiative and Referendum and organization-related issues. Generally, the "majority" was composed of people who could work and talk together,

essentially a grouping of some 65 votes. It consisted of a dependable core of 40 votes, with another 25 who would come and go depending on issues. In addition, about 15 "reformists" might join with the majority on specific matters.

The "minority" did not function in a consistent or organized manner. Composed of most of the convention's Caucasians, most of the Republicans, and most of the more lucid attorneys, this group consisted mostly of convention independents and individuals brought together mainly by their opposition to the coalition and its hard organizational tactics.

In many ways, the coalition was a loose amalgam of votes that had to be kept together through compromise and promises. One reason for the many changes made in the constitution and for the extensive amount of legislative matter included was the need to satisfy the individual needs and desires of individual delegates whose votes had to be kept in line on core issues such as Initiative and Referendum.

Philosophical Differences, Characteristics of Delegates

Many observations make it clear that there was a lot of dynamics within the Hawaii convention. There were, of course, 102 individuals, and categorizing them is not particularly easy. The groupings that seemed most appropriately classify the delegates were:

- (1) "Reformists" or "independents" -- those who were concerned about government structures and processes and generally favored Initiative and Referendum.

(2) "Standpatists" -- those who wanted none or only the most minimal changes; there were few of these.

(3) "Conservatives" -- those who fell between the other two categories; they often felt more strongly about constitutional preservation than the standpatists, while at other times they favored changes.

It appears that a substantial majority of delegates thought the constitution was basically good and required no major changes. From that standpoint, virtually all could have been classified as "conservatives." However, post-election coalition-building, pursuit of particular objectives, and individual philosophies lead to groupings, some rather loose, that continued through the convention.

While there was a general feeling within the convention that the legislature needed to be made more responsive and that political processes had to be more open, it was the "reformists" or "independents" who believed most strongly that the public majority should be able to exercise power over government and directly participate in political decisions. These individuals generally held that the "aloha spirit" should be kept alive, that migration should not be restricted or growth unduly controlled, and that special privileges should not be granted to Native Hawaiians or any other groups.

As the others, "conservatives" saw Initiative and Referendum as a symbol. With labor, they believed it could become a tool that could be used by ever increasing numbers of in-migrants, mostly haoles (Caucasians) from California, to upset existing order and arrangements. This applied

not only to the fear of the initiative's use against unions, but also to concern that the initiative could work against minorities, be used to establish the death penalty, bring about cuts in social welfare, and the like. They were concerned about accountability for what goes on: To them, it was the unseeable and unseen electorate vs. responsibility fixed directly on the governor and legislature. Behind the opposition also seemed to lie the fear that while the legislature could be influenced, the initiative process could not be controlled. The public was viewed as too often signing petitions and voting without full understanding of propositions and their implications. Thus, danger was seen in the exercise of direct legislative power by an uncaring majority, particularly as such power might be exercised in the areas of labor, welfare, and fiscal legislation.

An important ingredient in the "conservatives'" philosophy was the belief that locals should retain political power and preserve Hawaii's uniqueness in the face of an infusion of newcomers to the state. Accordingly, they sought to preserve existing political and labor power centers, above all defeating proposals to authorize Initiative, Referendum, and Recall. In general, though conservative in many ways, the majority coalition showed itself extremely change oriented in such areas as Hawaiian affairs and environmental issues.

A key role in fashioning the convention's program was played by John Waihee III, a 32-year old attorney. A newspaper article described Waihee, a Native Hawaiian, as the "major architect of the convention's will... who, by default and tactical skill, assumed the role of majority leader midway in the convention." Everyone interviewed supported the premise that insofar as anyone "managed" the convention, both in substance and process, it was Waihee.

Working with Waihee was a group of young people, the "children of the 60's." Their principal goals included social justice, Hawaiian rights, and protection of Hawaii's character and uniqueness. (When one looks at these values, it is clear that the term "conservatives" can be applied to this group only in its most dynamic interpretation.)

Despite many differences there were of course unifying issues that brought delegates together regardless of coalition status. This was true in particular with the full gamut of fiscal controls. The convention's actions in this area demonstrated not only wide consensus among delegates, but also showed that HGEA's power was nowhere near as great as generally perceived. In the fiscal arena, at least, business interests and populism combined to greatly restrict government's taxing and spending ability.

The general philosophy of the convention, or at least of those who set its tone, is best reflected in the revision of the constitution's preamble:

We, the people of [the State of] Hawaii, grateful for Divine Guidance, and mindful of our Hawaiian heritage [,] and uniqueness as an island State, dedicate our efforts to fulfill the philosophy decreed by the Hawaii State motto, "Ua mau ke ea o ka aina i ka pono."*

We reserve the right to control our destiny, to nurture the integrity of our people and culture, and to preserve the quality of life that we desire.

Principal Constitutional Changes

By the time the delegates concluded their work, they surprised the state and probably themselves by both the number and range of constitutional changes proposed. Part of the explanation lies in the organization of the

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(New material underlined, deleted material in brackets.)

convention. The majority had not been fashioned to implement a program, but rather to oppose amendments which threatened to disturb the status quo: attempts to eliminate or modify public sector collective bargaining, converting of the legislature to a unicameral body, and the introduction of the initiative, referendum, and recall at the state level. The cost of maintaining such a coalition was the inability to prevent individual members, frequently allied with special interests, from successfully championing their pet ideas.⁷

In all, the 1978 convention made 116 changes in Hawaii's constitution. Although some revisions were truly constitutional in nature, the majority would ordinarily be classified as legislative matter. The latter category resulted principally from wide public frustration with governmental, and particularly legislative, processes and actions.

