

PUBLIC ACCESS ROOM

A division of the Legislative Reference Bureau

NEWSLETTER

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Amending the Constitution

The Constitution of the State of Hawaii ("Constitution") is such a foundational document, providing the basis for other laws and rules, that it takes quite a lot to change it!

This year, on the November 6th ballot, you will have two questions asked of you. Roughly,

- 1) Do you think the Constitution should be changed to authorize the Legislature to establish, as provided by law, a surcharge on investment real property to be used to support public education?
- 2) Do you think there should be a Constitutional Convention to consider other ways in which the Constitution might be changed?

At the Public Access Room (PAR), we do not take a position on either of these questions. However, we thought a little context might make things a bit easier for you.

What's in the Constitution?

On pages 2-3, you will find titles and links to the various sections of the Constitution. You can select the sections you are interested in, or start with one and use the "previous" or "next" arrows at the bottom of the webpages to navigate through the document. As you will see, it doesn't take that long to get through the whole thing!

The Constitution provides the framework for Hawaii's government and laws – the specifics are usually spelled out in the Hawaii Revised Statutes (HRS). Take a look at the articles and sections – the Constitution establishes a separation of government power, ensures representation of the people, and provides protections of individual and collective human rights. The framers of the Constitution recognized that, over time, the people might decide that the rules and principles they want government to follow may need to be fixed or made better. So they made sure that the Constitution spells out exactly how it can be changed or amended.

Timetable

2018

November

6th Election: General Election

2019

January

16th Legislature:
Opening Day of 2019 Regular Session

Starting on page 4, we'll take you through the two methods of proposing changes to the Constitution. And, on page 6, you'll find a bit more information about Constitutional Conventions.

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The Constitution of the State of Hawaii

In November, you will be asked whether or not we should have a constitutional convention... What does the Constitution cover? Click the links to delve into the sections.

PREAMBLE:

"We, the people 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.

We reaffirm our belief in a government of the people, by the people and for the people, and with an understanding and compassionate heart toward all the peoples of the earth, do hereby ordain and establish this constitution for the State of Hawaii."

Article I Bill of Rights

Section 1 [Political power](#); 2 [Rights of individuals](#); 3 [Equality of rights](#); 4 [Freedom of religion, speech, press, assembly and petition](#); 5 [Due process and equal protection](#); 6 [Right to privacy](#); 7 [Searches, seizures and invasion of privacy](#); 8 [Rights of citizens](#); 9 [Enlistment; segregation](#); 10 [Indictment; preliminary hearing; information; double jeopardy; self-incrimination](#); 11 [Grand jury counsel](#); 12 [Bail; excessive punishment](#); 13 [Trial by jury, civil cases](#); 14 [Rights of accused](#); 15 [Habeas corpus and suspension of laws](#); 16 [Supremacy of civil power](#); 17 [Right to bear arms](#); 18 [Quartering of soldiers](#); 19 [Imprisonment for debt](#); 20 [Eminent domain](#); 21 [Limitations of special privileges](#); 22 [Construction](#); 23 [Marriage](#); 24 [Public access to information concerning persons convicted of certain offenses against children and certain sexual offenses](#); 25 [Sexual assault crimes against minors](#)

Article II Suffrage and Elections

Section 1 [Qualifications](#); 2 [Disqualification](#); 3 [Residence](#); 4 [Registration; voting](#); 5 [Campaign fund, spending limit](#); 6 [Campaign contributions limits](#); 7 [Resignation from public office](#); 8 [General, special and primary elections](#); 9 [Presidential preference primary](#); 10 [Contested elections](#)

Article III The Legislature

Section 1 [Legislative power](#); 2 [Composition of senate](#); 3 [Composition of house of representatives](#); 4 [Election of members; term](#); 5 [Vacancies](#); 6 [Qualifications of members](#); 7 [Privileges of members](#); 8 [Disqualifications of members](#); 9 [Legislative allowance](#); 10 [Sessions](#); 11 [Adjournment](#); 12 [Organization; discipline; rules; procedure](#); 13 [Quorum; compulsory attendance](#); 14 [Bills; enactment](#); 15 [Passage of bills](#); 16 [Approval or veto; Reconsideration after adjournment](#); 17 [Procedures upon veto](#); 18 [Punishment of nonmembers](#); 19 [Impeachment](#)

