



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008**

ON THE FOLLOWING MEASURE:

H.B. NO. 3294, RELATING TO A CONSTITUTIONAL CONVENTION

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, February 7, 2008 **TIME:** 5:30 PM

LOCATION: State Capitol, Room 325
Deliver to: Committee Clerk, Room 302, 5 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Robyn B. Chun, Deputy Attorney General

Chair Waters and Members of the Committee:

We offer the following comments on this bill.

With respect to a constitutional convention, article XVII, section 2 of the Hawaii State Constitution provides, in relevant part, that "the legislature shall make the necessary appropriations and may enact legislation to facilitate their operation." Accordingly, section 4 of this bill should be clarified to allow the convention to retain: (a) legal services without regard to section 28-8.3, Hawaii Revised Statutes, by amending section 28-8.3(a) to add a constitutional convention to the list of governmental bodies or agencies that may employ or retain counsel; and (b) consultant services without regard to chapter 103D, Hawaii Revised Statutes, which can be accomplished by amending the definition of "governmental body" in section 103D-104 to exclude the constitutional convention.

Other relevant issues are these. First, previous conventions have been held in a general election year so that the proposed amendments go to the voters without delay; in this case, that would be 2010. Second, section 6 allows public employees leave without pay, or vacation pay in lieu of a salary, from the date of the special election of delegates to the convention. It might be more

appropriate to provide that public employees shall be permitted to serve without the loss of benefits other than salary, or loss of seniority, but that the appointing authority shall have discretion as to how to implement such a provision.

In addition, there is a typographical error at page 5, line 1 of this bill. The word "is" should be replaced with the word "its".



STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION
235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

February 6, 2008

TO: The Honorable Tommy Waters
The Honorable Blake Oshiro
Members of the House Judiciary Committee

FROM: Barbara U. Wong, Executive Director ^{BW}
Campaign Spending Commission

SUBJECT: Testimony on H.B. No. 3294, Relating to a Constitutional Convention

Thursday, February 7, 2008
5:30 p.m. in Conference Room 325

Chair Waters, Vice-Chair Oshiro, and Members of the House Judiciary Committee, thank you for the opportunity to testify on this bill.

H.B. No. 3294 provides, in part, that if voters in the 2008 general election approve a constitutional convention, there shall be a special election in August 2009 for 102 delegates. Voters will elect two nonpartisan delegates for each district of the house of representatives by mail-ballots.

The Campaign Spending Commission ("Commission") takes no position regarding this bill, except with respect to section 8(c) which appropriates an unspecified amount to the Commission for fiscal year 2008-2009, but specifies that the "sum appropriated shall be expended by the department of accounting and general services ("DAGS") for the purposes of this Act." We also note that the Committee may want to consider amending the campaign finance laws (e.g., contribution limits, reporting deadlines, and partial public funding provisions) at the appropriate time because the laws currently does not address candidates who are delegates to the convention.

Allow the Commission to expend the funds appropriated

The Commission recommends that the bill be amended to allow the Commission to administer and expend the appropriation pursuant to Hawaii Revised Statutes ("HRS") § 11-193(c), which exempts the Commission from some of the laws relating to administrative supervision of boards and commissions. Briefly, the Commission is allowed to make direct communications with the governor and legislature and does not

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The Honorable Tommy Waters
Testimony regarding H.B. No. 3294
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February 7, 2008

have to obtain the approval of the Comptroller for personnel decisions and for all purchases of supplies, equipment, or furniture. By allowing the Commission to expend the funds, the personnel and procurement process would be expedited.

If the sum appropriated is to be expended by DAGS, rather than the Commission, there will be a large increase in paperwork, as each expenditure will have to be requested from and approved by DAGS. This will impede the Commission's ability to get up and running as soon as possible; we will not even know if a Constitutional Convention will take place until November 4, 2008.

\$210,000 appropriation

We estimate that \$210,000 should be appropriated for three temporary positions for training candidates in campaign finance law and the electronic filing system, review of disclosure reports, investigations, technical support, and clerical assistance, as well as for equipment for these positions. This is based upon our estimate of a minimum of 300 candidates in the 2009 election (approximately three candidates for each seat).

There were 698 persons who were candidates for election as delegates to the 1978 Constitutional Convention (approximately seven candidates for each seat). This is about 2.5 times the size of a regular election.

The election for delegates to the convention will occur as we review reports and investigate complaints for the 2008 election, follow-up on late reports from the 2008 election, prepare and testify at the 2009 legislature (we anticipate submitting a major bill recodifying the campaign finance subpart), and prepare for the 2010 election.