At the same time, the convention's products clearly expressed major current societal values: political reform, fiscal conservatism, environmental concerns, individual rights, and social justice. In addition, delegates also effected a number of structural changes. The appendix reviews changes made by the convention. The following is a summary of principal provisions, loosely grouped according to their basic aim or character.

Political reform

- Code of Ethics: calls for highest standards of ethical conduct and personal integrity of each individual in government; requires adoption of code of ethics by state, each political subdivision, and any constitutional convention; requires administration of each code by an independent

⁷ Norman Meller and Richard H. Kosaki, "Hawaii's Constitutional Convention," to be published in National Civic Review, May 1980.

ethics commission; and specifies that each code shall include provisions on gifts, confidential information, use of positions, contracts with government agencies, financial disclosure, lobbyists, lobbyist registration and restrictions, etc.

- Open primary elections are provided in lieu of previous closed party primaries.
- An elected official must resign from office before running for another office.
- Partial public financing of state and local election campaigns is provided.
- Campaign spending limits are to be established.
- Campaign contributions are to be limited.
- Primary required to be at least 45 days prior to general election.
- Legislative procedures: committee meetings held for the purpose of making decisions must be open to the public; a time limit for introduction of bills is provided for; legislature is required to recess for at least 5 days, between the 20th day and 40th day of a session, and the recess must follow bill introduction deadline; bills must be printed and available for 48 hours (rather than 24) prior to third reading.
- Governor and lieutenant governor limited to no more than two consecutive full terms.
- Elected state board of education and university board of regents given jurisdiction over internal organization and management of their respective systems.
- All government writing meant for the public is to be plainly worded.

Fiscal reform

- General fund expenditure growth not to exceed estimated rate of growth of the economy.
- Tax refund or credit to be provided when state general fund has 5 percent surplus for two straight years.
- If state mandates new programs for counties, state must share in costs.
- Deficit spending prohibited, unless governor says public health, safety, welfare are threatened.
- Limits established on amount of principal and interest on state debt.
- Term of general obligation bonds reduced.
- Bond authorizations lapsed if not used in three years.
- Legislature permitted to issue revenue bonds by two 2/3 votes.
- Council on revenues established to prepare revenue estimates that are to be considered by governor in preparing budget and the legislature in appropriating funds.
- Tax review commission to be appointed every five years to evaluate state tax structure and recommend revenue and tax policy.

Growth policy, environmental quality, resources management

- Population growth management: state required to plan and manage population growth; counties also must manage growth, but may be more restrictive than the state.
- State is empowered to promote and maintain a healthful environment, including prevention of excessive demands on environment and resources.
- Environmental rights: each person is granted the right to a clean and healthful environment and is given the right to sue to enforce this right.

- The state and counties are required to conserve and protect Hawaii's natural beauty and resources, and to promote development and utilization of resources to further the state's self-sufficiency. A new provision is added that all public natural resources are held in trust by the state for the benefit of the people; deleted is previous requirement to promote conservation, development, and utilization of agricultural, fisheries, mineral, forest, water, land, and other natural resources.
- Land banking: the state is authorized to acquire interests in real property to control future growth, development, and land use.
- Strong language is included to conserve and protect agricultural lands, and important agricultural may not be reclassified for other purposes except under special circumstances and by extraordinary vote.
- Marine, seabed, and other resources within the boundaries of the state are to be managed and controlled by the state, which reserves to itself outside state boundaries all such rights not specifically limited by federal or international law.
- The state's obligation to protect, control, and regulate use of water resources for the benefit of its people is established, and toward that end a water resources agency is provided for.
- Nuclear fission power plants may not be constructed and radioactive materials may not be disposed of in the state without prior approval by 2/3 vote in each house of the legislature.

Individual rights and social justice

- Right to privacy is added to Bill of Rights.

- Independent counsel will be appointed to advise members of grand juries.
- Discrimination in public school on the basis of sex is prohibited.
- Safety of the people from crimes against persons and property shall be provided by the state.
- Cultural, creative and traditional arts of Hawaii's ethnic groups are to be preserved.
- Power to provide for security and economic and social wellbeing of the elderly is granted this state.
- Public assistance provisions are clarified and specific authority granted to establish eligibility standards.
- All words in the constitution that referred to one sex were replaced with language that is sex-neutral.
- (Abortion, or right-to-life, was never a convention issue.)

Hawaiian rights

Assertion of Native rights was the "real sleeper," the "big event" of the convention. Few elected delegates, and even fewer people outside the convention, had expected Hawaiian rights to become a major topic or to result in a comprehensive "Hawaiian affairs package."

Key to the package were Frenchy DeSoto, who chaired the Hawaiian Affairs Committee, and John Waihee, the convention's "majority leader." Although only 4 of the 12 committee members were Native Hawaiian, Frenchy saw to it that every proposal emerged from the committee with unanimous support. She and her staff proselyted the other delegates to guarantee approval of the entire package.

