



STATE OF HAWAII
DEPARTMENT OF EDUCATION
KA 'OIHANA HO'ONA'AUAO
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/08/2024

Time: 02:00 PM

Location: 325 VIA VIDEOCONFERENCE

Committee: House Judiciary & Hawaiian
Affairs

Department: Education

Person Testifying: Keith T. Hayashi, Superintendent of Education

Title of Bill: HB 1537, HD1 PROPOSING AMENDMENTS TO ARTICLES VIII AND X OF THE CONSTITUTION OF THE STATE OF HAWAII TO AUTHORIZE THE LEGISLATURE TO ESTABLISH A SURCHARGE ON RESIDENTIAL INVESTMENT PROPERTY TO INCREASE FUNDING FOR PUBLIC EDUCATION.

Purpose of Bill: Proposes amendments to the Hawaii State Constitution to repeal the counties exclusive power to tax real property and increase funding for public education for the children and adults of Hawaii by authorizing the Legislature to establish, as provided by law, a surcharge on residential investment property valued at \$3,000,000 or greater. Effective 7/1/3000. (HD1)

Department's Position:

The Hawaii State Department of Education (Department) provides comments on this proposal, which would increase resources for public education without supplanting general fund base appropriations.

This measure appears consistent with guidance issued by the National Conference of State Legislatures on principles of a sound system for public school financing in regard to providing funding that would be predictable, reliable, and adequate.

Although additional resources to ensure public school graduates are globally competitive and locally committed are needed, similar to the practice in previous years, the Department is not taking a position on the appropriateness of establishing a surcharge on residential investment property valued at \$3 million or greater.

Should this proposal pass, it is requested that collections be placed into a Trust fund for the Department to safeguard and ensure the funds are used for public education.

Thank you for the opportunity to provide comments on this measure.



UNIVERSITY OF HAWAII SYSTEM

‘ŌNAEHANA KULANUI O HAWAII

Legislative Testimony

Hō'ike Mana'o I Mua O Ka 'Aha'ōlelo

Testimony Presented Before the
House Committee on Judiciary & Hawaiian Affairs
February 8, 2024 at 2:00 p.m.

By

Kalbert K. Young

Vice President for Budget and Finance/Chief Financial Officer
University of Hawai'i System

HB 1537 HD1 – PROPOSING AMENDMENTS TO ARTICLES VIII AND X OF THE
CONSTITUTION OF THE STATE OF HAWAII TO AUTHORIZE THE LEGISLATURE
TO ESTABLISH A SURCHARGE ON RESIDENTIAL INVESTMENT PROPERTY TO
INCREASE FUNDING FOR PUBLIC EDUCATION

Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

Thank you for the opportunity to testify on this measure, which proposes to provide, by constitutional amendment, legislative authority to establish a surcharge on certain real property for the benefit of public education in Hawai'i. The University of Hawai'i (University) supports this measure as a means to provide more public funding to support Hawai'i's lone higher education system.

State funding for the University has steadily declined over the past ten years as competing demands to fund state services have also weighed on available state revenues. The state budget for FY2015-16 (Act 119, SLH 2015) appropriated \$427.6 million or 6.5% of the state general fund budget towards higher education at the University¹. For FY2023-24, the University's portion of the state general fund budget has declined to 5.7% (\$614.1 million)². The same trend is also reflected with public K-12 Department of Education declining from 23.2% to 19.8% over the same period.

Providing adequate funding for public education is critical to support one of the primary services for our community and state. The University is supportive of this measure to the extent that additional sources are needed to help the state address its funding needs.

Mahalo for the opportunity to provide testimony on this bill.

¹ State of Hawai'i, Budget-in-Brief, FY2017.

<https://budget.hawaii.gov/wp-content/uploads/2015/12/Budget-in-Brief-FY-17-BIB.pdf>, page 11.

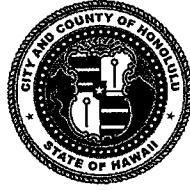
² State of Hawai'i, Budget-in-Brief, FY2025.

<https://budget.hawaii.gov/wp-content/uploads/2023/12/Budget-in-Brief-FY-25-BIB.7H0.pdf>, page 11.

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February 7, 2024

The Honorable David A. Tarnas, Chair
The Honorable Gregg Takayama, Vice Chair
And Members of the House Committee on Judiciary and Hawaiian Affairs
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Tarnas, Vice Chair Takayama, and Committee Members:

Re: Testimony in **Opposition** to House Bill 1537 HD1 (2024)

The City and County of Honolulu ("City") opposes House Bill 1537 HD1 (2024) ("HB 1537"). The proposed constitutional amendment and ballot question for the upcoming general election appear "unclear and misleading" under Section 11-118.5, Hawaii Revised Statutes ("HRS"), similar to the ballot question posed in 2018 (via Senate Bill 2922 SD1 HD1 (2018) ("SB 2022"), which the Hawai'i Supreme Court invalidated. See attached, City & County of Honolulu v. State of Hawaii, 143 Haw. 455 (2018).

The City respectfully submits that HB 1537 suffers from the same deficiencies as SB 2922 and opposes this measure based upon the same legal grounds. Should there be any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael D. Formby".

Michael D. Formby
Managing Director

Attachment

**Electronically Filed
Supreme Court
SCPW-18-0000733
20-DEC-2018
12:37 PM**

IN THE SUPREME COURT OF THE STATE OF HAWAII

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CITY AND COUNTY OF HONOLULU; COUNTY OF HAWAII;
COUNTY OF MAUI; COUNTY OF KAUA'I, Petitioners,

vs.

STATE OF HAWAII; SCOTT T. NAGO, in his capacity as
Chief Election Officer, Respondents.

SCPW-18-0000733

ORIGINAL PROCEEDING
(CIV. NO. 18-1-1326-08)

DECEMBER 20, 2018

RECKTENWALD, C.J., NAKAYAMA, McKENNA, POLLACK, AND WILSON, JJ.

OPINION OF THE COURT BY POLLACK, J.

The right of the people to shape the way in which they are governed through free and fair elections is the basis of our democratic society. At no time is this dynamic more pronounced than when the public is called upon to approve revisions to the Hawaii Constitution, the foundational document on which our

state government is based. In order for the electorate to effectively exercise this most basic of rights, however, a ballot must be capable of rendering a knowing and deliberate expression of voter choice. Thus, when a constitutional amendment is presented to the electorate for ratification, both our constitution and statutes require that the question posed to voters must be clear and neither misleading nor deceptive. And it is this court's duty to preserve the integrity of the electoral process by invalidating a question that fails to meet this standard.

In this case, several counties of the State of Hawai'i challenged a ballot question authored by the state legislature that would approve an amendment granting the State the authority to impose a surcharge on investment real property. The challengers argue that the ballot question was unclear and likely to mislead or deceive an average voter. Upon review, this court determined that the ballot question as written did not comply with the requirement that its language and meaning be clear and not misleading. We accordingly declared the ballot question invalid, stating at the time that this opinion would follow. We now elaborate as to our reasoning.

I. BACKGROUND AND PROCEDURAL HISTORY

A. Real Property Taxation in Hawai'i

From the beginning of statehood until 1980, the Hawai'i Constitution fully reserved the taxing power to the State, delegable to the counties at the Hawai'i legislature's sole discretion. County of Kaua'i ex rel. Nakazawa v. Baptiste, 115 Hawai'i 15, 20, 165 P.3d 916, 921 (2007) (quoting Haw. Const. art. VII, § 3 (1968)). As a result, a hybrid system of real property taxation developed within the state. Although the counties were statutorily authorized to set the specific tax rates applicable to land within their borders, the State retained all other relevant responsibilities, including the creation of exemptions, the administrative adjudication of tax appeals, and the actual collection of tax funds. See Stand. Comm. Rep. No. 42 in 1 Proceedings of the Constitutional Convention of Hawai'i of 1978, at 594-95 (1980). After the State was reimbursed for its administrative expenses, all revenues derived from real property taxes were remitted to the counties for their operations. Id. The counties depended heavily on these monetary transfers for their operating income, and by the time of the 1978 Constitutional Convention, the shared responsibility had become a "sore point between counties and the State." 2 Proceedings of the Constitutional Convention of Hawai'i of 1978, at 247 (1980).

Prior to the 1978 Convention, county officials began to express frustration that the patchwork of concurrent authority had created confusion and a lack of accountability between the State and counties, with voters unable to determine "what level of government [was] responsible for the real property tax bite." Id.; accord Stand. Comm. Rep. No. 42 in 1 Proceedings of the Constitutional Convention of Hawai'i of 1978, at 594-95. Further, county officials contended that the counties had differing needs and economic bases that were not fully served by state-wide tax policies, and that it was unfair that the counties were tasked with the full management of local affairs but had little control over their primary source of income. See Stand. Comm. Rep. No. 42 in 1 Proceedings of the Constitutional Convention of Hawai'i of 1978, at 595; 2 Proceedings of the Constitutional Convention of Hawai'i of 1978, at 247-48.

Responding to these concerns, the delegates adopted a proposed amendment to the Hawai'i Constitution granting the counties exclusive authority over all functions related to the taxation of real property.¹ See 1 Proceedings of the

¹ The County of Kalawao, which at the time was managed by the State Department of Health and had no local government, was not included in the transfer of power. See 2 Proceedings of the Constitutional Convention of Hawai'i of 1978, at 248.

Constitutional Convention of Hawai'i of 1978, at 1198 (setting forth Haw. Const. art. VIII, § 3 as amended). A report from the Committee on Local Government indicates the transfer was intended to grant the counties full control over their finances, eliminate public confusion as to which level of government was responsible for real property taxes, further the democratic ideal of home rule, and allow the counties flexibility in addressing their unique local needs. Stand. Comm. Rep. No. 42 in 1 Proceedings of the Constitutional Convention of Hawai'i of 1978, at 595. The amendment was subsequently approved by Hawai'i voters, and article VIII, section 3 of the Hawai'i Constitution now states in full as follows:

The taxing power shall be reserved to the State, except so much thereof as may be delegated by the legislature to the political subdivisions, and except that all functions, powers and duties relating to the taxation of real property shall be exercised exclusively by the counties, with the exception of the county of Kalawao. The legislature shall have the power to apportion state revenues among the several political subdivisions.

(Emphasis added.) Thus, only the counties currently possess the constitutional authority to levy a tax on real property within the State of Hawai'i.

B. Senate Bill 2922

On January 24, 2018, Senate Bill 2922 (S.B. 2922) was introduced in the Hawai'i State Senate.² S.B. 2922, 29th Leg., Reg. Sess. (2018). In the section of the bill setting forth proposed legislative findings, the bill stated that article X, section 1 of the Hawai'i Constitution requires the State to provide a system of public education.³ Id. The bill noted that Hawai'i is unique among the United States in that it funds and administers its public school system at the State level rather than assigning the responsibility to its counties or another local political subdivision. Id. Citing a series of government studies that placed Hawai'i among the lowest ranked states in the nation for teacher salary and education expenditures, the bill asserted that the State was consistently failing to appropriate adequate revenue for education from the state general fund, which undermined the State's mission of providing a quality education to all of Hawai'i's children. Id. The bill concluded, "It is necessary to develop a new means of funding Hawaii's

² The text of S.B. 2922 as originally introduced is available at https://www.capitol.hawaii.gov/session2018/bills/SB2922_.HTM.

³ Article X, section 1 of the Hawai'i Constitution provides in relevant part as follows: "The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university, public libraries and such other educational institutions as may be deemed desirable, including physical facilities therefor."

public education system to ensure that the State will be able to prepare children to meet the social and economic demands of the twenty-first century.”⁴ Id.

To this end, the bill proposed amending the Hawai‘i Constitution pursuant to article XVII, section 3 to authorize “the legislature to establish a surcharge on residential investment property” for the purpose of funding public education.⁵ Id. Following a series of revisions by both legislative chambers, S.B. 2922 was passed in late April 2018.