Article IV Reapportionment

Section 1 [Reapportionment years](#); 2 [Reapportionment commission](#); 3 [Chief election officer](#); 4 [Apportionment among basic island units](#); 5 [Minimum representation for basic island units](#); 6 [Apportionment within basic island units](#); 7 [Election of senators after reapportionment](#); 8 [Staggered terms for the senate](#); 9 [Congressional redistricting for United States house of representatives](#); 10 [Mandamus and judicial review](#)

Article V The Executive

Section 1 [Establishment of the executive](#); 2 [Lieutenant governor](#); 3 [Repealed](#); 4 [Succession to governorship; absence or disability of governor](#); 5 [Executive powers](#); 6 [Executive and administrative offices and department](#)

Article VI The Judiciary

Section 1 [Judicial power](#); 2 [Supreme court; intermediate appellate court; circuit courts](#); 3 [Appointment of justices and judges; Qualifications for appointment; Tenure; retirement](#); 4 [Judicial selection commission](#); 5 [Retirement; removal; discipline](#); 6 [Administration](#); 7 [Rules](#)

Article VII Taxation and Finance

Section 1 [Taxing power inalienable](#); 2 [Income taxation](#); 3 [Tax review commission](#); 4 [Appropriations for private purposes prohibited](#); 5 [Expenditure controls](#); 6 [Disposition of excess revenues](#); 7 [Council on revenues](#); 8 [The budget](#); 9 [Legislative appropriations; procedures; expenditure ceiling; General fund expenditure ceiling](#); 10 [Auditor](#); 11 [Lapsing of appropriations](#); 12 [Definitions; issuance of indebtedness](#); 13 [Debt limit; exclusions](#)

Article VIII Local Government

Section 1 [Creation; powers of political subdivisions](#); 2 [Local self-government; charter](#); 3 [Taxation and finance](#); 4 [Mandates; accrued claims](#); 5 [Transfer of mandated programs](#); 6 [Statewide laws](#)

Article IX Public Health and Welfare

Section 1 [Public health](#); 2 [Care of handicapped persons](#); 3 [Public assistance](#); 4 [Economic security of the elderly](#); 5 [Housing, slum clearance, development and rehabilitation](#); 6 [Management of state population growth](#); 7 [Public sightliness and good order](#); 8 [Preservation of a healthful environment](#); 9 [Cultural resources](#); 10 [Public safety](#)

Article X Education

Section 1 [Public education](#); 2 [Board of education](#); 3 [Power of the board of education](#); 4 [Hawaiian education program](#); 5 [University of Hawaii](#); 6 [Board of regents; powers](#)

Article XI Conservation, Control and Development of Resources

Section 1 [Conservation and development of resources](#); 2 [Management and disposition of natural resources](#); 3 [Agricultural lands](#); 4 [Public land banking](#); 5 [General laws required; exceptions](#); 6 [Marine resources](#); 7 [Water resources](#); 8 [Nuclear energy](#); 9 [Environmental rights](#); 10 [Farm and home ownership](#); 11 [Exclusive economic zone](#)

Article XII Hawaiian Affairs

Section 1 [Hawaiian Homes Commission Act](#); 2 [Acceptance of compact](#); 3 [Compact adoption; procedures after adoption](#); 4 [Public trust](#); 5 [Office of Hawaiian Affairs; establishment of board of trustees](#); 6 [Powers of board of trustees](#); 7 [Traditional and customary rights](#)

Article XIII Organization; Collective Bargaining

Section 1 [Private employees](#); 2 [Public employees](#)

Article XIV Code of Ethics

Article XV State Boundaries; Capital; Flag; Language and Motto

Section 1 [Boundaries](#); 2 [Capital](#); 3 [State flag](#); 4 [Official languages](#); 5 [Motto](#)