Hawaiian rights turned out to be an issue that cut across all lines and groups. Young delegates felt it was time to redress the wrongs done to ethnic Hawaiians. People who grew up in Hawaii as well as newcomers had a way to show their support of the basic Hawaii culture. Some non-Hawaiians found it to be a means of dealing with their identity crisis. "Reformists" who wanted to show their liberalism could do so by supporting minority rights. The time became one of "Hawaiian renaissance," providing an opportunity to be Hawaiiphile. And underlying the broad support for the Hawaiian affairs package was Frenchy's dynamic personality, her proselyting activities, and her strategy: "I never let them get away with not feeling guilty." So delegates gave their support despite some serious concern that some propositions were so vague as to create implementation problems and about creating a constitutionally established split along ethnic lines in the state that prides itself on its multi-ethnic base.

Key elements of the Hawaiian affairs package were:

- Subsistence, cultural, and religious rights of Native Hawaiians are recognized and are to be protected by the state.
- Study of Hawaiian culture, history, and language in the schools will be promoted by the state.
- Hawaiian, together with English, is made an official language of the state.
- A portion of the public lands granted Hawaii by the statehood admission act is to be held in trust for the benefit of Hawaiians.
- An office of Hawaiian affairs is established within the executive branch; policy will be made by a board of trustees composed of Hawaiians and elected from throughout the state by Hawaiians only.

- Major state funding is to be provided for economic, social, and other "rehabilitation" purposes for Native Hawaiians.
- Water on lands held for the benefit of Native Hawaiians is excluded from any outside state or other control.
- Acquisition of real property by adverse possession is restricted.

Structural Changes

- Major revisions were made only in the judiciary article: an intermediate appellate court is created; district courts are recognized in the constitution; merit selection of judges is provided; a judicial discipline commission is provided for; compensation for the judiciary is to be set by a salary commission, rather than having it provided in the constitution; courts must establish time limits for disposition of cases; twelve-member juries are provided in cases of serious crime; civil cases can have jury trials for amounts above \$1,000, in lieu of previous \$100.
- Legislative changes include provision for senators to have staggered 4-year terms; previously all were elected at the same time. Reapportionment procedures are somewhat modified, and new reapportionment standards are enacted... Revision of the legislative structure to unicameral system was not seriously considered by the Hawaii convention.

Ratification⁸

When Hawaii's 1978 convention completed its work, it had agreed upon 116 proposed changes. The convention had revised much of the

⁸ Meller and Kosaki.

constitution but apparently did not want to place its handiwork before the voters on an all-or-nothing basis and run the risk of objections to particular amendments causing rejection of the whole. Instead, the precedent set by the 1968 convention was used and all changes were grouped into 34 separate proposals, with the contents of some only tenuously related.

The convention went to great efforts to provide extensive public information on the proposed amendments. Summaries were mailed to all registered voters. An advertising supplement with the text of amendments was distributed through the newspapers in all counties. A voter information booklet provided by the convention was circulated as part of the official ballot. News stories, editorial comment, and pro-and-con analyses prepared and publicized under non-convention auspices also supplied pertinent data and opinions on which voters could make individual judgments.

The Honolulu daily papers opposed only a few amendments -- the morning newspaper three and the evening paper five, with the "right to privacy" amendment the only common target of opposition. On the eve of the election, both papers expressed concern about the possibility that all 34 proposals might be defeated.

The format of the ballot followed the three-part style adopted by the 1968 constitutional convention, providing "yes," "no," and "yes-but" options. Voters were instructed to (1) vote for or against all of the amendments by a single punch of the ballot or (2) avail themselves of the "yes-but" option. The last permitted them to vote against one or more of the proposals which they specifically disapproved; a "yes" was then automatically tallied for the remaining unmarked proposals.

Despite the wide range of subjects, many of them controversial, every one of the convention's proposals received a recorded vote large enough to be declared adopted. Less than sixty percent of the voters who went to the general election polls marked constitution ballots. Of those who did, one-fifth were in favor of the entire slate of proposals, and almost as many cast a single "no" vote. Some 60 percent voted against one or more amendments. However, the negative votes were so sparsely spread among many proposals that no single amendment was opposed on half of the ratification ballots. The proposals which received the largest negative tallies included the "Hawaiian-affairs package" (Department of Hawaiian Homes Lands amendments, Office of Hawaiian Affairs, and recognition of traditional subsistence and other rights), the right to privacy, resignation of incumbents to run for another office, the provision for campaign financing, and transfer of property tax administration to counties.

Not everyone liked the ballot form or the ratification outcome. Some argued that what had started out in 1968 as an ingenious means to overcome voter inertia had turned into a "cynical manipulation of Hawaii's citizens." Protestors lodged several court challenges but succeeded only in nullifying some minor parts of the proposed changes. In response to the major objection that the form of the ballot was biased in favor of an affirmative vote, the Hawaii supreme court refused to invalidate the results, holding that it was legally sufficient so long as the voters were fully and adequately instructed. Similarly rejected as not invalidating the election was inclusion of unrelated amendments within a single proposal. The complaint that the electorate was presented with too complex an array of amendments to permit an intelligent decision was not considered sufficient to warrant judicial interference with the electoral process.

Miscellaneous Comments

Rules.