⁴ These proposed findings, which are provided for context, were not included in the final version of the bill passed by the legislature. See S.B. 2922, S.D.1, H.D.1, 29th Leg., Reg. Sess. (2018), https://www.capitol.hawaii.gov/session2018/bills/SB2922_HD1_.htm.

⁵ Article XVII, section 3 provides in full as follows:

The legislature may propose amendments to the constitution by adopting the same, in the manner required for legislation, by a two-thirds vote of each house on final reading at any session, after either or both houses shall have given the governor at least ten days' written notice of the final form of the proposed amendment, or, with or without such notice, by a majority vote of each house on final reading at each of two successive sessions.

Upon such adoption, the proposed amendments shall be entered upon the journals, with the ayes and noes, and published once in each of four successive weeks in at least one newspaper of general circulation in each senatorial district wherein such a newspaper is published, within the two months' period immediately preceding the next general election.

At such general election the proposed amendments shall be submitted to the electorate for approval or rejection upon a separate ballot.

The conditions of and requirements for ratification of such proposed amendments shall be the same as provided in section 2 of this article for ratification at a general election.

In its final form, the act proposed two changes to the Hawai'i Constitution.

First, the act proposed amending article VIII, section 3 as follows:

TAXATION AND FINANCE

Section 3. The taxing power shall be reserved to the State, except so much thereof as may be delegated by the legislature to the political subdivisions, and except that all functions, powers and duties relating to the taxation of real property shall be exercised exclusively by the counties, with the exception of the county of Kalawao[.]; provided that the legislature may establish, as provided by law, a surcharge on investment real property. The legislature shall have the power to apportion state revenues among the several political subdivisions.

S.B. 2922, S.D.1, H.D.1, 29th Leg., Reg. Sess. (2018) (proposed deletion bracketed and proposed addition underlined). Second, the bill proposed making the following addition to article X, section 1:

PUBLIC EDUCATION

Section 1. The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university, public libraries and such other educational institutions as may be deemed desirable, including physical facilities therefor. There shall be no discrimination in public educational institutions because of race, religion, sex or ancestry; nor shall public funds be appropriated for the support or benefit of any sectarian or nonsectarian private educational institution, except that proceeds of special purpose revenue bonds authorized or issued under section 12 of Article VII may be appropriated to finance or assist:

1. Not-for-profit corporations that provide early childhood education and care facilities serving the general public; and
2. Not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges and universities.

Funding of public education shall be determined by the legislature; provided that revenues derived from a surcharge on investment real property pursuant to section 3 of article VIII shall be used to support public education.

Id. (proposed addition underlined).

Lastly, the act set forth the ballot question to be posed to the electorate for a vote on ratifying the proposed amendment, as is required for enactment under Hawaii Revised Statutes (HRS) § 11-118.5 (2011)⁶ and article XVII, section 3 of the Hawai'i Constitution. See supra note 5. The ballot question stated as follows: "Shall the legislature be authorized to establish, as provided by law, a surcharge on investment real property to be used to support public education?" S.B. 2922, S.D.1, H.D.1.

C. The Circuit Court Action (Civ. No. 18-1-1326-08)

On August 22, 2018, the City and County of Honolulu filed suit in the Circuit Court for the First Circuit (circuit court) against the State of Hawai'i and various state election officials in their official capacities.⁷ The action sought

⁶ HRS § 11-118.5 provides in full as follows:

Any constitutional amendment proposed by the legislature shall include in final form the exact constitutional ratification question to be printed on a ballot. The constitutional ratification question shall be phrased in a manner to enable voters to express their choice on the constitutional amendment by providing a "yes" or "no" response. The language and meaning of a constitutional amendment shall be clear and it shall be neither misleading nor deceptive.

⁷ The Honorable Jeffrey P. Crabtree presided.

declaratory and injunctive relief invalidating S.B. 2922 and enjoining the ballot question from being placed on the November 6, 2018 election ballot. In a second amended complaint filed the following week, the Counties of Hawai'i, Maui, and Kaua'i joined the City and County of Honolulu (collectively, the Counties⁸) as additional plaintiffs. Then, on August 31, 2018, the Counties filed a Motion for Preliminary Injunction.⁹

In support of their motion, the Counties argued in their submissions that the S.B. 2922 ballot question was misleading and deceptive in violation of HRS § 11-118.5.¹⁰ They

⁸ For purposes of clarity, this opinion uses the capitalized "Counties" when referring to the specific litigants in this case and the lower-case "counties" when generally referencing the state's political subdivisions.

⁹ Three days before, the Counties filed an ex parte motion to shorten time on the forthcoming Motion for Preliminary Injunction. Although the motion to shorten time is not included in the filings to this court, it appears from the filings in the record that the Counties asserted that the ballots would be submitted for printing on or about September 7, 2018, and thus an expedited schedule would be necessary to prevent the ballot question from being printed should the Counties prevail. With its response, the State included a declaration by the Chief Election Officer. The declaration stated that, while September 7 was the deadline to submit the ballots to the printer, the logistics of compiling and translating over 240 different ballot types in time to comply with procedural safeguards and laws relating to the distribution of absentee ballots had already rendered it impracticable to make substantive changes to the ballots. The Chief Election Officer stated that, should the Counties prevail, he could instead be ordered to issue a proclamation declaring that the ballot question should be considered stricken and any votes for or against it would have no effect.

¹⁰ Before the circuit court, the Counties also argued that the title under which the ballot question was to be printed was deceptive and misleading. Thereafter, the Hawai'i Chief Election Officer chose to remove the title entirely, reasoning that it was not legally required. The Counties did not challenge this decision.

In addition to HRS § 11-118.5, the Counties' motion relied on Kahalekai v. Doi, in which this court indicated that the ratification

(continued . . .)

argued that the ballot question's use of the term "surcharge" did not accurately reflect the substantive nature and effect of the proposed amendment, which would be to alter a constitutional provision entitled "Taxation and Finance" to grant a new taxation power to the state legislature. The ballot question also did not indicate that the proposed amendment would fundamentally change the allocation of authority between the State and counties by making the counties' authority over real property taxation nonexclusive, the Counties continued. The Counties additionally argued that the phrase "investment real property" was vague and overbroad in that virtually any purchase of real property could be characterized as an investment. And the Counties contended that the phrase "as provided by law" was misleading because voters may believe it indicated that the proposed practice was already authorized under current law, and in any event they would not know which law was being referred to as a limitation on the legislature's new taxing power. Lastly, the Counties argued that the phrase "to be used to support public education" was likely to mislead voters to believe funding for public education would necessarily increase if the

(. . . continued)

processes prescribed in article XVII of the Hawai'i Constitution inherently require that an amendment ballot question be sufficiently clear to allow "a knowing and deliberate expression of voter choice." 60 Haw. 324, 333, 590 P.2d 543, 550 (1979); see infra note 15.

proposed amendment were enacted, which the amendment did not actually require.¹¹ A preliminary injunction was appropriate, the Counties concluded, because they were likely to prevail on the merits and the public interest weighed in favor of protecting the integrity of the election.

In its responsive arguments, the State contended that every enactment of the legislature is presumptively valid and the ballot question clearly reflected the nature and effect of the proposed amendment. "Surcharge" is a well understood term that often appears in statutes, the State argued, and it was properly used in the amendment and ballot question according to its legal definition: "[a]n additional tax, charge, or cost." (Citing Surcharge, Black's Law Dictionary (10th ed. 2014).) The State further argued that the proposed amendment would not fundamentally change the allocation of power between the State and counties because it would not restrict the counties' power to tax real property; rather, it would simply authorize the legislature to impose a charge in addition to any real property tax imposed by the counties, which the ballot question

¹¹ The Counties additionally argued before the circuit court that the process by which the legislature adopted S.B. 2922 was improper, that the amendment should be made only through a constitutional convention, and that the amendment would intrude on the University of Hawai'i's and the Board of Education's autonomy by granting the legislature sole authority to determine funding for public education, which the ballot question did not disclose. These arguments are not raised before this court, and they therefore are not further addressed.

appropriately reflected. Further, the State argued, the phrase "as provided by law" simply indicated that the provision was not self-executing and would require subsequent legislation to be implemented. And even if the question and amendment were unclear, the State argued, a preliminary injunction would nonetheless be inappropriate because the Counties could avail themselves of judicial remedies to invalidate the ballot question after the election if the measure were to pass, and thus there was no risk of irreparable harm. In contrast, the State concluded, ordering a change to the ballot would risk derailing the general election and would deprive the public of its right to vote on the proposed amendment, and the public interest therefore favored denial of the injunction.

The State further clarified its position during a September 7, 2018 hearing on the Counties' Motion for Preliminary Injunction. During the hearing, the State maintained that the surcharge contemplated by the proposed amendment was not itself a tax on real property, but rather an independent tax calculated based on the amount of real property tax imposed by the counties. The legislature is authorized to enact such a fee pursuant to its general taxation power under

article VII, section 1 of the Hawai'i Constitution,¹² the State argued, and the term "surcharge" distinguishes this extra fee from a direct tax on real property. There was therefore a "clear, rational basis" for using the word "surcharge" instead of tax, the State concluded, making the choice of language neither deceptive nor unclear.

On September 20, 2018, the circuit court issued its Findings of Fact, Conclusions of Law, and Order Denying Plaintiff Counties' Motion for Preliminary Injunction, Filed on August 31, 2018 (Order Denying Injunction). The court found that the language of the proposed amendment was not deceptive, noting that HRS § 11-118.5 does not require a constitutional amendment to contain a detailed description of all of the issues and possible effects associated with the change. Although the court acknowledged that the proposed language was not as clear as it could have been, the court found that it was clear enough to satisfy HRS § 11-118.5, reasoning that many of the most important constitutional rights are phrased in general or vague terms. The court thus found that the Counties were not likely to prevail on the merits and, in any event, allowing the public to vote on the ballot question would not cause irreparable harm.

¹² Article VII, section 1 of the Hawai'i Constitution provides as follows: "The power of taxation shall never be surrendered, suspended or contracted away."

The court also found that, because the public has both an interest in not allowing a deficient question to appear on the ballot and an interest in voting on properly adopted non-deficient ballot questions, the public interest on each side of the question balanced evenly and did not "tip the scale in favor of issuing the injunction."

The following day, the circuit court certified for interlocutory appeal its Order Denying Injunction and issued a stay of proceedings pending the issue's final resolution.

D. Petition for Extraordinary Writ

On September 26, 2018, the Counties filed with this court a Petition for Extraordinary Writ Seeking Pre-Election Relief. The Counties explained that they intended to file a "prompt notice of appeal" to challenge the circuit court's Order Denying Injunction, but given the standard rules and deadlines, it would be virtually impossible to present the issue to this court through the normal appellate process prior to the November 6, 2018 general election. The Counties therefore contended that an extraordinary writ was their only practical way to obtain pre-election relief, which this court's precedents establish is strongly preferred in contrast to post-election challenges.

(Citing State ex rel. Bronster v. Yoshina, 84 Hawai'i 179, 185, 932 P.2d 316, 322 (1997).) They accordingly requested that this court issue an order to the Chief Election Officer directing him

to issue a public proclamation stating that the ballot question should be considered stricken and that any votes for or against the measure would not be counted and would have no impact.

In addition to reiterating their arguments before the circuit court regarding the ways in which the ballot question was misleading, the Counties contended that the point of view of the average voter should be the "touchstone" by which the ballot question's clarity and potential for deception should be measured. The average voter is much more likely to know what a "tax" is than to know what a "surcharge" means, the Counties argued, and it therefore should be impermissible to make no reference to a tax in the ballot question--particularly when the sole purpose of the amendment is to raise government revenue. The Counties asserted that the use of the alternate term "surcharge" was deceptive, suggesting that it was likely motivated by a desire to circumvent the average voter's reluctance to approve new taxes.