Article XVI General and Miscellaneous Provisions

Section 1 [Civil service](#); 2 [Employees' retirement system](#); 3 [Disqualifications from public office or employment](#); 3.5 [Salary commission](#); 4 [Oath of office](#); 5 [Intergovernmental relations](#); 6 [Federal lands](#); 7 [Compliance with trust](#); 8 [Administration of undisposed lands](#); 9 [Tax exemption of federal property](#); 10 [Hawaii national park](#); 11 [Judicial rights](#); 12 [Quieting title](#); 13 [Plain language](#); 14 [Titles, subtitles; construction](#); 15 [General power](#); 16 [Provisions are self-executing](#)

Article XVII Revision and Amendment

Section 1 [Methods of proposal](#); 2 [Constitutional convention; Election of delegates; Meeting; Organization; procedure; Ratification; appropriations](#); 3 [Amendments proposed by legislature](#); 4 [Veto](#); 5 [Conflicting revisions or amendments](#)

Article XVIII Schedule

Section 1 [Districting and apportionment](#); 2 [1978 Senatorial elections](#); 3 [Repealed](#); 4 [Effective date for term limitations for governor and lieutenant governor](#); 5 [Judiciary: transition; effective date](#); 6 [Effective date and application of real property tax transfer](#); 7 [1978 Board of education elections](#); 8 [Effective date for Office of Hawaiian Affairs](#); 9 [Continuity of laws](#); 10 [Debts](#); 11 [Residence, other qualifications](#); 12 [Board of education transition](#)

[Hard copy readers can visit https://www.capitol.hawaii.gov/hrscurrent/Vol01_Ch0001-0042F/05-Const/CONST_.htm and navigate using the "next" and "previous" links at the bottom of the webpages.]

Two Ways to Propose a Change to the Constitution

Per [Article XVII, Section 1](#) of the Constitution, there are two ways to propose changes to the Constitution:

- By proposal adopted by the Legislature (i.e., a bill); or
- By proposal recommended by a Constitutional Convention.

Regardless of the method, the voters must ratify any proposed change. This means that the proposed change will appear on a ballot, and registered voters will be able to decide whether or not the change should be made to the Constitution.

Let's look at both of the ways changes can be proposed.



Question Proposed by the Legislature (A Bill)

The Constitution ([Article XVII, Section 3](#)) gives the Legislature the authority to propose changes to the Constitution by passing a bill. Since the last ConCon held in 1978, the Legislature has used this authority to propose a total of sixty-five constitutional amendments, of which fifty-two have been ratified by the electorate (one more constitutional amendment will be included on the 2018 general election ballot, which, if ratified, will bring the total to fifty-three).

The bill follows the same legislative process as other bills (introduction by a member, public hearings in committees, and at least three votes by each chamber) until the last stage, where there are two methods allowing for final passage:

- 1) The bill must obtain a two-thirds vote on final reading in each chamber (for other bills, only a majority of the members to which the chamber is entitled is required) AND the final reading cannot take place until after the governor receives at least ten days' written notice that the bill is in its final form. The ten-day notice gives the governor the opportunity to use the power of persuasion to object to or support the proposed revisions or amendments.
- 2) Alternatively, a bill proposing amendment passes if it receives a majority vote in both chambers at two successive sessions. In this scenario, notice to the governor is not required.

When a bill proposing a change to the Constitution is passed by the Legislature, it does not go to the governor for signature. Instead, the question posed in the bill is put on the next general election ballot for the people to vote "yes" or "no." The exact question to be posed to voters must be stated in the bill.

Educating the public

The Constitution specifies how legislatively proposed amendments are publicized. They will be entered in the legislative journals. They are published once in each of four successive weeks in "at least one newspaper of general circulation . . . within the two months' period immediately before the next general election." The full text of the bill must also be available on the day of election at each polling place.

[Continued on page 5]

In addition, voters can access the bill status webpage of the proposed amendment, where testimony for and against the measure as it made its way through the Legislature will appear. (For this year's proposed amendment, visit the status page for SB2922 here:

https://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=SB&billnumber=2922&year=2018 .)