1978 convention rules were essentially those of the 1968 convention, where wide consensus prevailed. They did not prove appropriate for a divided convention. They were particularly deficient in being able to move processes along effectively... A resolution enacted by delegates at the end of the convention made suggestions for rule changes that could improve functioning the next convention.

Lobbying.

The convention saw essentially the same lobbyists and special interest that generally work the legislature. Some lobbyists were there all of the time, while others resonded to specific issues. Principal lobbies were labor, estates, sugar planters. Many interests were represented by delegates themselves, especially business... Lobbyists had to work hard, apply heavy pressure. The convention was essentially wide open, and all 102 delegates were important, not just committee chairmen as in the legislature... Leaders of the executive and legislative branches proclaimed a hands-off policy, though it is claimed that they did not favor adoption of major substantive changes. Amendment creating an intermediate court of appeals was actively sought by the judiciary, led by the chief justice.

Outside Activities.

Most delegates gave total attention and commitment to the convention. In early stages, some individuals would spend off-hours (early mornings, evenings, weekends) on law practices or outside activities. Later in the convention, there was no time for outside pursuits... A large number of delegates were young, many were not really established and some were

unemployed. Accordingly, most had no problem concentrating full-time on the convention.

Legislative Follow-Up.

Despite a strong undercurrent of anti-legislature sentiment, most amendments were non-self-executing and required legislative implementation. Not being sympathetic to the convention in the first place, implementation has been slow and sporadic... The legislature is choosing what will go, what will not be put into effect... Legislative follow-up on the Hawaiian Affairs package was described as "Terrible! They are messing it up, not implementing the constitutional provisions." Unsympathetic legislators claim that constitutional language is not sufficiently explicit, the intent not clear. Some expect the legislature to do nothing.

Controlled Convention.

Delegates who were not part of the convention's governing coalition found it impossible to have any significant substantive or procedural impact... The coalition was formed early and some delegates who would have been sympathetic to the majority's objectives were never asked to join. They thus became part of the minority, even though they might have been willing to join the coalition, support William Paty for president, and otherwise participate in convention decisions.

Hawaiians' Conclusions and Suggestions

The following were among the concluding sentiments expressed by persons interviewed during preparation of this paper:

A constitution does require periodic monitoring, fine-tuning. There is need to provide for social reforms that the legislature won't put into effect.

A convention is worth having -- if not controlled by political machinery. It's not worthwhile just for minor reforms to placate public opinion, just to provide window dressing.

Preferably should not have a constitutional convention unless it is really necessary, not without a definite purpose... A constitutional revision commission could provide a good alternative approach.

ConCon was positive for the state, despite some bad amendments. There were good amendments on finance and taxation. And while we cannot mandate fiscal responsibility, at least this will keep government from running away with expenditures and taxes.

Set up procedure to accomplish initial organization: temporary chairmen, non-controversial arrangement, convention finances, a place to meet, furniture, etc. In '78, there was too much confusion, much time was lost jockeying around... Get someone outside convention to act as temporary chairman and preside over initial organizational state. This would avoid the premature worrying about selection of temporary chairman who would most likely become the permanent president. Alternatively, pick someone as temporary president with clear understanding that this person would not be the permanent president, but would simply supervise initial stage while permanent president is chosen.

A convention should develop a philosophy, a vision of the future, create a unifying force. But can't accomplish or develop a real program before a convention begins. Delegates have to get to know each other in convention... If you have a convention, phase it, hold it in two parts. Use the first phase to develop the foundation, establish a philosophy, develop a preliminary program and product. Then take time out to think it over, talk with the people, just get away from it for a while. After nine months or so, come together and develop the final product.

Biggest value of convention was providing the opportunity to inject a lot of fresh blood into the political process. That includes not just the 102 delegates who were elected, but the total of over 600 people who were candidates in the convention election.

APPENDIX -- Hawaii's 1978 Constitutional Amendments

PREAMBLE

New language added to the preamble reflects the temper of Hawaii's 1968 convention:

We reserve the right to control our destiny, to nurture the integrity of our people and culture, and to preserve the quality of life that we desire.

Other language emphasizes Hawaii's "uniqueness as an island State" and expands the ordainment clause to state that the constitution is established "with an understanding and compassionate heart toward all the peoples of the earth." (New material underlined.)

ARTICLE I. BILL OF RIGHTS

Right to Privacy

Section 6. The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right.

Alaska adopted a similar amendment in 1972.

Grand Jury Counsel

Provides for the appointment of independent counsel to advise members of a grand jury. Counsel must be a lawyer and not a public employee.

Trial by Jury, Civil Cases

Amount in controversy necessary for a jury trial in a civil suit is raised from \$100 to \$1,000.

Rights of Accused

A jury must consist of twelve members when "the crime charged is serious". Provision also requires counsel for indigent defendants whenever charged with an offense punishable by imprisonment; previously applicable to possible imprisonment of more than 60 days.

ARTICLE II. SUFFRAGE AND ELECTIONS

Registration; Voting

An open primary is established by specifying that a person need not declare party preference or non-partisanship as a condition for voting

in a primary election. The provision is reinforced by requiring that secrecy of political party affiliation or nonpartisanship is to be preserved.

Campaign Fund, Spending Limit, Contributions Limit

The legislature is required to establish a campaign fund to be used for partial public funding of campaigns for state and local public offices.

The legislature is also required to provide a limit on the campaign spending of candidates.