On October 4, 2018, this court directed the State respondents to file an answer to the Counties' petition. In its response, the State restated its arguments that the ballot question and amendment were neither deceptive nor misleading. The State also argued that the petition should be denied because the Counties were improperly seeking a more favorable forum to relitigate a matter that had been decided against them in the

circuit court action. The State further contended that, if construed as a petition for a writ of mandamus directed at the circuit court, the Counties' petition was an attempt to circumvent the required appellate procedures. The circuit court properly exercised its discretion in denying the preliminary injunction, the State continued, and an extraordinary writ should not be used to interfere with or control a trial court's decision-making even when the decision is erroneous.¹³

This court heard oral argument on October 18, 2018, and the following day we issued an order granting the Counties' petition, declaring the ballot question invalid, and directing the Chief Election Officer to issue a public proclamation stating that no votes for or against the measure would be counted or have any impact. Our order deferred issuance of the present opinion due to the time constraints.

¹³ The State also contended that two of the Respondents, Senate President Ronald D. Kouchi and Speaker of the House Scott K. Saiki, were improperly named in the petition because the Counties had failed to state a claim for relief against them. The Counties argued in reply that the legislators were properly joined in the action to allow them an opportunity to be heard on the issue. During oral argument in this case, counsel for the Counties indicated that they had no objection to the dismissal of the legislators, who had chosen not to appear. Oral Argument at 00:08:45-00:09:05, City & Cty. of Honolulu v. State of Hawai'i (No. SCPW-18-733), http://oaoa.hawaii.gov/jud/oa/18/SCOA_101818_SCPW_18_733.mp3. This court issued an order dismissing the two legislative respondents on October 19, 2018.

II. DISCUSSION

A. The Propriety of an Extraordinary Writ

The State urges that, notwithstanding any error on the part of the circuit court, an extraordinary writ is inappropriate under the circumstances. This court has indeed often stated that an extraordinary writ will not be issued when alternative relief is available. See, e.g., State ex rel. Marsland v. Ames, 71 Haw. 304, 307, 788 P.2d 1281, 1283 (1990); Sapienza v. Hayashi, 57 Haw. 289, 293, 554 P.2d 1131, 1135 (1976). As such, an extraordinary writ is not a substitute for an appeal, and it will not lie to control a trial court's discretion even when that discretion is exercised in error. Honolulu Advertiser, Inc. v. Takao, 59 Haw. 237, 241, 580 P.2d 58, 62 (1978).

Nevertheless, we have seen fit to depart from this rule in "rare and exceptional situations" in which "the special and exigent circumstances of the particular case" compel this court to act. Sapienza, 57 Haw. at 293, 554 P.2d at 1135. In Sapienza v. Hayashi, for instance, a trial court judge issued an order disqualifying the entire City and County of Honolulu Prosecutor's Office from participating in a grand jury inquiry because the City Prosecutor was a political appointee of the Mayor who was accused of wrongdoing in the underlying matter. 57 Haw. at 291-92, 554 P.2d at 1133-34. Upon being petitioned

for extraordinary relief, this court held that the order was overbroad. Id. at 293, 554 P.2d at 1135. Although the trial court's order was presumably subject to challenge through normal appellate procedures, this court reasoned that "[t]o allow the matter to rest until the appeals process has run its course would forestall the expeditious presentation of legitimate criminal charges to the grand jury by the prosecuting attorney." Id. at 294, 554 P.2d at 1135. "Obviously, this would not be in the public interest," we stated, "and [it] would work upon the public irreparable harm." Id. This court thus held that issuance of an extraordinary writ was appropriate. Id. at 293, 554 P.2d at 1135; see also Gannett Pac. Corp. v. Richardson, 59 Haw. 224, 226-27, 580 P.2d 49, 53 (1978) (holding that news media representatives were entitled to issuance of an extraordinary writ in their challenge to a district court's closure to the public of a high profile preliminary hearing notwithstanding the representatives' failure to appeal a previous denial of a petition for the same relief filed in circuit court "because it appear[ed] to us only too clear that the district courts [were] in immediate need of direction from this court on a procedural and substantive matter of public importance").

Even if the Counties had sought to expedite an appeal of the circuit court's order through normal channels, they could

not have obtained final resolution of this matter before the November 6 general election given the timeline established by our court rules governing appellate procedure. See Hawai'i Rules of Appellate Procedure (HRAP) Rule 28 (2016) (setting forth the required timeline for briefing cases on appeal); HRAP Rule 11(b)(1) (2016) (providing the time limit for the assembly, certification, and filing of the record on appeal). Had the normal appeal process been followed, this court would have had the authority to grant post-election relief by invalidating the results of a ballot question, and the Counties thus would not have been entirely without alternative relief if the amendment had been ratified during the pendency of this case. See, e.g., Taomae v. Lingle, 108 Hawai'i 245, 250, 118 P.3d 1188, 1193 (2005) (invalidating constitutional amendment following ratification by the electorate because the State defendants failed to follow constitutionally mandated procedural requirements prior to the vote); Watland v. Lingle, 104 Hawai'i 128, 132-33, 85 P.3d 1079, 1083-84 (2004) (same).

However, our precedents make clear that pre-election challenges are favored whenever feasible. See State ex rel. Bronster v. Yoshina, 84 Hawai'i 179, 185, 932 P.2d 316, 322 (1997) ("[T]he better practice would have been to expedite legal action prior to the election." (citing Blair v. Cayetano, 73 Haw. 536, 836 P.2d 1066 (1992))). The reasons for this

preference for pre-election challenges are myriad. Resolving legal challenges to a ballot's validity before an election generally conserves public resources and discourages gamesmanship by preventing litigants from "gambl[ing] on the outcome of the election contest then challeng[ing] it when dissatisfied with the results." Id.

But more importantly, settling such challenges before the votes are tallied protects the integrity of our most sacred democratic institutions. The right of the citizenry to shape the way in which it is governed through free and fair elections is "the foundation of our representative society." Hayes v. Gill, 52 Haw. 251, 269, 473 P.2d 872, 883 (1970). Just as actual arbitrary or artificial restrictions on that right undermine the true "legitimacy of representative government," id. (citing Kramer v. Union Free School District No. 15, 395 U.S. 621, 626 (1969)), the appearance that the right is being denied undermines public perceptions of legitimacy on which our system is equally dependent. No matter how justified a court may be in setting aside the results of a popular election, such an action may be perceived as a subversion of the directly expressed will of the people. See Watland, 104 Hawai'i at 143, 85 P.3d at 1094 (Acoba, J., concurring) ("Count first, and rule upon legality afterwards, is not a recipe for producing election results that have the public acceptance democratic stability

requires." (quoting Bush v. Gore, 531 U.S. 1046, 1047 (2000) (Scalia, J., concurring))). Invalidating an electoral result thus threatens public confidence in both the efficacy of voting and the independence of our justice system, and this risk of irreparable harm is to be avoided if practicable.

In light of the concerns inherent in the after-the-fact invalidation of a democratically approved ballot measure, we hold that it was in the public interest to resolve this case prior to the November 6, 2018 general election, and we therefore turn to the merits of the Counties' petition for extraordinary relief.

B. The Proposed Amendment and Ballot Question

Article XVII of the Hawai'i Constitution sets forth two alternative processes by which the constitution may be amended. See Haw. Const. art. XVII, § 1. Under the first, amendments can be proposed through a constitutional convention called by a majority vote of the electorate. Haw. Const. art. XVII, § 2. Under the second, the legislature may propose amendments through either a two-thirds vote of each house or a simple majority vote during two successive legislative sessions. Haw. Const. art. XVII, § 3. In either case, proposed amendments must be submitted to and ratified by the electorate before they are formally incorporated into the Hawai'i Constitution. Haw. Const. art. XVII, §§ 2-3.

This court considered the details of this ratification requirement in Kahalekai v. Doi, 60 Haw. 324, 590 P.2d 543 (1979). In Kahalekai, the plaintiffs argued that a series of proposed constitutional amendments that had been approved by a majority vote of the electorate were not validly ratified due to the format of the ballot, which they contended made it inherently more difficult for a voter to mark a "no" vote than a "yes" vote. 60 Haw. at 331-32, 590 P.2d at 549. In reviewing the plaintiffs' challenge, this court stated that it was nearly impossible to eliminate all possible bias from the layout of a ballot, as even basic formatting choices, such as listing candidates in alphabetical order, could arguably favor some contenders over others. Id. at 332 n.4, 590 P.2d at 549 n.4. Rather than imposing "an impractical standard of perfection," id., the court indicated that the constitution's use of the term "ratification" inherently implies the informed, purposeful approval of the amendment by the electorate. Id. at 333, 590 P.2d at 550.

Thus, reasoned the Kahalekai court, the pivotal inquiry is whether the ballot generates "a knowing and deliberate expression of voter choice." Id. The "broad authority" to propose amendments for ratification, we elaborated, "is subject to the limitation that the ballot must enable the voters to express their choice on the amendments

presented and be in such form and language as not to deceive or mislead the public."¹⁴ Id. at 338, 590 P.2d at 552-53. The court stated that this requirement can be met in part by the provision of supplemental voter information regarding the context and implications of a proposed amendment. Id. at 339-40, 590 P.2d at 553-54. "[W]here information placed before the electorate is neither deceptive nor misleading," we held, "and they are given sufficient time within which to familiarize themselves with the contents and effect of the proposed amendments, they will be deemed to have cast informed ballots." Id. at 339-40, 590 P.2d at 553.

Kahalekai appears to have significantly informed the Hawai'i State Legislature's 1996 enactment of various statutory requirements related to the ratification of proposed constitutional amendments. See 1996 Haw. Sess. Laws Act 173, §§ 1-3 at 391-93. Notably, the Act closely tracked language in Kahalekai in setting forth the rule that, when proposed by the legislature, "[t]he language and meaning of a constitutional

¹⁴ Although Kahalekai appeared to rely on the "ratification" language in what is now article XVII of the Hawai'i Constitution, the court also approvingly cited Kohler v. Tugwell, in which the federal district court indicated a similar requirement inheres in notions of due process. See 292 F.Supp. 978, 981 (E.D. La. 1968) ("The procedure followed by Louisiana does not deprive the plaintiffs of Due Process for it is sufficient that Louisiana's voters were informed by the ballot of the subject of the amendment, were given a fair opportunity by publication to consider its full text, and were not deceived by the ballot's words."), aff'd, 393 U.S. 531 (1969).

amendment shall be clear and it shall be neither misleading nor deceptive."¹⁵ HRS § 11-118.5.

Thus, proposed amendments and their corresponding ballot questions are both constitutionally and statutorily required to be phrased in clear language that is not likely to deceive or mislead voters as to their nature and effect.¹⁶ We

¹⁵ It is noted that, by its plain text, HRS § 11-118.5 refers to "the language and meaning of a constitutional amendment" rather than the language and meaning of the corresponding ballot question submitted to the voters for approval or rejection of the proposed constitutional amendment. We nonetheless hold that, given the clear parallels between HRS § 11-118.5 and our holding in Kahalekai, the legislature intended the statute to incorporate our precedent requiring that a ballot question be neither misleading nor deceptive. The litigants appear to have presumed this interpretation to be correct throughout the proceedings in this case, and no party has argued that HRS § 11-118.5 is inapplicable to the S.B. 2922 ballot question.