C30391



**STATE OF HAWAII
OFFICE OF ELECTIONS**

802 LEHUA AVENUE
PEARL CITY, HAWAII 96782

KEVIN B. CRONIN
CHIEF ELECTION OFFICER

**TESTIMONY OF THE
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS
TO THE HOUSE COMMITTEE ON JUDICIARY
ON HOUSE BILL NO. 3294
RELATING TO A CONSTITUTIONAL CONVENTION**

February 7, 2008

Chair Waters and members of the House Committee on Judiciary, thank you for the opportunity to testify on House Bill No. 3294. The purpose of this bill is to establish a mechanism for the election of delegates to a constitutional convention. The Office has the following technical concerns with the bill:

- The bill, as presently drafted, requires an election to be held in August of 2009. Additionally, section three states, "The delegates to the constitutional convention shall meet in Honolulu on the 1st day of September 2009..." The proposed timeline does not allow sufficient time between the election and convening of the convention. There needs to be at least twenty days for a contest for cause pursuant to section 11-174.5. Given this requirement the election can only be held on Saturday, August 1, 2009.
- The issue of funding needs to be addressed. Previously the office estimated in 2002 that it would cost at least \$600,000 to conduct an all mail election of this magnitude and this cost may have increased substantially. Monies have to be determined and appropriated this Legislative Session in order for this office to conduct this election.

This bill has major technical and legal implications on conducting this election. We would be more than willing and able to assist your committee on a proposed house draft.

Thank you for the opportunity to testify in support of House Bill No. 3294.

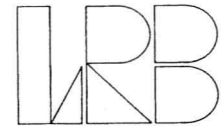
Respectfully Submitted:

By Kevin Cronin

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Ken H. Takayama
Acting Director

Research (808) 587-0666
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LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol
Honolulu, Hawaii 96813

Written Testimony Only

HB3294

RELATING TO A CONSTITUTIONAL CONVENTION

**Presented to the House Committee on Judiciary
Twenty-fourth State Legislature, Regular Session of 2008
By Ken H. Takayama, Acting Director
Legislative Reference Bureau
Thursday, February 7, 2008**

Chair Tommy Waters and Members of the Committee:

Thank you for this opportunity to testify on H.B. No. 3294, which makes appropriations for a constitutional convention to be held in 2009. The Bureau takes no position either for or against the bill but submits the following comments and concerns:

- The bill appropriates funds for fiscal year 2008-2009. Some of the important events in the bill, such as the election of delegates (August 2009) and the holding of the convention (September 2009) will not occur until after the end of that fiscal year.
- Article XVII, section 2 of the state constitution states that the convention "shall convene not less than five months prior to the next regularly scheduled general election." In this case, the convention is to be convened over a year before the 2010 general election, thus making the exact status of the convention somewhat unclear.
- Section 8(d) of the bill directs the Bureau to "update" the Hawaii constitutional convention studies. This is the equivalent of approximately 16 studies. This will be a major undertaking. Prior to the 1978 convention, the Bureau barely managed to complete the series before the convention started—and that update covered only a ten year period. In this case, thirty years have elapsed.
- In light of the foregoing point, it would be beneficial to the Bureau to have a clear statement of direction whether we should begin the updating process—which undoubtedly will require the hiring of contractors—as soon as the bill takes effect in July rather than wait until the election in November. In other words, should we embark on a large project and incur the costs that go with it?

before the question is even decided? In either case, given the size of the undertaking and the short time available, we request an exemption from the procurement code for any contracts relating to the study series.

- We have a great deal of concern about the requirement in section 8(d) that the Bureau conduct a "citizen education campaign". The Bureau did not have this responsibility in 1978, and any pre-convention educational "campaign" would need to occur during the precise period that we will be trying to complete the study series. We can assist with such aspects as production of some of the materials for such a campaign. Ultimately, however, we believe that such a campaign would be more effectively handled by the Legislature contracting with a reputable civic group such as the League of Women Voters.

Thank you very much for this opportunity to testify.

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University of Hawai`i at Manoa

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Feb 7, 2008

Testimony on HB3294 Relating to “Constitutional Convention; Appropriations” HB3293 “Con-Con; Voter Education; Appropriation”

Good Evening, Members of the Judiciary Committee.

I applaud your consideration of these two bills. HB3293 appropriates educational funds for better informing our citizens about the choice they have to make this November, about the nature of a Constitutional Convention, and how it operates, and how they get to approve or turn down any recommendations made by the Convention.