Limitations on campaign contributions to any political candidate or authorized political campaign organization for such candidate are to be established by the legislature.

(No money amounts are specified in any of the amendments.)

Resignation from Public Office

An elected official is required to resign the office to which elected in order to be eligible as a candidate for another public office if the term of the new office begins before the other ends.

Timing of Elections

Primary and special elections must precede general elections by no less than 45 days.

ARTICLE III. THE LEGISLATURE

Salary Commission

A commission is established to develop a salary plan for members of the legislature. Plan goes into effect unless disapproved by the legislature or by the governor. A new salary plan is developed every eight years.

(By all accounts, the 1979 experience under this plan was a fiasco.)

Sessions

Each regular session must be recessed for not less than 5 days at some period between the 20th and 40th day of the session. The purpose of the amendment is to provide both legislators and the public an opportunity to review bills introduced prior to the recess and to give an opportunity for legislators and constituents to communicate on matters before the legislature at about the mid-point of a regular session. (Hawaii has had a practice of imposing a bill introduction deadline at or about the 20th session day.)

Open Meetings; Bill Introduction Deadline

All legislative committee meetings must be open to the public. Each house is required to establish a date at which all bills to be considered in a regular session must be introduced. This date must be prior to the above mandatory recess time.

Passage of Bills

Increases from 24 hours to 48 hours, the amount of time a printed bill must be available to legislators before passage on third or final reading.

ARTICLE IV. REAPPORTIONMENT

Reapportionment provisions are taken out of the legislature article and are revised and expanded. Following changes are made:

- staggered terms are established for members of the senate, abolishing the old system whereby all senators ran concurrently for 4-year terms.
- reapportionment is required every 10 years beginning with 1981, eliminating the previous 8-year reapportionment provision.
- the reapportionment commission has 150 days, rather than the previous 120, to complete a reapportionment plan. (Alaska's reapportionment board must submit a plan within 90 days following official reporting of each decennial census.)
- criteria are established for apportionment among and within "basic island units."
- provides for placement of holdover senators.
- reapportionment commission is given responsibility for redrawing congressional district lines for election of U.S. House of Representatives members.

ARTICLE V. THE EXECUTIVE

Limit on Tenure

Both the governor and lieutenant governor are limited to no more than two consecutive full terms of office.

Grouping of Executive Agencies

Executive and administrative units are to be grouped within 20 departments according to common purposes and related functions, rather than according to "major purposes so far as practicable" as before.

(The purpose of the amendment supposedly was to provide constitutional impetus for a functional approach in achieving an effective departmental structure. This was done in response to dissatisfaction with the existing organizational arrangements.)

ARTICLE VI. THE JUDICIARY

Courts

New provisions establish an intermediate appellate court and give constitutional recognition to district courts. These are in addition to previous constitutional provisions for a supreme court and circuit courts.

Selection and Appointment of Justices and Judges

A modified merit selection process is established under a series of amendments.

A nine-member judicial selection commission is established. The governor appoints three members, of whom not more than one can be an attorney. The president of the senate and speaker of the house each appoint a member of the commission. The chief justice of the supreme court appoints two members, of whom only one may be a licensed attorney. Members of the state bar elect two members. In all, not more than four members of the commission may be licensed attorneys.

Vacancies in the office of the chief justice, supreme court, intermediate appellate court, and circuit courts are filled by the governor appointing a person from a list of not less than six nominees for the vacancy presented to the governor by the judicial selection committee. The appointment is subject to approval by the state senate. Appointees must be licensed attorneys.

Justices and judges of the supreme court, intermediate appellate court, and circuit courts serve terms of 10 years. Upon the expiration of that term, the judicial selection commission may determine to retain a justice or judge in office, renewing the term for 10 years or for another period established by law.

A salary commission is created to review and recommend salaries for justices and judges, with their salaries set by the legislature.

Discipline

Provisions for removal or retirement of justices and judges by the governor upon certification by a pertinent commission are eliminated. In lieu, the supreme court is given power to reprimand, discipline, suspend with or without salary, retire, or remove any justice or judge for misconduct or disability. The supreme court is required to establish a commission on judicial discipline with authority to investigate allegations of misconduct or disability and to make recommendations to the supreme court for appropriate action.

ARTICLE VII. TAXATION AND FINANCE

Tax Conformance

The legislature is granted authority to conform state tax laws to federal tax laws, although the state rates are set and modifications can be made by the legislature.

(The amendment was apparently deemed necessary by an attorney general's opinion which stated that the constitution prevented automatic conformance to federal tax provisions.)

Tax Review Commission

Appointment of a tax review commission is required in 1980 and every 5 years thereafter. The commission must submit to the legislature an evaluation of the state's tax structure, recommend revenue and tax policy, and then dissolve.

(The committee report states that the amendment is deemed necessary since neither the executive nor legislative branch has over a period of two decades reviewed the state's overall tax system against such standards as equity and efficiency. It is further suggested that a periodic and independent assessment would be useful to both branches and would help provide the public with a framework by which it can assess executive and legislative actions on taxation and revenue policy.)

Appropriations for Private Purposes Prohibited

Hawaii's constitution has since 1950 provided that no tax be levied, nor the public credit be used, directly or indirectly, except for a public purpose; the same requirement applies to any grants made by the state. In 1978, new language was added stating: No grant of public money or property shall be made except pursuant to standards provided by law.