Along with establishing HRS § 11-118.5, the 1996 Act also tasked the Chief Election Officer with "coordinat[ing] the preparation of appropriate voter education materials with the legislative reference bureau," including "[a] summary, factsheet, and digest of the proposed constitutional amendment" that specified the amendment's purpose, intent, and ramifications, as well as arguments for and against ratification. See 1996 Haw. Sess. Laws Act 173, §§ 2-3 at 392-93. This requirement was repealed in 2003, however, see 2003 Haw. Sess. Laws Act 8, § 1 at 16, and the ballot question itself is now the only statutorily required mechanism for providing voters with sufficient information to express a knowing and deliberate choice regarding ratification, as is constitutionally required. Kahalekai, 60 Haw. at 333, 590 P.2d at 550.

¹⁶ In considering the validity of amendments proposed by the legislature, this court has stated that "every enactment of the legislature is presumptively constitutional, and a party challenging the statute has the burden of showing unconstitutionality beyond a reasonable doubt." Blair v. Cayetano, 73 Haw. 536, 542, 836 P.2d 1066, 1069 (1992) (quoting Schwab v. Ariyoshi, 58 Haw. 25, 31, 564 P.2d 135, 139 (1977)). We note that proposed amendments and their corresponding ballot questions are not statutes, and the Counties' challenge is based at least in part on statutory rather than constitutional grounds. Nevertheless, article XV, section 3 of the Hawai'i Constitution specifically entrusts the legislature with the power to propose amendments, and courts owe deference to their coequal branch of government in its performance of constitutionally assigned functions. Thus, we will act to invalidate a legislatively proposed amendment or ballot question only when it is clearly incompatible with a statutory or constitutional mandate. See id.

therefore consider whether this standard is met by the ballot question: "Shall the legislature be authorized to establish, as provided by law, a surcharge on investment real property to be used to support public education?" In making this determination, we consider how the average lay voter would interpret the ballot question.¹⁷ W. Petroleum Importers, Inc. v. Friedt, 127 Wash.2d 420, 424, 899 P.2d 792, 794-95 (1995) (quoting Estate of Turner v. Dep't of Rev., 106 Wash.2d 649, 654, 724 P.2d 1013, 1015 (1986)).

1. The Ballot Question Is Unclear and Inherently Misleading in That It Does Not Disclose the Nature of the Proposed Change to the Constitution.

It is fundamental that, to provide a voter "with sufficient information to make an informed decision about the true nature of the proposed constitutional amendment," a ballot question must "at least put [voters] on notice of the changes being made" to the constitution. In re Initiative Petition No. 409, 376 P.3d 250, 252, 254 (Okla. 2016) (addressing requirements for the "statement of the gist of the proposition" included in the header of an initiative petition proposing a constitutional amendment); see also HRS § 11-118.5 ("The language and meaning of a constitutional amendment shall be

¹⁷ Based on the declaration by the Chief Election Officer, the full text of the amendment at issue in this case would have been available to voters upon request.

clear" (emphasis added)). "When the major effect of a proposed measure would be a substantive change in existing law, the ballot [] should inform the reader of the scope of the change." Rasmussen v. Kroger, 351 Or. 195, 198 (2011).

In some instances, this necessary information will not be self-evident. For example, a proposal to establish a new governmental power or limitation suggests by negative implication that no such power or limitation exists under current law. Cf. Sprague v. Cortes, 636 Pa. 542, 564 (2016) (opinion of Todd, J.) ("By omitting any indication that there is a current mandatory retirement age in the Constitution, the plain import of the unadorned ballot question language is that a brand new provision requiring all judges of the Commonwealth to retire at age 75 is being added." (emphases added)). When this implication creates an inaccurate or incomplete impression of the law, the failure of the ballot to correct the misconception will render it unclear, misleading, and deceptive. As stated by Justice Todd of the Pennsylvania Supreme Court,

In everyday human interaction, in the arts and literature, as well as in legal documents, statutes, and constitutional provisions which govern our day-to-day affairs, there is a categorical difference between the act of creating something entirely new and altering something which already exists. Language which suggests the former while, in actuality, doing the latter is, at the very least, misleading, and, at its worst, constitutes a ruse.

Id. at 556-57.

A number of courts from other jurisdictions have drawn such a distinction when considering the validity of ballot measures aimed at amending existing law. In Askew v. Firestone, for example, the Supreme Court of Florida considered a legislatively proposed change to a provision of the state constitution that prohibited elected officials from lobbying for two years after leaving office. 421 So.2d 151, 152-53 (Fla. 1982). The proposal would have amended the provision to instead permit such lobbying when the former public official first filed a full public disclosure statement. Id. at 153. The legislative description of the amendment to be placed on the ballot would have informed voters that the amendment prohibited "former legislators and statewide elected officers from representing other persons or entities for compensation before any state government body for a period of 2 years following vacation of office, unless they file full and public disclosure of their financial interests." Id.

In holding the ballot description invalid, the Florida Supreme Court observed that the "ballot summary neglect[ed] to advise the public that there [was] presently a complete two-year ban on lobbying before one's agency." Id. at 155. The Askew court explained that, although the ballot accurately stated that the amendment would "require the filing of financial disclosure before anyone may appear before any agency for the two years

after leaving office," the description did not disclose the "amendment's chief effect," which was "to abolish the present two-year total prohibition." Id. (emphasis omitted). The court thus stated, "The problem . . . lies not with what the summary says, but, rather, with what it does not say." Askew, 421 So.2d at 156.

The Florida Supreme Court held that the description failed "to give fair notice" that it would establish "an exception to a present prohibition." Id. The ballot was therefore "misleading to the public concerning material changes to an existing constitutional provision," the court concluded. Id.; see also Wadhams v. Bd. of Cty. Comm'rs of Sarasota Cty., 567 So.2d 414, 416 (Fla. 1990) (holding that a ballot that informed voters solely of how the amended constitutional provision would read if the amendment was approved was invalid for failing to disclose the language or effect of the provision prior to amendment); Lane v. Lukens, 48 Idaho 517 (1929) (holding that a ballot question that asked whether the state constitution should be amended such that the terms of office of various officials "shall be limited to four years" was invalid for failing to disclose that terms were already limited to two years under then-existing law).

Such is the case with the S.B. 2922 ballot question. By asking the voter only whether "the legislature [shall] be

authorized to establish, as provided by law, a surcharge on investment real property to be used to support public education," the ballot question suggests surcharges on investment real property are not authorized under current law.¹⁸ But this implication provides an inaccurate picture of the law as it stands and the manner in which it would be altered by the proposed amendment.

Under article VIII, section 3 of the Hawai'i Constitution, the counties currently have the exclusive authority to tax real property within the State of Hawai'i. As stated, the ballot question reads as follows: "Shall the legislature be authorized to establish, as provided by law, a surcharge on investment real property to be used to support public education?" The question contains no information from which a voter could ascertain that the counties already have the constitutional authority to impose the property tax at issue and, consequently, that the "chief effect" of the amendment would be to allow two different government entities to tax the same property. Askew, 421 So.2d at 155. Thus, as in Askew, the amendment does not give notice that it would establish "an

¹⁸ Alternatively, as discussed below, a voter could read the phrase "as provided by law" to imply that specifically the state legislature is already empowered to establish the surcharge at issue and therefore infer that a vote in favor of the provision would preserve the status quo. See infra section II.B.2.c.

exception to a present prohibition,"--namely, the current prohibition on the State taxing real property. 421 So.2d at 156; see also Kahalekai, 60 Haw. at 338 n.7, 590 P.2d at 553 n.7 ("[T]he ballot should contain a description of the proposition submitted in such language as to constitute a fair portrayal of the chief features of the proposition, in words of plain meaning, so that it can be understood by persons entitled to vote." (emphasis added) (quoting Wright v. Bd. of Trustees of Tatum Indep. Sch. Dist., 520 S.W.2d 787, 792 (Tex. Civ. App. 1975))).

Indeed, to fully appreciate the scope of the proposed change, a voter would need to know that the Hawai'i Constitution provides independent taxing power to the counties; that the constitution currently allows only the counties to tax real property to the exclusion of all other government entities; and that the proposed amendment would make an exception to this exclusive authority of the counties by granting the State concurrent authority to tax what is presumably a subset of real property. None of this information is conveyed by the ballot question, which is instead likely to leave the average lay voter with the false impression that a vote in favor of the amendment would allow investment real property to be taxed in the first

instance.¹⁹ The ballot question is thus "misleading to the public concerning material changes to an existing constitutional provision."²⁰ 421 So.2d at 156.

If the legislature believes that an exception should be made to the constitutional prohibition placed upon the State as to the imposition of property taxes in order to fund public education, it is appropriate for the legislature "to ask the citizens to modify that prohibition. But such a change must stand on its own merits" Id. The dearth of information contained in the S.B. 2922 ballot question does not reveal the true effect of the proposed amendment, and the average lay voter may be duly misled as a result. This alone would be sufficient to hold that the ballot question is clearly incompatible with

¹⁹ The necessary context could have been concisely conveyed by asking, for example: "Should the exclusive authority of the counties to tax real property provided in the constitution be amended to also provide authority to the State legislature to establish a surcharge on investment real property?"

²⁰ The State alternatively contended in the circuit court and during oral argument that, because the fee contemplated by the proposed amendment would be a surcharge on the property taxes collected by the counties rather than an independent tax imposed directly upon real property, the State is already constitutionally authorized to enact such a fee pursuant to its general taxation power. Assuming arguendo that the State's interpretation is accurate, it would appear to render the proposed amendment superfluous as it would grant no powers to the State that it does not currently have. Further, it would make the language of the amendment, which states the surtax is to be imposed on "real property" rather than on real property taxes, inaccurate. And, the discussed implication of the ballot question--that the State is not authorized to impose the discussed surcharge under current law--would also be incorrect. Given the difficulties and inconsistencies that arise under the State's argued interpretation, we again can hardly say that the ballot question is sufficient to inform the average voter of the scope of the proposed change.

the requirements of HRS § 11-118.5 and article XVII of the Hawai'i Constitution. The deficiency is even more pronounced when viewed in light of the multiple other incidental ways in which the language of the ballot question is unclear or confusing.

2. The Language and Effect of the Ballot Question is Potentially Confusing in a Number of Other Ways.

There are a number of additional ways in which the amendment and its corresponding ballot question, "Shall the legislature be authorized to establish, as provided by law, a surcharge on investment real property to be used to support public education?" are likely to confuse or mislead the average lay voter. When these ambiguities and concerns of potential misapprehension are considered together and in conjunction with the ballot question's failure to disclose the overarching nature of the change it would enact, the problematic nature of the ballot question is only magnified.

a. "Surcharge"

Relying on Boyd v. Jordan, 35 P.2d 533 (Cal. 1934), the Counties argue that it is misleading to ask voters to authorize a new tax without ever using the term "tax." In Boyd, a constitutional amendment was proposed by citizens' initiative that would have overhauled California's tax system by, inter alia, allowing the State to impose a tax on all gross receipts.

Id. at 471-72. In considering the validity of the initiative's short title, "Initiative Measure Providing for Adoption of Gross Receipts Act," the California Supreme Court noted that "[t]he essential features . . . and the sole purpose of the proposed measure, is to levy a tax to maintain the state and its political subdivisions." Id. at 471-72. Because "[t]he short title used in this petition ma[de] no reference to a tax or to the fact that the proposed amendment [was] a revenue measure," the court held that the title demonstrated neither the nature nor subject of the petition, and it was therefore likely to mislead the electors who were asked to sign the initiative. Id. at 472; see also Walton v. McDonald, 97 S.W.2d 81, 82 (Ark. 1936) (invalidating a ballot entitled "An Act to provide for the assistance of aged and/or blind persons and funds therefor, the administration and distribution of same, penalties for the violation of Act, and for other purposes" for failing to disclose that the measure would impose a series of taxes).