Counting the votes

A proposed amendment to the Constitution is ratified at a general election if a majority of those voting on the particular amendment vote affirmatively, and if the number of voters making up that majority constitutes at least fifty per cent of the total votes cast at the general election. Note that a ballot that leaves the answer to the question blank counts as a "no" vote, making it harder for the amendment to pass.



The Constitution ([Article XVII, Section 2](#)) also provides for constitutional amendments via proposals made by a Constitutional Convention ("ConCon"). (See the next section for more information on how a ConCon can be called, and how it is set up.) Proposals put forward by a ConCon are submitted to voters on the ballot in the form of a question consisting of one subject that can be answered by voting "yes" or "no."



Educating the public

Here again, the Constitution ensures that the public is advised of the changes being proposed. At least thirty days before the election, the ConCon makes the full text of the proposals available for public inspection. Every public library, office of the clerk of each county, and the chief election officer must make this information available to the public. The full text of the proposals is also available on the day of election at each polling place.

Counting the votes

A proposed amendment to the Constitution is ratified at a **general election** if a majority of those voting on the particular amendment vote affirmatively ("yes"), and if the number of voters making up that majority constitutes at least fifty per cent of the total votes cast at the general election. At a **special election**, an amendment is ratified if the number of voters making up the affirmative majority equals at least thirty per cent of the total number of registered voters. Note that Attorney General's Opinion 82-7 concludes that "blank" and "spoiled" ballots are included as part of the total votes cast at an election.



Constitutional Convention ("ConCon")



So when do we have a Constitutional Convention ("ConCon")? The last one was in 1978. The question of whether to have a ConCon can be proposed by the Legislature on any special or general election ballot. There is no limit on the number of times the question can be posed. However, if nine years go by without the question of having a ConCon appearing on a ballot, it must be placed on the ballot at the next general election. That is the situation we find ourselves in now. And it's why on the November 6 ballot voters will be asked whether a ConCon should be held.

It is important to remember that the ballot question is whether or not a ConCon should be held, not who will serve in it or what proposals may be offered. If the question is answered in the negative, the clock resets and the question of a ConCon is not brought up until it appears on the ballot again. If the question is answered in the affirmative, then the Constitution states that the Legislature must decide how and when to conduct a delegate election and provide financial and other resources necessary to conduct the election and to hold the ConCon. Once that's done and the ConCon takes place, any proposals to change the Constitution that may emerge will appear on a ballot for the people to ratify.

Back to the question of whether or not to have a ConCon. If a majority of the ballots cast on this question is in the affirmative (*blank votes are tallied as no votes*), we will be on the path to a ConCon.

While the Legislature does get to determine how many delegates are to be elected and how much money is to be provided for the ConCon, once established, it is the ConCon that determines its own organization, sets its own rules of procedure, and serves as its own judge of its elections. Also, there is no requirement that the delegates must come to an agreement on one or more proposed revisions to the Constitution.

If any proposed constitutional revisions are successfully proposed and agreed upon at the ConCon, the proposed amendments would then be submitted for a vote by the people. A proposed revision would appear on a ballot, and voters would have the opportunity to say whether or not the Constitution should be changed in that particular way. (See the previous section entitled, "Question Proposed by Constitutional Convention.") The people have the final say.

Other Issues of Note

- 1) How many delegates will there be and how are they selected?
If the electorate approves the convening of a ConCon, the Legislature then decides the number of ConCon delegates, the areas they will represent, and the manner and location in which the ConCon shall convene. Delegates to the ConCon will be chosen at the next regular election unless the Legislature provides for the election of delegates at a special election.
- 2) How is the ConCon funded?
The Legislature must provide state funding for the necessary facilities, equipment, and staffing for the ConCon, and may enact legislation to facilitate the ConCon's operation.
- 3) How much will a ConCon cost?
It depends on a number of factors, but in 2008, the Legislative Reference Bureau was asked to [study](#) this issue, and it estimated that (in 2012 dollars) the cost of a ConCon could range from approximately \$7.5 million to \$48.8 million dollars.
- 4) Where will a ConCon be held?
Such a determination would be made at a later date based upon the spatial needs, facility availability, and cost.