(The committee report notes that the addition of the language will require the legislature to establish standards for appropriation of funds to private organizations conducting programs which the legislature has determined to be in the public interest. No such standards have existed, even though the legislature appropriates several millions each biennium to private organizations.)

Expenditure Controls

Expenditures of public money may be made only pursuant to appropriations made by law.

General fund expenditures for any fiscal year may not exceed the state's current general fund revenues and unencumbered cash balances,

appropriations lapse at the close of the fiscal period for which the appropriation is made.

Revenue Bonds

The legislature is authorized to issue special purpose revenue bonds. 2/3 vote of the legislature are required: one to authorize bonds, and another to issue the bonds. Special purposes include assistance to manufacturing, processing, industrial enterprises, utilities serving general public, health care facilities, and low and moderate income government housing programs. State credit cannot be used directly or indirectly to secure special purpose revenue bonds. Legislature may authorize counties to also issue special purpose revenue bonds.

Debt Limitation; Exclusions

The debt limit is revised to limit amount of principal and interest payments on general obligation bonds to 20 percent of the average general fund revenues over the three preceding fiscal years; after 1982, the percentage limit is reduced to 18 1/2%. The legislature is required to certify that any bond issuance does not bring total state indebtedness above such a limit. The general obligation bond limit is reduced to 25 years from 35 years. The list of exclusions from computation of total indebtedness is extended to cover special purpose revenue bonds, certain loans guaranteed by the state, tax anticipation bonds, and emergency bonds.

ARTICLE VIII. LOCAL GOVERNMENT

Real Property Taxation

Power to tax real property is transferred from the state to the counties. For eleven years, assessing methods are to be uniform throughout the state.

(Reasons for giving counties the power to tax real property included: the change is consistent with home rule; counties are responsible for local affairs and should have authority over local real property taxation; real property tax policies are more of local than of statewide concern.)

State-Mandated Programs

The state must share in the cost of any new or expanded services mandated by the legislature to a political subdivision.

(The intent was to assure that the state did not circumvent the spending limit by transferring some of its functions to counties without compensating them for increased costs.)

except when the governor publicly declares that the public health, safety, and welfare is threatened.

(The latter provision prohibits deficit spending. It is designed to prevent circumvention of the newly established spending limit by engaging in deficit spending.)

Disposition of Excess Revenues

Provision is made for taxpayers to benefit from any surplus in the state's general fund balance. Whenever this balance in each of two successive fiscal years exceeds 5 percent of general fund revenues for each of those years, taxpayers are to be given a tax refund or tax credit. Means of the rebate are to be provided by the legislature.

Council on Revenues

A council on revenues is to be established by law to prepare revenue estimates for the state government and to report the estimates to the governor and the legislature. The governor is to consider the estimates in preparing the budget, recommending appropriations and revenues, and controlling expenditures. The legislature is to consider the estimates in appropriating funds and enacting revenue measures.

Budget

The governor is required to submit a complete plan of proposed expenditures of the executive branch, together with estimates of the aggregate expenditures of the judicial and legislative branches. The chief justice is required to submit to the legislature a complete plan of proposed expenditures of the judicial branch.

Total proposed general fund expenditures may not exceed the general fund expenditure ceiling established by the legislature, unless the governor sets forth the excess and the reasons therefor.

Expenditure Ceiling

A general fund expenditure ceiling is to be established by the legislature to limit the rate of growth of general fund appropriations to the estimated rate of growth of the state's economy. No appropriation in excess of the ceiling may be authorized during any legislative session unless authorized by 2/3 vote of the membership of each house.

Auditor

Authority of the legislative officer to conduct post-audits of programs and performances, as well as financial transactions and accounts, of executive agencies and political subdivisions is clarified.

Lapsing of Appropriations

Appropriations from general funds or general obligation bond funds must be for specified periods not exceeding three years. Unencumbered

ARTICLE IX. PUBLIC HEALTH AND WELFARE

Care of Handicapped

Provides state with broad power to provide for the treatment and rehabilitation of handicapped persons, broadening and clarifying previous provisions.

Public Assistance

The legislature is given the power to establish eligibility standards for public assistance, which covers financial aid, medical assistance, and social services.

Economic Security of the Elderly

The state is given power to provide for the security of the elderly by establishing and promoting programs to assure their economic and social wellbeing.

Management of State Population Growth

State and local governments are required to plan and manage growth:

The State and its political subdivisions, as provided by general law, shall plan and manage the growth of the population to protect and preserve the public health and welfare; except that each political subdivision, as provided by general law, may plan and manage the growth of its population in a more restrictive manner than the State.

(Referring to Hawaiian's concern about rapidly increasing population, the committee report concludes that planning and managing growth should be a top priority in the state's activities.)

Preservation of a Healthful Environment

The State shall have the power to promote and maintain a healthful environment, including the prevention of any excessive demands upon the environment and the State's resources.

Cultural Resources

The State shall have the power to preserve and develop, the cultural, creative and tration arts of its various ethnic groups.

Public Safety

The law of the splintered paddle, mamala-hoe kanawai, decreed by Kamehameha I - Let every elderly person,

woman and child, lie by the roadside in safety - shall be a unique and living symbol of the State's concern for public safety.