In this case, the parties dispute whether the amendment would in fact authorize the imposition of a tax on real property. The State argues that, because the additional charge would be levied on the real property taxes imposed by the counties, it was appropriate for the legislature to use the word "surcharge"--a commonly used term meaning "[a]n additional tax, charge, or cost." (Citing Surcharge, Black's Law Dictionary

(10th ed. 2014).) But this is contrary to the plain text of the amendment and ballot question, which ask voters to authorize the legislature to establish "a surcharge on investment real property"--not on real property taxes imposed by the counties. If the amendment would indeed allow the State to impose an independent tax on real property, it is apparent that the term surcharge does not obviously convey this meaning. See Boyd, 35 P.2d at 534. If, instead, the amendment would authorize only a dependent, supplemental charge added to an existing tax, the ballot question fails to accurately state upon what basis the surcharge will be calculated and levied. In either event, the language and effect of the amendment and ballot question cannot be said to be clear in this regard as HRS § 11-118.5 requires.

b. "Investment Real Property"

The Counties also challenge the legislature's failure to define the term "investment real property" in the ballot question and amendment. Pointing out that earlier versions of S.B. 2922 specifically limited the provision to property "for which the owner does not qualify for a homeowner's [tax] exemption," the Counties contend that virtually any real property can be considered a form of investment in the absence of such a limitation. (Citing S.B. 2922, 29th Leg., Reg. Sess. (2018) and S.B. 2922, S.D.1, 29th Leg., Reg. Sess. (2018).) The amendment and ballot question is therefore misleading and

deceptive, the Counties argue, in that it falsely conveys to voters that the surcharge would be limited to a subset of real property that does not include personal residences when in reality the amendment would permit the legislature to tax all real property.

This court has specifically stated that "real estate may be purchased with an intent to reside on the parcel of property and, concurrently, with an intent to hold the property in anticipation of an appreciation in the parcel's resale value." Cieri v. Leticia Query Realty, Inc., 80 Hawai'i 54, 67, 905 P.2d 29, 42 (1995). We accordingly held that "the plain and obvious meaning of the term 'personal investment' includes real estate or residences." Id. It would thus appear that the plain language of the amendment, considered in isolation, would allow the legislature to tax virtually any real property.²¹ Indeed, the State contended during oral argument that, if the amendment were enacted, determining what real property qualified as an

²¹ In practice, this court interprets a constitutional provision in harmony with other constitutional provisions and "in the light of the circumstances under which it was adopted." Hanabusa v. Lingle, 105 Hawai'i 28, 32, 93 P.3d 670, 674 (2004) (quoting Blair v. Harris, 98 Hawai'i 176, 179, 45 P.3d 798, 801 (2002)).

investment subject to the surcharge would fall within the discretion of the legislature.²²

Yet this is not the impression conveyed by the amendment's and ballot question's use of the term "investment real property." If the amendment was meant to grant the legislature the unrestrained discretion to tax any real property, it could have achieved this effect without employing the word "investment." By qualifying the "real property" that the surcharge would apply to with the term "investment," the amendment and ballot question suggest that the legislature would be empowered to impose the surcharge on only some real property—namely, non-owner-occupied real estate acquired solely to generate revenue for the property owner. To the extent this implication is inaccurate, the ballot question is unclear and misleading.

c. "As Provided By Law"

The Counties further argue that the ballot question's and amendment's use of the phrase "as provided by law" is deceptive and misleading in that the average lay voter is likely to believe the legislature is already authorized under current law to impose the contemplated surcharge. The State responds

²² Oral Argument at 00:34:27-00:34:34, City & Cty. of Honolulu v. State of Hawaii (No. SCPW-18-733), http://oaoa.hawaii.gov/jud/oa/18/SCOA_101818_SCPW_18_733.mp3.

that the phrase merely indicates that the provision is not self-executing and would require implementing legislation once enacted.

The expression "as provided by law" appears throughout the Hawai'i Constitution, and this court has in the past recognized that the construction is inherently ambiguous. In some instances, "a reference to a right being exercised 'as provided by law' may reflect an intent that implementing legislation is anticipated." Cty. of Hawai'i v. Ala Loop Homeowners, 123 Hawai'i 391, 412, 235 P.3d 1103, 1124 (2010). In State v. Rodrigues, for example, this court considered article I, section 11, which provides that "[w]henever a grand jury is impaneled, there shall be an independent counsel appointed as provided by law" whose term and compensation are "as provided by law." 63 Haw. 412, 414, 629 P.2d 1111, 1113 (1981). Upon review, we held that the framers had used the phrase "as provided by law" to indicate "further legislation was required to implement the amendment." Id. at 416, 629 P.2d at 1114.

In other contexts, however, the use of "as provided by law" in a constitutional provision may be "simply referring to an existing body of statutory and other law on a particular subject." Ala Loop Homeowners, 123 Hawai'i at 412, 235 P.3d at 1124. In United Public Workers, AFSCME, Local 646, AFL-CIO v. Yogi, for instance, this court held that, in guaranteeing the

right of public employees "to organize for the purpose of collective bargaining as provided by law," the provision now codified as article XIII, section 2 was intended to incorporate the body of "pre-existing federal and state statutes, constitutional provisions, and court cases which give meaning to the term 'collective bargaining.'" 101 Hawai'i 46, 51, 62 P.3d 189, 194 (2002).

To determine in which sense the phrase was intended, this court considers the history of the provision in addition to its plain language. Ala Loop Homeowners, 123 Hawai'i at 412-13, 235 P.3d at 1124-25. The average lay voter, however, does not have the benefit of reviewing the legislature's or framers' committee reports while in the voting booth and must rely on the language of the amendment and ballot question to determine the words' intended meaning.

In general, the phrase "as provided by law" follows the portion of the constitutional provision that is defined by some other sources of law. When article I, section 11 specifies that "[w]henever a grand jury is impaneled, there shall be an independent counsel appointed as provided by law," for instance, it is the appointment process of the independent counsel that is implemented through legislation. Similarly, in article XIII, section 2's guarantee of the right to "collective bargaining as

provided by law," it is the collective bargaining that is defined through the body of relevant statutes and case law.²³

Thus, based on the natural reading of the question "Shall the legislature be authorized to establish, as provided by law, a surcharge on investment real property to be used to support public education?" it is not the surcharge on investment real property that is defined by some other source of law, but rather the legislature's authorization to establish such a surcharge. In other words, the placement of the phrase within the ballot question may lead the average lay voter to believe that the legislature is already authorized by some other source of law to impose the surcharge at issue and that a vote in favor of the amendment maintains the status quo.²⁴ Given this likely confusion, the Counties are correct that the language of the amendment and ballot question is unclear and misleading in this respect.

²³ See also, e.g., Haw. Const. art. IX, § 3 (empowering the State to provide social services to "persons who are found to be in need of and are eligible for such assistance and services as provided by law"); Haw. Const. art. XVI, § 3.5 (calling for "a commission on salaries as provided by law").

²⁴ This misconception is further reinforced because the concept of implementing legislation is already embodied in the ballot question's reference to "the legislature" "establish[ing]" the contemplated surcharge. In other words, had the ballot question simply read, "Shall the legislature be authorized to establish a surcharge on investment real property to be used to support public education?" it would have wholly conveyed that the amendment would allow the legislature to enact subsequent legislation imposing the surcharge in question. The phrase "as provided by law" is redundant in achieving this result, and the average lay voter may assign other significance to its inclusion in order to make the clause non-superfluous.

d. "To Support Public Education"

Lastly, the Counties contend that the ballot question's reference to "support[ing] public education" is likely to mislead the average lay voter into believing state spending on public education will necessarily increase if the amendment is enacted, when in actuality the amendment does not require a net increase in education spending. The State responds that the funds raised through the surcharge would be required to be used to fund public education, as the ballot question indicates. But, as the Counties aptly argue, "[m]oney," including the legislature's budgetary expenditures, "is fungible." Holder v. Humanitarian Law Project, 561 U.S. 1, 31 (2010). An increase in funding from one source, including the proposed surcharge, can be offset by a decrease from other sources. Indeed, the State acknowledged during oral argument that, should the amendment be enacted, nothing would prevent the legislature from funding public education entirely through revenues raised through the surcharge while repurposing all other funds.²⁵

An entreaty "to support public education" is "an appeal to all humane instincts," and a voter would not be

²⁵ Oral Argument at 00:45:54, City & Cty. of Honolulu v. State of Hawai'i (No. SCPW-18-733), http://oaoa.hawaii.gov/jud/oa/18/SCOA_101818_SCPW_18_733.mp3.

unreasonable in assuming that such a measure would in fact result in an increase in funding for public education. Walton, 97 S.W.2d at 82. Yet by its plain text, the ballot question and amendment make no such guarantee, and no explanatory materials were provided that would dispel this misconception.

The legislature in its wisdom enacted HRS § 11-118.5 to ensure that the language of a proposed amendment and ballot question clearly conveys the amendment's meaning when feasible. When it becomes apparent, however, that practical textual constraints in stating the ballot question may prevent it from being set forth with the specificity or clarity necessary to prevent the average voter from forming an incorrect impression, the legislature should consider whether complementary materials may aid in clarifying the decision voters are to be tasked with making.²⁶

²⁶ This court has in the past noted that supplemental materials similar to those that the Chief Election Officer was formerly tasked with preparing are an effective method of informing the electorate of the details of proposed amendments. See supra note 15; Kahalekai, 60 Haw. at 340 n.9, 590 P.2d at 554 n.9 ("We think the 'Con-Con Summary' was an excellent method of informing the voter of the proposed amendments. The Convention, however, could have devoted more space than it did to a comparative analysis of the substantive effect of the proposed amendments."). However, when the ballot question fails to appropriately disclose the scope and effect of the proposed change, even providing supplemental voter materials will not serve to cure the deficiency as may be possible in instances where optimum specificity or clarity is not present. See supra section II.B.1.

III. CONCLUSION

The Hawai'i Constitution vests "broad authority" in the legislature to propose amendments to its provisions to be ratified by the electorate. Kahalekai v. Doi, 60 Haw. 324, 338, 590 P.2d 543, 552-53 (1979). "But such a change must stand on its own merits" and "cannot fly under false colors." Askew v. Firestone, 421 So.2d 151, 156 (Fla. 1982). As the legislature recognized in enacting HRS § 11-118.5, the provisions of our constitution are of such foundational importance that the utmost care must be taken to apprise citizens of the effect of their vote on a proposed constitutional amendment. When the language or effect of a proposed amendment or its corresponding ballot question is unclear, misleading, or deceptive, the ballot is not capable of generating the "knowing and deliberate expression of voter choice" necessary for ratification. Kahalekai, 60 Haw. at 333, 590 P.2d at 550. The ballot question in the present case is flawed in not presenting the information necessary to produce such a choice, and this court thus invalidated the ballot question in accordance to our law.

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for petitioner
County of Hawai'i

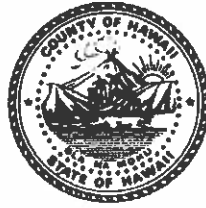
Matthew M. Bracken
For petitioner
County of Kaua'i

Russell A. Suzuki
Valri Lei Kunimoto
Patricia Ohara
for respondent

Thomas Yamachika
for amicus curiae
Tax Foundation of Hawai'i

Mitchell D. Roth
Mayor

Deanna S. Sako
Managing Director



Diane Nakagawa
Finance Director

Aaron K.H. Brown
Deputy Director

County of Hawai'i

DEPARTMENT OF FINANCE - REAL PROPERTY TAX

Aupuni Center • 101 Pauahi Street • Suite No. 4 • Hilo, Hawai'i 96720-4224 • Fax (808) 961-8415
Appraisers (808) 961-8354 • Clerical (808) 961-8201 • Collections (808) 961-8282
West Hawai'i Civic Center • 74-5044 Ane Keohokalole Hwy • Bldg. D, 2nd Flr. • Kailua Kona, Hawai'i 96740
Fax (808) 327-3538 • Appraisers (808) 323-4881 • Clerical (808) 323-4880

February 7, 2024

To: Honorable Chair, David A. Tarnas
Honorable Vice Chair, Gregg Takayama
House Committee on Judiciary & Hawaiian Affairs Committee

From: Lisa Miura, Real Property Tax Administrator
Keita Jo, Assistant Real Property Tax Administrator
County of Hawai'i

Subject: Comments on HB1537, Relating to Surcharge on Real Property for Education

HB1537 attempts to authorize a surcharge on residential investment properties for the purpose of funding public education. **We would like to humbly request that the Committee on Judiciary and Hawaiian Affairs not pass this bill.** There were good reasons when the state turned over jurisdiction for real property taxes to the counties. While under good intentions, this bill has many unintended consequences and is not practical.