HB3294 sets some basic features of the process itself. As I wrote a lengthy op-ed that appears in the Honolulu Star Bulletin last May, describing the workings of the 1968 ConCon, let me list some of my recommendations here, as they relate to the present bills.

<http://starbulletin.com/2007/05/06/editorial/special.html>

A CONCON REQUIRES ADEQUATE PREPARATION

Without adequate pre-convention activities to study a host of major issues, make proposals and publicly discuss them, delegates will be elected primarily on the basis of name familiarity, large campaign expenditures or the backing of well-organized special interest groups. Votes will be cast hardly on the basis of good information about issues and the candidates themselves. Fortunately, Hawaii has historical precedents for doing a good job of organizing pre-ConCon activities, and we could adopt their approach.

EXTENSIVE PLANNING FOR THE 1968 CONCON

In 1968 a Citizens Committee on the Constitutional Convention played a major role in educating the public on constitutional issues and **stimulating a wide cross-section**

of individuals to stand as delegates to the convention. The following are some guiding principles, which I derive from University of Hawaii professor Normal Meller's book "Constitution Making In Hawaii."

» **Utilize citizen good-government groups.** Starting 12 months before the convention, members of the American Association of University Women, the Junior League of Honolulu, the League of Women Voters and other interested organizations pooled efforts to promote a large-scale conference about six months before the election.

In preparation for what turned out to be a three-day conference, 12 subcommittees, comprised of balanced representations of various points of view, were established to prepare proposals for the conference and convention.

These committees considered: the Constitution and the Convention; State-County Relationships; Tax and Finance; Judicial Article; Bill of Rights; Ethics; Legislative and Executive; Cultural Affairs; Health and Welfare; Conservation and Planning; Elections; Education; Amendment; Initiative, Referendum and Recall; and Continuing Informational Effort.

» **Job of subcommittees.** Within their assigned spheres of interest, the subcommittees had the responsibility to:

- 1) collect and disseminate background information in a form that could be made readily available to interested people;
- 2) encourage serious discussion of all proposals by making fact-based research materials and expert speakers available to interested organizations;
- 3) refine proposals to be submitted to the Constitutional Convention, phrased in precise language suitable for adoption;
- 4) act as a resource of personnel and information for the secretariat and the Subcommittee on Continuing Informational Effort;
- 5) develop and recommend programs designed to sharpen issues, increase citizen interest and educate the public; and
- 6) select and present the material to be covered at the Constitutional Conference sponsored by the Citizens Committee.

Each subcommittee worked out public presentations for the press, radio and television. They prepared drafts for one-minute spots on radio and television, highlighting the issues that would come before the convention. They furnished short to medium-length articles outlining the pro and con aspects of each issue.

While the original objective of bringing various community organizations together was to hold a conference for the ConCon, the representatives agreed that the committee's purpose should be **focused more toward citizen education** than just the conference. The Citizens Committee divided its activities into two stages: planning and running the conference itself, and a continuing effort to last until the revised Constitution was presented to voters for their approval.

Pulling off such an ambitious project required a lot of planning, coordination, effort and financial support. Subcommittees had to be organized, a conference headquarters established, and an extensive public information program laid out by professionals from public relations firms and the press, radio and television.

» **"The People's Conference."** To provide content as well as glamour to the event, five distinguished mainland commentators were asked to participate. The bulk of the program, however, was carried out by more than a hundred local academic, community and political leaders who discussed the pros and cons of the major issues likely to come before the constitutional convention.

Ten thousand promotional brochures were mailed. The newspapers and other media provided extensive advance publicity and, on the opening day, Gov. John Burns spoke before a standing-room-only audience of 500. In all, some 711 persons attended the three-day pre-convention conference.

As UH's Meller concluded, *"The conference admirably served the dual purpose of directing the attention of the public to the forthcoming election and convention, and also helped to clarify the nature of the issues."* An added bonus was that many of the heavily involved panel members and members of the audience ran later as delegates. The conference spun off similar activities and citizen participation on the Big Island and Kauai.

» **Supplying the public with information.** With the successful completion of its three-day conference, the Citizens Committee on Oahu directed its attention to public outreach. It produced a weekly "Con Commentary" radio call-in program, and prepared and mailed folders to church, community and service organizations listing both issues and sources of additional information.

The UH Speakers Bureau coordinated requests from organizations for speakers, frequently using people recruited by the Citizens Committee. UH also offered eight-week seminars on Constitutional Convention issues. All branches of the state library maintained a collection of convention materials for public perusal.