The State shall have the power to provide for the safety of the people from crimes against persons and property.

(According to the committee report, the amendment is intended to address the growing concern of the public about the crime rate. Existing statutes and endorsements were deemed ineffectual in coping with the growing crime rate. Public safety was singled out as an area deserving special and increased recognition.)

ARTICLE X. EDUCATION

Public Education

The prohibition of "segregation" in the schools was replaced with a prohibition against discrimination. Sex was added to prohibitions under discrimination.

Board of Education

Amendments deal with nonpartisan election and districting of Hawaii's elected board of education.

Board is given jurisdiction over the internal organization and management of the public school system, though the legislature and governor would continue to exercise general budgetary control over the system.

Hawaiian Education Program

The State shall promote the study of Hawaiian culture, history and language.

The State shall provide for a Hawaiian education program consisting of language, culture and history in the public schools. The use of community expertise shall be encouraged as a suitable and essential means in furtherance of the Hawaiian education program.

(The committee stated that the study of Hawaiian culture, history, and language should be vigorously promoted and encouraged. Because Hawaii has a special status as the only state which was formerly a kingdom and which has its own Polynesian heritage and customs, the inclusion of the provision in the constitution is intended to facilitate the preservation and growth of the Hawaiian culture.)

(The convention wanted to assure the general diffusion of Hawaiian history in the community to assure that a program be developed as part of the regular public school curriculum employing persons who have knowledge of Hawaiian language, culture, and history, but who do not necessarily have the formal educational qualifications.)

Board of Regents; Powers

The board of regents is given exclusive jurisdiction over the internal organization and management of the University of Hawaii. The amendment also states its intent not to limit the power of the legislature to enact laws of statewide concern.

While constitutional intent was to make authority of the board of regents complete with respect to matters of internal organization and management, the governor would continue to review the university's budget requests before submission to the legislature. Furthermore, the university would continue to comply with laws passed by the legislature... (A post-convention analysis of constitutional amendments by the Legislative Reference Bureau raises a series of questions that remain unresolved even after this supposedly clarifying amendment was enacted.)

ARTICLE XI. CONSERVATION, CONTROL AND DEVELOPMENT OF RESOURCES

Conservation and Development of Resources

For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

All public natural resources are held in trust by the State for the benefit of the people.

The amendment deletes previous requirements for the state to promote the conservation, development and utilization of agricultural resources and fish, mineral, forests, water, land, game and other natural resources.

The committee report defines the word "conservation" as "the protection, improvement, and use of natural resources according to principles that will assure the highest economic or social benefits." ... The provision regarding "self-sufficiency" was included to recognize the growing concern and awareness of Hawaii as being overly dependent on outside sources for, among other resources, food and energy... The report concludes that the promotion of energy conservation, development of clean, renewable sources of energy, and achievement of increased self-sufficiency would be adequately covered by the provisions of the new section.)

Agricultural Lands

The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally

suitable lands. The legislature shall provide standards and criteria to accomplish the foregoing.

Lands identified by the State as important agricultural lands needed to fulfill the purposes above shall not be reclassified by the State or rezoned by its political subdivisions without meeting the standards and criteria established by the legislature and approved by a two-thirds vote of the body responsible for the reclassification or rezoning action.

The new language substitutes for a section referring only to development of farm and home ownership.

Public Land Banking

The State shall have the power to acquire interests in real property to control future growth, development and land use within the State. The exercise of such power is deemed to be for a public use and purpose.

(The language is designed to overcome possible constitutional problems in case the legislature chose to establish a land bank program.)

Water Resources

A new section is added obligating the state to protect, control, and regulate water resources for the benefit of the people of Hawaii. The legislature must provide for a water resources agency to set water policies, define beneficial uses, protect ground and surface water, establish criteria for water use priorities, and establish procedures for regulating all uses of Hawaii's water resources.

(The Committee of the Whole report states that the question of water ownership is irrelevant to the states ability to exercise its police power to regulate fresh water resources. It further clarifies that the agency has power to regulate existing as well as future water usage.)

Nuclear Energy and Radioactive Material Disposal

Another new section added to the resource article provides:

No nuclear fission power plant shall be constructed or radioactive material disposed of in the State without the prior approval by a two-thirds vote in each house of the legislature.

Environmental Rights

Hawaii's convention decided to affirm the rights of citizens to a clean and healthful environment, and citizens are given the right to sue to enforce this right:

ARTICLE XII. HAWAIIAN AFFAIRS

An article previously dealing with Hawaiian home lands now covers the Hawaiian affairs package enacted by the 1978 convention. The package is designed to recognize rights of and provide benefits for native Hawaiians.

Hawaiian Homes Commission Act

The Hawaiian Homes Commission Act of 1920 was incorporated in Hawaii's constitution in 1959 as a condition of Hawaii's admission to the Union. Under the act, all available lands be used to provide for settlement by native Hawaiians and to raise revenues for their benefit.

While many Hawaiians benefited over the years, much land was used for non-settlement purposes, including utilization by sugar and pineapple plantations. Monetary returns were not considered sufficient to be of major benefit to native Hawaiians.