Our county was not consulted on this proposal. The County of Hawai'i does not have a residential investor tax class and our county already has some of the highest tax rates in the state including a tiered rate for properties in the residential tax class over \$2,000,000. Based on the wording of the bill, we do not have a clear understanding of what properties would be subject to this additional tax. There may be affordable housing projects that can be impacted by this additional proposed tax. This is counterproductive to state and county efforts to increase the affordable housing supply. Not all affordable housing developments qualify for the low to moderate income housing exemption currently in place.

In addition, the County of Hawai'i has 32.7% of all taxable parcels within the agricultural tax class which include higher end residential dwellings. Apartment buildings in this jurisdiction are typically not high end projects which would be subject to this additional tax. It is unclear if the writers of this bill had the opportunity to consider the effects of this bill on neighbor islands.

Sincerely,

Lisa K Miura
Real Property Tax Administrator

Keita Jo
Assistant Real Property Tax Administrator

RICHARD T. BISSEN, JR.
Mayor



JOSIAH K. NISHITA
Managing Director

OFFICE OF THE MAYOR
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov

February 7, 2024

TO: Representative Justin H. Woodson, Chair
Representative Rep. Trish La Chica, Vice Chair
Committee on Education

FROM: Richard T. Bissen, Jr., Mayor
Steve Tesoro, Acting Director of Finance

DATE: February 7, 2024

SUBJECT: **OPPOSITION OF HB1537, HD1**, PROPOSING AMENDMENTS TO ARTICLES VIII AND X OF THE CONSTITUTION OF THE STATE OF HAWAII TO AUTHORIZE THE LEGISLATURE TO ESTABLISH A SURCHARGE ON RESIDENTIAL INVESTMENT PROPERTY TO INCREASE FUNDING FOR PUBLIC EDUCATION.

Thank you for the opportunity to testify in **OPPOSITION** of this measure. This bill proposes amendments to the Hawai'i State Constitution to repeal the counties exclusive power to tax real property and increase funding for public education for the children and adults of Hawai'i by authorizing the Legislature to establish, as provided by law, a surcharge on residential investment property valued at \$3,000,000 or greater.

We **OPPOSE** this measure for the following reasons:

1. This bill adds on to some of the higher tax rates already established by the Counties. The tax base and classifications in each county are unique, so there is no uniform base to apply a statewide tax.
2. This bill will be an additional burden placed on the tax appeals at the County level as more taxpayers with properties valued at \$3,000,000 or greater would be more inclined to appeal their value due to the increase in their tax burden. There is currently no framework in place for the state to compensate the counties for this additional burden.
3. This bill will directly impact the rental market, consequently increasing rent in a community that is already challenged with rental housing inventory.

For the foregoing reasons, we **OPPOSE** this measure.

February 8, 2024

The Honorable David A. Tarnas, Chair

House Committee on Judiciary & Hawaiian Affairs
State Capitol, Conference Room 325 & Videoconference

RE: House Bill 1537, HD1, PROPOSING AMENDMENTS TO ARTICLES VIII AND X OF THE CONSTITUTION OF THE STATE OF HAWAII TO AUTHORIZE THE LEGISLATURE TO ESTABLISH A SURCHARGE ON RESIDENTIAL INVESTMENT PROPERTY TO INCREASE FUNDING FOR PUBLIC EDUCATION.

HEARING: Thursday, February 8, 2024, at 2:00 p.m.

Aloha Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i and its over 11,000 members. HAR **opposes** House Bill 1537, HD1, which proposes amendments to the Hawai'i State Constitution to repeal the counties exclusive power to tax real property and increase funding for public education for the children and adults of Hawai'i by authorizing the Legislature to establish, as provided by law, a surcharge on residential investment property valued at \$3,000,000 or greater. Effective 7/1/3000.

While Hawai'i REALTORS® supports education, we are deeply concerned that an additional property tax surcharge for residential investment property will add to the cost of housing and rentals. There's a misconception that such taxation solely affects the wealthy or luxury properties. However, this also directly impacts workforce housing, including multi-family units and walk-ups in our State. The repercussions of any surcharge on property tax could be passed on to renters, further adding to the financial burden of residents in our State already grappling with high costs of living and housing.

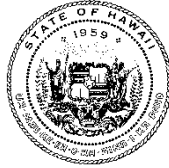
According to the Economic Research Organization at the University of Hawaii's ("UHERO") Hawai'i Housing Fact Book, it highlights the stark reality that "Hawai'i is the most expensive state in the nation for housing. Median housing costs are 2.7 times the national level."¹ Moreover, Hawaii's total housing supply has not seen significant growth, primarily due to "the most restrictive housing regulations in the nation. Long permit delays, limits on land use, legislative and judicial hurdles, and affordable housing requirements all constrain new construction making it more difficult for new housing to be supplied."

Our need for housing in Hawai'i is equally important and a residential investment surcharge is counterproductive to efforts to help increase the supply of housing so that our keiki can have a place to call home in Hawai'i.

For the foregoing reasons, the Hawai'i Association of REALTORS® opposes this measure. Mahalo for the opportunity to testify.

¹ UHERO. (June 28, 2023). *The Hawai'i Housing Factbook*. uhero.hawaii.edu/wp-content/uploads/2023/06/TheHawaiiHousingFactbook.pdf

JOSH GREEN, M.D.
GOVERNOR
KE KIA'AINA



FELICIA VILLALOBOS
EXECUTIVE DIRECTOR

STATE OF HAWAII
HAWAII TEACHER STANDARDS BOARD

650 IWILEI ROAD, SUITE 268
HONOLULU, HAWAII 96817

February 8, 2024

WRITTEN TESTIMONY BEFORE THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

PERSON TESTIFYING: Mitzie Higa, Licensing Specialist, on behalf of the Hawai'i Teacher Standards Board (HTSB)

DATE: February 8, 2024

TIME: 2:00pm

LOCATION: Conference Room 325 and Video Conference

TITLE OF BILL: HB 1537 PROPOSING AMENDMENTS TO ARTICLES VIII AND X OF THE CONSTITUTION OF THE STATE OF HAWAII TO AUTHORIZE THE LEGISLATURE TO ESTABLISH A SURCHARGE ON RESIDENTIAL INVESTMENT PROPERTY TO INCREASE FUNDING FOR PUBLIC EDUCATION

PURPOSE OF BILL:

POSITION: Support

Chair Tarnas, and Members of the Committee:

The Hawai'i Teacher Standards Board supports HB1537, PROPOSING AMENDMENTS TO ARTICLES VIII AND X OF THE CONSTITUTION OF THE STATE OF HAWAII TO AUTHORIZE THE LEGISLATURE TO ESTABLISH A SURCHARGE ON RESIDENTIAL INVESTMENT PROPERTY TO INCREASE FUNDING FOR PUBLIC EDUCATION.

Our state desperately needs to amend our State Constitution to guarantee ample learning opportunities for our keiki. Every year, we continue to lose approximately 45- 50 percent of our teachers after five years. Not having sufficient funds has contributed to low teacher pay and is the primary driver of teacher turnover, not being able to lower class sizes due to fiscal constraints, and not having enough licensed teachers who stay in our public schools, including our public charter schools. A Stanford University analysis found that raising teacher wages by 10 percent reduces high school dropout rates by 3 to 4 percent. Similarly, a Florida study showed that pay raises reduced teacher attrition by as much as 25 percent for hard-to-fill subject areas, with children's learning growth gaining from more exposure to experienced licensed educators.

Furthermore, according to the National School Supply and Equipment Association, public school teachers annually spend \$1.6 billion of their discretionary income on supplementary school supplies and instructional materials, showing the lack of adequate resources in our public schools in Hawai'i. On average, teachers surveyed spent a total of \$485 on school supplies and instructional materials, with even more spending over \$1,000 of personal income each school year since the pandemic.

Insufficient funding has led to our teacher shortage crisis.

We need to right the wrongs of the past and have part of property taxes go toward our public schools. **We are the only state in the nation that doesn't use some part of property taxes to help fund our public schools, keeping our local residents in mind, this Constitutional Amendment will be a surcharge on investment residential properties over \$3 million in value, that are non-owner occupied homes, thus protecting our workforce, including our teachers.**

These funds could help us retain our licensed teachers and help us maintain the quality of our teacher workforce, attracting and retaining our best and brightest to continue to teach in our public schools, including our public charter schools. We as a state will be able to afford creating smaller class sizes that allow teachers to connect with each of their students, expand whole child education to include career and technical education and the arts, increase resources for our students with special needs, and provide professional pay that reflects the value of our licensed teachers.

At the same time, we can make Hawai'i more affordable. Over the past two decades, the pricing of housing in the islands has skyrocketed, even more since the pandemic. Our state's high cost of housing and renting is driven by real estate speculators using the islands as their personal Monopoly board. In levying a surcharge on investment properties, non-owner occupied residential housing worth \$3 million or over, and incentivizing low-income rentals, we are not only advancing our children's future, but ensuring that they aren't priced out of paradise.

Thank you for allowing us to testify on this bill.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: CONSTITUTIONAL AMENDMENT, Residential Investment Property Surcharge for Public Education

BILL NUMBER: HB 1537 HD 1

INTRODUCED BY: House Committee on Education

EXECUTIVE SUMMARY: Constitutional amendment to allow the legislature to impose a surcharge on residential investment property valued at \$3,000,000 or greater for funding public education.

SYNOPSIS: The bill proposes a constitutional amendment to empower the legislature to establish a surcharge on residential investment property valued at three million dollars or greater.

“Residential investment property” is defined as all real property including apartments and condominiums and appurtenances thereto, including buildings, structures, fences and improvements erected on or affixed to such real property, and any fixture that is erected on or affixed to the land, buildings, structures, fences and improvements; and all machinery and other mechanical or other allied equipment, and the foundations thereof, that are dedicated for residential use and that do not serve as the owner’s primary residence; provided that the surcharge shall not apply to any affordable housing development that is subject to a regulatory agreement with the State or county.

EFFECTIVE DATE: July 1, 3000.

STAFF COMMENTS: It is contended that public schools have been underfunded, consequently, the constitutional amendment is needed to provide the State the ability to increase funding for public education from surcharges on residential investment property valued at \$3M or more. “Residential investment property” is broadly defined to include fixtures erected or affixed to real property improvements and mechanical equipment that are dedicated for residential use.

What is troubling is there are no limits on the proposed tax. If the constitutional amendment is approved, legislators are free to implement legislation when it determines funding is needed. It could be the year the amendment is approved, or the next year, or the year after that. They could change it to impose the surcharge on all “residential investment” property as long as the property value is \$3 million or more. They could set the surcharge rate. They could do all these things because the constitutional amendment gives the legislature this power. In other words, once the amendment passes, the genie is out of the bottle. It may not even be under control of the members now in the legislature, because future legislators (note that this year is an election year) may have different ideas from current members.

We need to ask ourselves if we want to or need to give the genie that much power. If we do, then we only have ourselves to blame for what happens when the genie does come out. If we don't, then we should either kill the constitutional amendment or write strict limits into it.

