

Honolulu, Hawaii

MAR 01 2013

RE: S.B. No. 982

S.D. 1

Honorable Donna Mercado Kim  
President of the Senate  
Twenty-Seventh State Legislature  
Regular Session of 2013  
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred  
S.B. No. 982 entitled:

"A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE XVII,  
SECTION 3, OF THE CONSTITUTION OF THE STATE OF HAWAII,"

begs leave to report as follows:

The purpose and intent of this measure is to propose a constitutional amendment to ensure that legislatively proposed constitutional amendments are ratified by counting only affirmative and negative votes after all blank and spoiled ballots are excluded. Specifically, this measure:

- (1) Requires that the full text of any proposed constitutional amendment be available for inspection on the website of the Office of Elections;
- (2) Requires that each constitutional amendment be submitted in the form of a question embracing only one subject with the question having designated spaces to mark a "yes" or "no" on the constitutional amendment;
- (3) Requires that constitutional amendments be effective only if approved at a general election by a majority of votes constituting at least fifty percent of the total votes cast at the election, or at a special election by a majority of votes tallied on the question, with the majority constituting at least thirty percent of the total number of registered voters; and



- (4) Clarifies that blank and spoiled ballots shall not be tallied upon the question.

Your Committee received testimony in support of this measure from the Department of the Attorney General. Testimony in opposition to this measure was received from the Department of the Prosecuting Attorney, City and County of Honolulu; Office of the Public Defender; and League of Women Voters.

The intent of this measure is to provide that a legislatively proposed constitutional amendment becomes effective if approved by a majority, counting only those votes on the question that are marked either "yes" or "no" and not counting blank and spoiled ballots. Under this measure, determining whether a legislatively proposed constitutional amendment is approved by the voters will be different from the current method of determining whether the voters have approved an amendment proposed by the constitutional convention of 1950.

Under the existing method, which also applied to legislatively proposed constitutional amendments, the majority of the votes marked "yes" and "no" must also be a majority of the total votes cast, which includes all ballots, including blank and spoiled ballots to be deemed approved by the voters. As explained by the Supreme Court in Hawaii State AFL-CIO v. Yoshina, 84 Haw. 374, 935 P.2d 89, "[t]he procedure for ratification of revisions or amendments is the same whether the amendments are initiated by the legislature or by a constitutional convention, and clearly requires an extraordinary majority."

Delegates to the 1950 Constitutional Convention also expressed concerns with procedures that made revisions and amendments to the constitution too easy.

Your Committee has concerns that this measure will allow the state constitution to be amended by a majority based on a small number of voters who actually vote "yes" or "no" on the proposed constitutional amendment. The Office of the Public Defender testified that the state constitution is not supposed to be easy to amend and that an already small pool of voters submitting affirmative or negative ballots will be even smaller if this proposed constitutional amendment is ratified.



A survey conducted by the Department of the Attorney General found that in all fourteen instances that legislatively proposed constitutional amendments were voted on during the last five general elections, an average of ninety-one percent of the total number of voters who voted in the election voted "yes" or "no" to approve or reject a legislatively proposed constitutional amendment. The relatively large number of yes and no votes on constitutional amendments proposed by the legislature is encouraging.

The Department of the Attorney General also indicated in its testimony that it is not clear whether the Hawaii State Constitution includes or excludes blank or spoiled ballots in determining the majority of voters voting on the constitutional amendment question.

Accordingly, your Committee has amended this measure by:

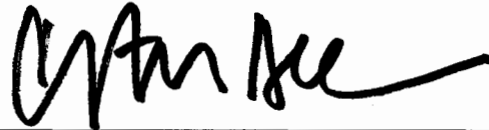
- (1) Keeping the conditions and requirements for ratification of legislatively proposed constitutional amendments the same as for constitutional amendments proposed by a constitutional convention, but with an exception as suggested by the Department of the Attorney General that constitutional amendments proposed by the legislature become effective when approved at a general election by a majority of the votes tallied upon the question;
- (2) Adding a definition to the phrase "votes tallied" as excluding blank and spoiled ballots and to the phrase "votes cast" as including all ballots, including blank and spoiled ballots to be consistent with the expressed intent of the 1950 Constitutional Convention that established the current method for revising and amending the constitution;
- (3) Adding to the suggested language made by the Department a requirement that the number of votes tallied on the question in comparison to the number of votes cast at the general election must be a percentage that is equal to or greater than the average percentage of votes tallied on constitutional amendments proposed by the legislature in comparison to the votes cast at the general election in which the amendments were voted on in the immediately preceding ten years;



- (4) Making conforming amendments to the question to be printed on the ballot to appropriately reflect the amendments made to article XVII, section 3, of the Constitution of the State of Hawaii; and
- (5) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 982, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 982, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Labor,



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CLAYTON HEE, Chair



The Senate  
 Twenty-Seventh Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Judiciary and Labor**  
**JDL**

Bill / Resolution No.:* <b>SB 982</b>	Committee Referral: <b>JDL</b>	Date: <b>01-29-2013</b>
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The committee is reconsidering its previous decision on this measure.  
 If so, then the previous decision was to: \_\_\_\_\_

The Recommendation is:

Pass, unamended 2312    
  Pass, with amendments 2311    
 Hold 2310    
 Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
GABBARD, Mike		✓		
IHARA, Jr., Les			✓	
SLOM, Sam		✓		
<b>TOTAL</b>	<b>2</b>	<b>2</b>	<b>1</b>	

Recommendation:    
 Adopted    
 Not Adopted

Chair's or Designee's Signature:

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\*Only one measure per Record of Votes