1978 amendments to the act established specific purposes for its implementation: (1) development of home, agriculture, farm and ranch lots; (2) home, agriculture, aquaculture, farm and ranch loans; (3) rehabilitation projects to include, but not limited to, educational, economic, political, social and cultural processes by which the general welfare and conditions of native Hawaiians are thereby improved; (4) the administration and operating budget of the department of Hawaiian home lands...

Further, 30 percent of state receipts from lease of sugar lands or from water licenses are to be placed in a newly established native Hawaiian rehabilitation fund, which becomes one of eight constitutionally established special funds. This money is to be used solely for the benefit of native Hawaiians, as described in item (3) of the preceding paragraph.

A special provision excludes waters controlled by the Department of Hawaiian Home Lands from any outside control, thus removing them from jurisdiction of the water resources agency established in an earlier amendment.

Office of Hawaiian Affairs

A further series of amendments establishes an Office of Hawaiian Affairs, which would hold title to all property conveyed to it and which would, in turn, be held in trust for native Hawaiians and the general public. A nine-member board of trustees, elected by and consisting of Hawaiians is to manage and administer proceeds from the disposition of lands, natural resources, minerals, and income from whatever source for Hawaiians.

"Hawaiian" is defined as any descendant of the races inhabiting the Hawaiian Islands previous to 1778. "Native Hawaiian" is any descendant of not less than one half part of the blood of races inhabiting the Hawaiian Islands previous to 1778.

Subsistence, Cultural, and Religious Rights

The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

An "ahupua'a" is defined as a land division or unit of land usually extending from the uplands to the sea, varying in size from 100 to 100,000 acres. Traditionally, individual Hawaiians did not own land, and lands provided under the Hawaii Homes Commission Act are not held in fee. Thus, the rights are considered to be personal rights; rather than being attached to the land, the rights are inherently held by Hawaiians and do not run with the land.

Only native Hawaiians who are tenants of an ahupua'a, and not all native Hawaiians, are given access rights to the mountains and the sea, as was traditionally and customarily asserted by their ancestors. Other protected rights include fishing rights, hunting, gathering, water rights, and other rights for sustenance, cultural, and religious purposes.

ARTICLE XV. STATE BOUNDARIES; CAPITAL; FLAG; LANGUAGE AND MOTTO

Boundaries

In order to eliminate ambiguity and uncertainty with respect to state boundaries as established in the Congressional Admission Act, and to affirm the state's archipelagic status in order to protect and regulate Hawaii's commerce and trade and to conserve and utilize its ocean resources, the boundary definition was revised to read:

The State of Hawaii shall consist of all the islands, together with their appurtenant reefs and territorial and archipelagic waters... (New matter underlined.)

Hawaiian: An Official Language

English and Hawaiian shall be the official languages of Hawaii, except that Hawaiian shall be required for public acts and transactions only as provided by law.

(In adopting the new language, the convention wanted to overcome insults of the past, where the speaking of Hawaiian was forbidden in the public school system, and of the day, where Hawaiian has been listed as a foreign language in the language department of the University of Hawaii. A further stated intent was to give full recognition to the rich and cultural inheritance that Hawaiians have given to all ethnic groups.)

Motto

The state motto is established as "Ua mau ke ea o ka aina i ka pono."

ARTICLE XVI. GENERAL AND MISCELLANEOUS PROVISIONS

Disqualifications from Public Office or Employment

An amendment provides that persons convicted (rather than, as previously stated, merely accused) of an act or conspiracy to overthrow the government by force will be disqualified from holding public office or employment.

Adverse Possession

A new provision was enacted to provide a constitutional vehicle to "protect the lands of the people from theft through adverse possession proceedings." Use of adverse possession is restricted to real property of five acres or less. Such claims may be brought by a person not more than once in twenty years.

(The adverse possession process had apparently been used in the past to obtain title to lands properly belonging to native Hawaiians.)

Plain Language

A principle was established that government writing should be concise, simple, and understandable. This was designed to insure that the people have access to the government's resources and information and that non-technical language be used whenever possible:

Insofar as practicable, all governmental writing meant for the public, in whatever language, should be plainly worded, avoiding the use of technical terms.

ARTICLE VII. REVISION AND AMENDMENT

Constitutional Convention

One amendment provides that if any nine year, instead of ten year, period elapses during which the question of whether to hold a constitutional convention is not submitted to the electorate, that question is to be voted on at the first general election thereafter. The intent is still that the question be submitted to the electorate every tenth year, but the change eliminates the problem that resulted in 1976 due to strict interpretation of the ten-year provision.

(Alaska could face a similar problem in view of its similar ten year proviso.)

To deal with the problem of insufficient time having been provided by the legislature for the 1978 convention, delegates specified that future constitutional conventions begin not less than five months prior to the next regularly scheduled general election.

(The committee report discusses the wish of delegates for a specified public official to convene delegates and disburse monies or incur expenses prior to formal organization of the convention. However, delegates agreed that the matter should be resolved by the legislature.)

(The legislature is also urged by the report to consider establishment of a constitutional revision commission to provide for continuous study of Hawaii's constitution.)

TECHNICAL AND STYLE CHANGES

A separate amendment was adopted which:

- changes the constitution where the subject was found to be unconstitutional or unnecessary under the Constitution of the United States.
- changes style and language for uniformity and other reasons.
- replaces words which sound like they apply to only men or women with words which apply to everyone (de-sexifying the constitution)
- makes small changes which are related to the main purposes of other amendments.