We are also concerned that voters are and will be unaware that they are voting on a new tax. There is no mention of the word "tax" in the proposed amendment. Limits should be written into the proposed amendment or the voters should be apprised that they are voting on granting power to the legislature to impose a tax of some kind on an overly broad definition of residential investment property, with no limitations on that power.

The assumption that additional funding is needed is based on declining educational funding statistics and does not address whether the DOE is able to efficiently spend its existing resources. Indeed, the recent episode with DOE proposing to lapse hundreds of millions of dollars in already funded projects because they are unable to get them built underscores this point. Until DOE can actually utilize the money thrown their way, there is little justification for an increase in financial resources.

Digested: 2/6/2024



1200 Ala Kapuna Street • Honolulu, Hawaii 96819
Tel: (808) 833-2711 • Fax: (808) 839-7106 • Web: www.hsta.org

Osa Tui, Jr.
President

Logan Okita
Vice President

Lisa Thompson
Secretary-Treasurer

Ann Mahi
Executive Director

TESTIMONY TO THE HAWAII HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Item: **HB1537 HD1 - Proposing amendments to Articles VIII and X of the Constitution of the State of Hawaii to authorize the legislature to establish a surcharge on residential investment property to increase funding for public education**

Position: **Support**

Hearing: **February 8, 2024, 2:00 p.m., Conference Room 325**

Submitter: **Osa Tui, Jr. – President, Hawai'i State Teachers Association**

Chair Tarnas, Vice Chair Takayama, and members of the committee,

The Hawai'i State Teachers Association **supports** HB1537 HD1. This bill proposes amendments to the Hawai'i State Constitution to repeal the counties exclusive power to tax real property and increase funding for public education for the children and adults of Hawai'i by authorizing the Legislature to establish, as provided by law, a surcharge on residential investment property valued at \$3,000,000 or greater.

Increasingly Hawai'i is becoming the playground for the mega-wealthy. It is unconscionable that as they harvest the benefits and splendors that these lands offer, they don't also give back to our schools which are falling apart and not providing our keiki with the schools they deserve.

Educating our keiki is everyone's kuleana. While the counties may feel this is taking from pots of money that should be exclusive to them, that ignores the fact that the state has to support the counties in numerous ways as well. We cannot remain siloed when it comes to investing in the future of Hawai'i - the keiki o ka 'āina.

Ultimately, this would put the decision on whether our keiki are worthy of such investment in the hands of the voters of this state. The legislature was brave to put something similar on the ballot in 2018. Since then, the rich have only gotten richer and the struggles of the working class have only been exacerbated. Now is the time to put this on the ballot once again.

The Hawai'i State Teachers Association asks your committee to **support** this bill.



TESTIMONY FROM THE DEMOCRATIC PARTY OF HAWAII

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

FEBRUARY 8, 2024

HB 1537, HD1, PROPOSING AMENDMENTS TO ARTICLES VIII AND X OF THE CONSTITUTION OF THE STATE OF HAWAII TO AUTHORIZE THE LEGISLATURE TO ESTABLISH A SURCHARGE ON RESIDENTIAL INVESTMENT PROPERTY TO INCREASE FUNDING FOR PUBLIC EDUCATION

POSITION: SUPPORT

The Democratic Party of Hawai'i **supports** HB 1537, HD1, which proposes amendments to the Hawai'i State Constitution to increase funding for public education for the children and adults of Hawai'i by authorizing the Legislature to establish, as provided by law, a surcharge on residential investment property valued at \$3,000,000 or greater. Pursuant to the "Education" section of the official Democratic Party of Hawai'i platform, the party supports "establishing a dedicated funding source to deliver a quality public education and library services to every student, regardless of learning capacity or ability to pay, in an environment conducive to the learning process. These resources shall be made available at every level, from preschool through higher education, including life-long learning."

Public education is the heartbeat of our democracy and our economy. Last year, the State Legislature dramatically slashed funding for Hawai'i's public school system. **The state legislature's education operating budget was \$57.1 million less in general funds than what Gov. Josh Green requested for fiscal year 2023-2024 and \$109.7 million less than what was requested for 2024-2025.** Those gaps were even larger when compared with the state Board of Education's original requests last fall. Moreover, schools received \$434.2 million less than the

BOE-approved request of \$536.1 million for the first year of the biennium and \$479 million less than a slightly higher request for the second year. State lawmakers also zeroed out 5 out of 9 categories of lump-sum appropriations for capital improvements and meanwhile approved 117 line-item projects worth \$307 million. These cuts caused some lawmakers to take the unprecedented step of voting “no” on the state budget. Former BOE member Kili Namau’u called the cuts a “travesty.”

We desperately need to amend our State Constitution to guarantee ample learning opportunities for our keiki. As it has for years, the Aloha State is suffering from a chronic teacher shortage crisis, which could be exacerbated by proposed cuts to the Hawai’i Department of Education’s budget amounting to 15 to 21 percent. Additionally, we continue to lose approximately 50 percent of new hires after five years. Low teacher pay is the primary driver of teacher turnover. Numerous studies, including those performed by WalletHub.com and EdBuild, have found that Hawai’i’s teacher pay ranks last in the nation when adjusted for cost of living.

Moreover, a 2019 Economic Policy Institute analysis found that in our state, teachers earn 19.1 percent lower pay compared with other college graduates. Research also shows that as teacher pay increases, so, too, does student achievement. A Stanford University analysis found that raising teacher wages by 10 percent reduces high school dropout rates by 3 to 4 percent. Similarly, a Florida study showed that pay raises reduced teacher attrition by as much as 25 percent for hard-to-fill subject areas, with children’s learning growth gaining from more exposure to experienced educators. To deliver the schools our keiki deserve, we must raise the revenue necessary to pay teachers what they’re worth.

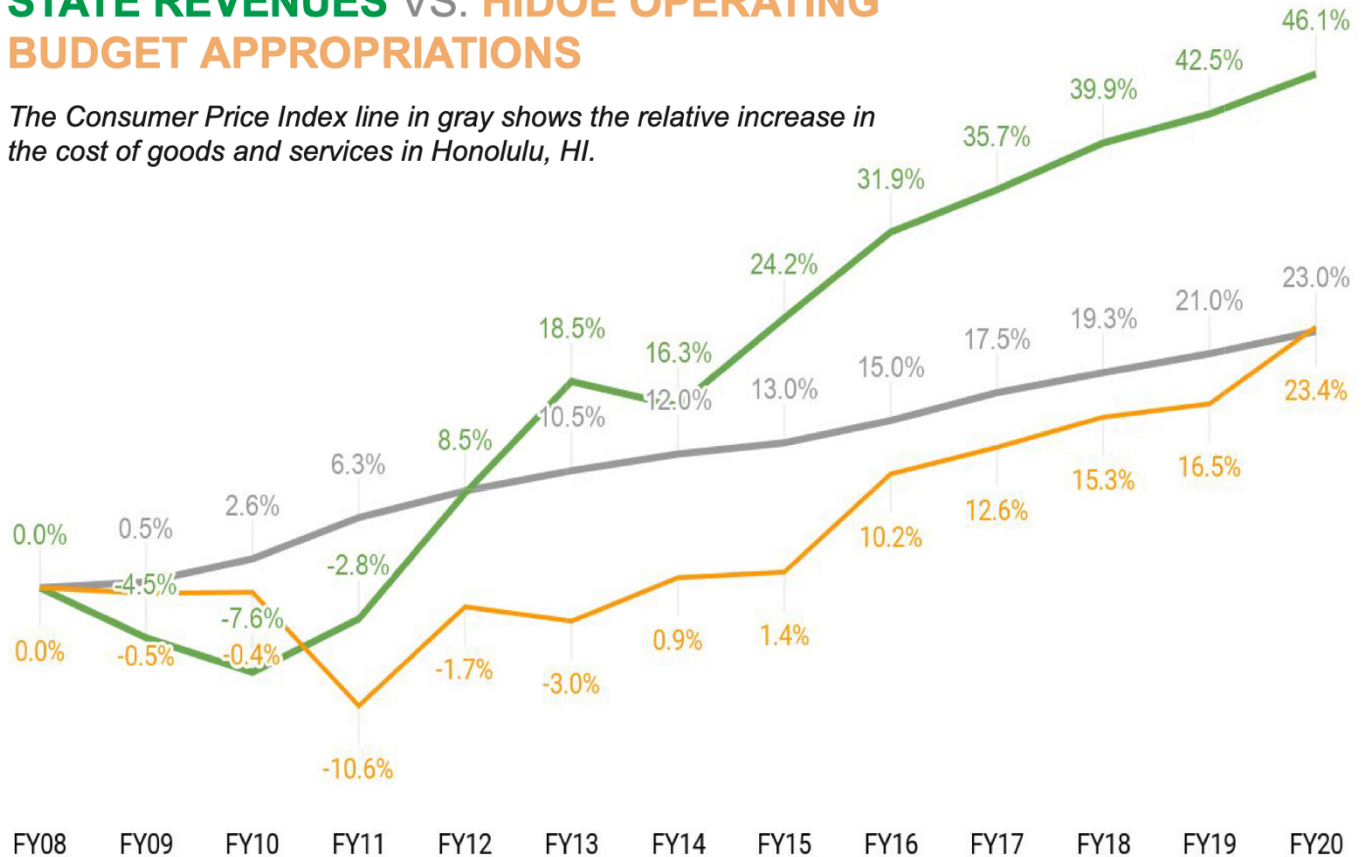
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Budget cuts and an overemphasis on standardized testing have crippled the DOE in recent years, leading to reconsideration of whether or not to continue successful learning programs. Arts, Hawaiian cultural, career and technical, foreign language, and 21st Century elective programs have been slashed to maintain an unsustainable testing regime. Unfortunately, when our state’s

education budget fails to keep pace with inflation, successful learning centers and categorical programming get placed on the chopping block, while the DOE's priorities shift from classroom support to programmatic savings. Put simply, when we fail to adequately fund our schools, the DOE must spend more time accounting for basic programs, crowding out concerns about the efficient allocation of funds for individual teacher and student needs, like classroom resources.

STATE REVENUES VS. HIDEO OPERATING BUDGET APPROPRIATIONS

The Consumer Price Index line in gray shows the relative increase in the cost of goods and services in Honolulu, HI.

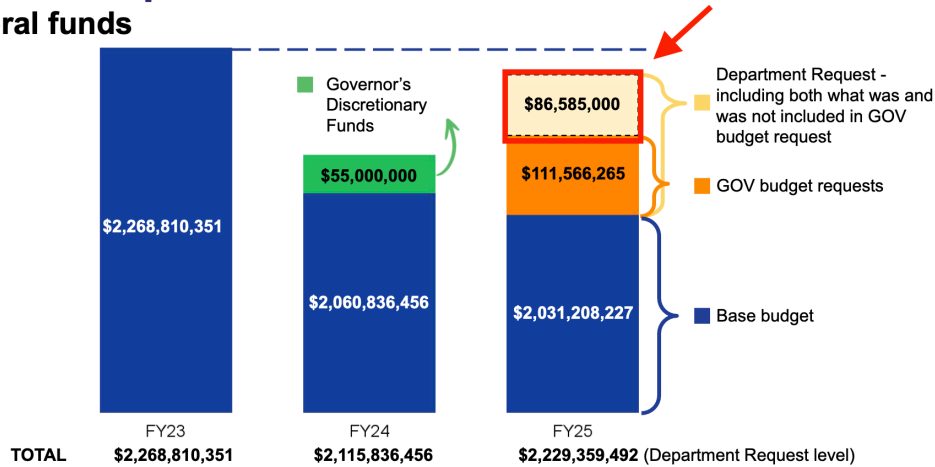


FY08-18 Actual Collections per Department of Taxation; FY19 and FY20 based on Council on Rvenues May 23, 2019 projection.