>> **Voter's pamphlet.** One of the subcommittees whose work expanded after the conclusion of the conference was the Subcommittee on Continuing Informational Effort, which gathered basic biographical information by questionnaires sent to all candidates, and from other sources. All of this data was printed in a roster of candidates, with photographs, published as a tabloid insert in a joint Sunday issue of the Honolulu Star-Bulletin and Honolulu Advertiser. In all, the Citizens Committee succeeded in publishing brief biographies for 360 of the 378 announced candidates, providing

background information on the many unknown individuals who were running for public office for the first time.

» **Symposium for newly elected delegates.** The final activity of the Citizens Committee was a three-day symposium at UH, held after the delegates were elected. The symposium featured four mainland specialists on constitutional revision. In addition, delegates had an opportunity to consult with local government officials who shortly would be called on to provide services to the convention. A good part of the symposium was devoted to sessions on the experiences of other conventions.

» The 1978 convention. While 1978's pre-convention activities were not as well organized, many efforts were undertaken to "tool up the community." Meller and Richard H. Kosaki reported, "*The media encouraged broad public involvement and solicited reactions to probable constitutional issues. Workshops were held on how to campaign for a convention seat. Public forums were scheduled throughout the state to examine a range of materials which might be considered in the convention. Polls taken under various auspices sought to probe the public's formulation of issues.*"

HOW TO DO IT

Holding a Constitutional Convention takes careful planning. Here are some guidelines.

- Elect two delegates per district: Prominent, well-financed candidates have a high probability of being elected. Providing a second choice allows fair representation of district's minority views. The highest two vote-getters are elected.
- Pay delegates a living wage: Pay at least \$4,000 a month, since we want a representative cross-section of the community running for, and being involved in, the ConCon. Otherwise, only paid lobbyists or paid representatives of entrenched power groups and the well-off or financially independent can be involved for such a long period.

Provide adequate funding for:

- » a citizens' committee to handle coordination and publicity, disseminate educational information, create a Web site and run a delegate symposium
- » special election mail-in ballots
- » salaries for 103 delegates
- » ConCon operational costs
- » adequate support staff and supplies
- » A Legislative Reference Bureau to perform research and provide assistance
- » voter's information pamphlets

>>**University of Hawaii role:** The university can play a significant role in this preliminary stage. Set up a "Learning Community" series of courses focusing on what constitutional changes would make sense. The ConCon could be tinkering about the edges, or consider fundamental structural questions (such as home rule).

>>**Campaign funding:** To provide a level playing field for candidates, minimally set strict campaign spending limits; allow only individual contributions (no corporate or PACs), limited to \$250, from registered voters who live in the district.

>>**Use mail-in ballot:** To increase voter turnout and reduce the costs of a special election, adopt the Oregon process.

SUGGESTED SCHEDULE --The first steps on the path to a Constitutional Convention in 2010 should be taken next year. A proposed schedule of events leading to a ConCon include:

2008

» November: Ballot proposal on whether to hold a ConCon in 2010.

2009

» January-May: Legislature passes bill to set up and fund pre-convention activities and the ConCon itself.

» July-December: Citizens Committee Working Groups convene about six months prior to Citizens Conference to fully prepare for ConCon.

2010

» Jan. 15: Citizens Committee three-day conference.

» February: Candidate education workshop on campaigning

» February-March: Public information campaign on ConCon issues

» April 1: Special election for ConCon delegates -- mail-in ballots

» Mid-April: Symposium for elected delegates

» May-July: Constitutional Convention

» August-October: Public education on amendments

» Nov. 5: Regular elections and vote on ConCon amendments

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The Twenty-Fourth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Judiciary

Testimony by
Hawaii Government Employees Association
February 7, 2008

**H.B. 3294 – RELATING TO A
CONSTITUTIONAL CONVENTION**

The Hawaii Government Employees Association opposes the purpose and intent of H.B. 3294. This bill is premature because the basic question of whether to have a Constitutional Convention is a decision for the voters after they hear about the pros and cons of this important issue.

Should voters decide on a Constitutional Convention (Con Con), the legislature will be called upon to determine the procedural aspects of a convention. However, we are firmly opposed to debating these procedural matters prior to a mandate by voters to hold a Con Con. There are other pressing issues demanding the attention of this legislature. If necessary, there will be ample time to address proposals contained in H.B. 3294 following the 2008 election.

Thank you for the opportunity to present testimony in opposition to H.B. 3294.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director

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Testimony Supporting HBs 3293 and 3294 (Constitutional Convention)
Ed Case

Committee on Judiciary, Hawaii State House of Representatives
February 7, 2008
5:30PM

Mr. Chair and members of this Committee, I am Ed Case, testifying as a private citizen in full support of HBs 3293 and 3294, both relating to a potential Hawaii state constitutional convention.

As we all know, Hawaii voters will answer this question at this year's general election: "Shall there be a convention to propose a revision of or amendments to the Constitution?" The submission of this question to the voters this year is mandated by our Constitution. If the voters answer yes, the details of how and when to convene the convention are mostly left to this legislature.

My own answer to the basic question is an unqualified yes. I believe we should convene a constitutional convention as soon as possible because, at our half-century mark of statehood, it is time for us to consider the big picture of our social and governmental compact going forward, to reaffirm what works and to improve what doesn't.

That discussion – whether or not to convene a convention – will continue over the next nine months and, I hope and believe, spark increased citizen engagement in our government. The bills before you today are neutral on the substance of the voters' choice but necessary to ensure a fully-informed decision.

The first, HB 3293, proposes that we do what we have otherwise done on similar submissions to the voters: assure that voters have the basic information with which to make an informed choice. In my own observation, given that it has been ten years since the question was last submitted to the voters and thirty years since our last constitutional convention, there is a substantial lack of knowledge among voters today as to our Constitution's requirements and the issues and outcomes of convening or not convening a convention.

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We can expect that, as public discussion picks up in the coming months, the level of public knowledge will increase. However, we cannot ensure, without an effort such as called for in this bill, that all voters will be provided with objective information, which is why we have authorized the Office of Elections to disseminate such information widely and objectively in past elections and should do so again this year through this measure.

The second, HB 3294, is an integral part of this same effort. In setting the basics of a convention now, should the voters choose this November to proceed with a convention, the legislature would be providing the voters with maximum information with which to make an informed decision. Voters will reasonably ask what-where-when-how-how much when the choice of whether to convene a convention is put to us, and this measure, as the legislature may choose to amend it, will provide that answer when it should be provided.

Beyond that basic reason, if the voters vote this November to convene a convention, this measure will accelerate the process of a convention and the submission to the voters of proposed constitutional amendments from the 2011-2012 timeframe to that of 2009-2010. If this measure is not enacted this year, and the legislature does not call special elections to select delegates next year, those delegates will be chosen at the 2010 regular elections, a convention convened in 2011-2012, and any proposals submitted to voters in 2012. But if it is enacted, then an orderly process will be established for delegate election in '09, a convention in '10, and submission of any proposals to the voters at '10's regular elections.

The policy question for you is whether, if the voters mandate a convention this year, we should collectively get on with it or effectively put it off for four years. I believe strongly that we should get going if the voters mandate a convention. It will not only be the voters' expectation, and not only exactly the right time to do so as we move into our next half-century of statehood together, but as well the broader issues of how we govern ourselves going forward in a changing Hawaii are ripe for collective discussion and decision.

Some may argue that the provisions of this bill may and should be put off until the legislature's '09 session; that this measure could be passed then and still establish a process of delegate election, convention and submission to the voters in the '09-'10 timeframe. I respectfully disagree, for three reasons.

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First, as discussed above, I believe voters should have the proposed details available to them to make a truly informed choice this November on whether or not to proceed. Second, the successful conventions of the past (1968 being the most notable example) resulted from a coordination of the delegate election/convention/proposed amendment submission basics with extensive public discussion and education on the specific issues; that process needs time to set up and carry out, and commencing it knowing the details after this year's election as opposed to the middle of next year after the '09 session would produce a far better result. And third, if unforeseen circumstances require any amendments in the process established by this measure this year, those adjustments can be made in the '09 session.

For these reasons, I urge advancement of HBs 3293 and 3294. Mahalo for your consideration.

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JUDtestimony

From: randy ching [redacted]
Sent: Thursday, February 07, 2008 8:37 AM
To: JUDtestimony
Subject: JUD: in support of HB 3294 - relating to a Constitutional Convention

Judiciary Committee
Chair Tommy Waters, Vice Chair Blake Oshiro
In support of HB 3294 - relating to a Constitutional Convention

Hearing on Thursday, February 7
5:30 p.m. in conference room 325

Chair Waters, Vice Chair Oshiro, and members of the committee,

I support HB 3294. If there is a Constitutional Convention, the Legislature should plan for it and fund it. The ConCon is an expression of the will of the people, and the Legislature should look to past ConCons for a guide on how to run one.

Please pass HB 3294. Mahalo.

Sincerely,

Randy Ching
[redacted]
[redacted]

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