We cannot give up the quest for a fully-funded school system. Our keiki's and our community's future depends on our resolve.

FY24 & FY25 Budget Appropriation & FY25 Requests

General funds



Briefing Progress

- Overview
- Federal Funds
- Non-General Funds
- Budget Requests**

Department's and Governor's Budget Request

General funds, FY25 by request category

REQUEST CATEGORY	FY25 Department's Request	FY25 Governor's Request	Difference
Weighted Student Formula	\$33,016,281	\$0	-\$33,016,281
Student Achievement and Enrichment	\$37,894,528	\$500,000	-\$37,394,528
Special Education and Mental Health Supports	\$19,273,754	\$8,172,245	-\$11,101,509
Teacher and Staff Retention	\$23,400,879	\$18,377,674	-\$5,023,205
Essential Support Services	\$15,488,565	\$10,000,000	-\$5,488,565
Infrastructure	\$21,750,000	\$17,250,000	-\$4,500,000
Student Meals & Transportation	\$39,266,346	\$39,266,346	\$0
School Safety	\$8,060,912	\$18,000,000	\$9,939,088
TOTAL	\$198,151,265	\$111,566,265	-\$86,585,000

Note: Excludes Trade-Off/Transfer

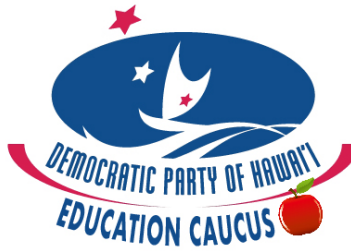
Briefing Progress

- Overview
- Federal Funds
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Mahalo nui loa,

Kris Coffield
 Co-Chair, Legislative Committee
 (808) 679-7454
 kriscoffield@gmail.com

Abby Simmons
 Co-Chair, Legislative Committee
 (808) 352-6818
 abbyalana808@gmail.com



HOUSE BILL 1537, HD1, PROPOSING AMENDMENTS TO ARTICLES VIII AND X OF THE CONSTITUTION OF THE STATE OF HAWAII TO AUTHORIZE THE LEGISLATURE TO ESTABLISH A SURCHARGE ON RESIDENTIAL INVESTMENT PROPERTY TO INCREASE FUNDING FOR PUBLIC EDUCATION

FEBRUARY 8, 2024 · JHA HEARING

POSITION: Support.

RATIONALE: The Democratic Party of Hawai'i Education Caucus **supports** HB 1537, HD1, which proposes amendments to the Hawai'i State Constitution to increase funding for public education for the children and adults of Hawai'i by authorizing the Legislature to establish, as provided by law, a surcharge on residential investment property valued at \$3,000,000 or greater.

Public education is the heartbeat of our democracy and our economy. Last year, the State Legislature dramatically slashed funding for Hawai'i's public school system. **The state Legislature's education operating budget was \$57.1 million less in general funds than what Gov. Josh Green requested for fiscal year 2023-2024 and \$109.7 million less than what was requested for 2024-2025.**

Those gaps were even larger when compared with the state Board of Education's original requests last fall. Moreover, schools received \$434.2 million less than the BOE-approved request of \$536.1 million for the first year of the biennium and \$479 million less than a slightly higher request for the second year. State lawmakers also zeroed out 5 out of 9 categories of lump-sum appropriations for capital improvements and meanwhile approved 117 line-item projects worth

\$307 million. These cuts caused some lawmakers to take the unprecedented step of voting “no” on the state budget. Former BOE member Kili Namau’u called the cuts a “travesty.”

We desperately need to amend our State Constitution to guarantee ample learning opportunities for our keiki. As it has for years, the Aloha State is suffering from a chronic teacher shortage crisis, which could be exacerbated by proposed cuts to the Hawai’i Department of Education’s budget amounting to 15 to 21 percent. Additionally, we continue to lose approximately 50 percent of new hires after five years. Low teacher pay is the primary driver of teacher turnover. Numerous studies, including those performed by WalletHub.com and EdBuild, have found that Hawai’i’s teacher pay ranks last in the nation when adjusted for cost of living.

Moreover, a 2019 Economic Policy Institute analysis found that in our state, teachers earn 19.1 percent lower pay compared with other college graduates. Research also shows that as teacher pay increases, so, too, does student achievement. A Stanford University analysis found that raising teacher wages by 10 percent reduces high school dropout rates by 3 to 4 percent. Similarly, a Florida study showed that pay raises reduced teacher attrition by as much as 25 percent for hard-to-fill subject areas, with children’s learning growth gaining from more exposure to experienced educators. To deliver the schools our keiki deserve, we must raise the revenue necessary to pay teachers what they’re worth.

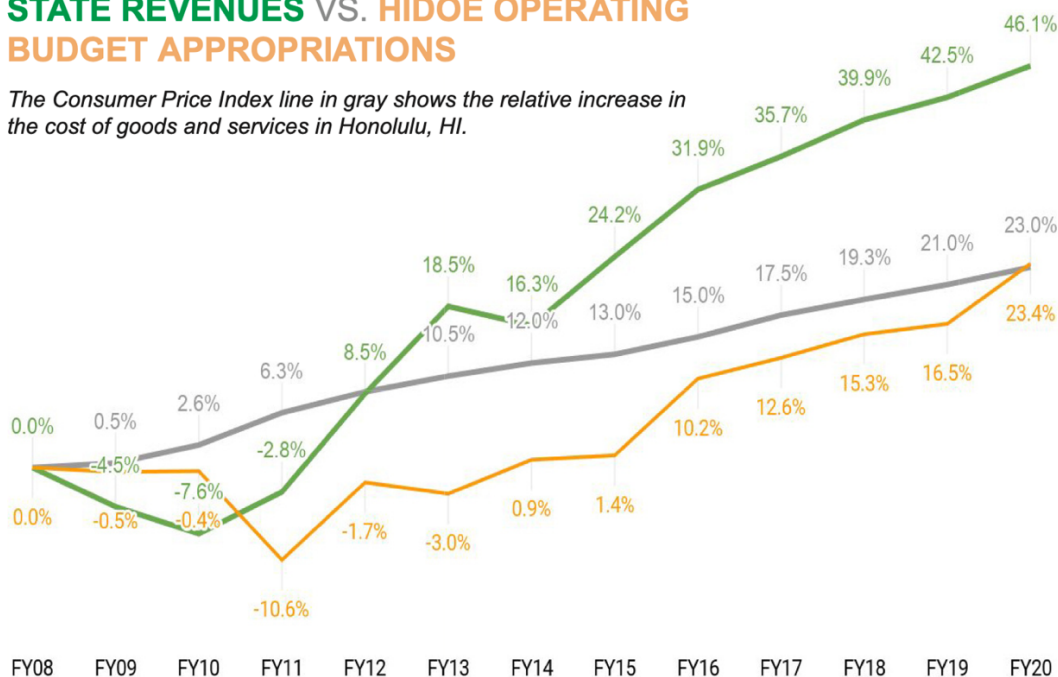
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We cannot give up the quest for a fully-funded school system. Our keiki’s and our community’s future depends on our resolve.

Kris Coffield · Chairperson, DPH Education Caucus · (808) 679-7454 · kriscoffield@gmail.com



LAND USE RESEARCH
FOUNDATION OF HAWAII

1100 Alakea Street, Suite 408
Honolulu, Hawaii 96813
(808) 521-4717
www.lurf.org

February 7, 2024

Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair
House Committee on Judiciary & Hawaiian Affairs

Comments in Strong Opposition to HB 1537, H.D. 1, Relating to Constitutional Amendment; Public Education; Residential Investment Property Surcharge (Proposes amendments to the Hawaii State Constitution to repeal the counties exclusive power to tax real property and increase funding for public education for the children and adults of Hawaii by authorizing the legislature to establish, as provided by law, a surcharge on residential investment property valued at \$3,000,000 or greater; effective 7/1/3000.)

Thursday, February 8, 2024, at 2:00 p.m.; State Capitol, Conference Room 325, Via Videoconference

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers, and utility companies. One of LURF's missions is to advocate for reasonable, rational, and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

HB 1537, H.D. 1. The purpose of this bill is to propose amendments to the Constitution of the State of Hawaii to increase funding for public education for all students of Hawaii by authorizing the Legislature to establish a surcharge on residential investment real property.

LURF's Position. LURF acknowledges the apparent intent of this measure given the reportedly dire need to supplement funding to support public education in Hawaii, however, believes the means by which such revenue is being sought pursuant to this bill, specifically an amendment to be made to the State

Constitution to impose a surcharge targeting a specific and limited group of property owners, is inappropriate, impractical, and arguably illegal.

LURF most certainly upholds, and is not in any way opposed to measures intended to further education in this State, but must strongly caution against such efforts made to promote and fund select government departments by disregarding protocol and circumventing considerations, requirements and procedures applicable to constitutional amendments which relate to significant issues such as taxation and education, particularly where the potential deprivation of constitutional rights of private landowners may be at stake; where significant impacts upon the State's economy may be suffered as a result; and where justifications for such measures have not been offered, proven, or supported by any credible facts or evidence.

With respect to the subject bill which proposes amendments to the Taxation and Public Education provisions of the State Constitution, LURF has significant concerns, both procedural and substantive, and must request this Committee's serious consideration of the following issues prior to deciding on this measure.

A. Procedural Concerns

- 1. The Bill Should be Thoroughly Vetted by the State's Attorneys and All Stakeholders to Ensure the Legality and Practical Viability of the Proposed Amendments as Well as to Confirm the Absence of any Unintended Negative Consequences.**

LURF questions whether the advice of legal counsel and consultation with the counties and other stakeholders were properly pursued prior to the measure's introduction and consideration by the Legislature, particularly since the proposed amendments to the State Constitution are imposing and discriminatory; arguably violate Constitutional mandates; and would set very bad precedent.

Amending the Constitution is one of the most serious and important undertakings of people acting through their government, since such amendments are **binding for the long-term and should be reserved for matters of utmost significance and importance**. Moreover, the stability that the Constitution provides is one of its key virtues and will be undermined if the Constitution is amended without restraint. As such, a proposed amendment must first be confirmed to be effective in achieving its policy objective, meaning that it should be intended to promote a long-term objective and not serve a temporary purpose, and should be verified through collaboration with attorneys and all stakeholders to be legally enforceable in order that there will not be any unintended negative consequences as a result of the amendment. As far as LURF is aware, no such confirmation or consultation was made prior to the introduction of this measure.

While the amendment to Article VIII, Section 3 of the Constitution proposed by this bill includes language stating that "...the legislature may establish, **as provided by law**, a surcharge on investment real property" (emphasis added), thereby inferring

that any surcharge eventually established and implemented will be legally enforceable, it is LURF's position that legal enforceability and specific details of any such surcharge should be confirmed **prior to** passage of the bill and placement of the question on the ballot.

2. The Proposed Constitutional Amendment is Not an Appropriate Mechanism to Address the Professed Funding Issue.

LURF does not believe it is appropriate or prudent for the Legislature to utilize Constitutional amendments as a means to source tax revenues to be applied to budgetary needs, especially the potentially temporary needs of select State departments or causes. Once established, such vehicle for funding would be boundless as there would be no limits on the proposed tax. The tax will no doubt be looked to perpetually as a potential source of funding by current and future legislators who would be granted the unlimited power to implement the surcharge whenever and to the extent they deem necessary; to change the surcharge rate; or to even expand the application of the tax to other State causes at the risk of damaging the sanctity of the State Constitution.

It is also questionable whether such a mechanism is feasible given that similar efforts in other jurisdictions have not proven effective since "shifting the source of revenue" seems to miss the point and often simply results in a reduction in the amount of funding originally allocated for the cause in the state's general fund.

3. All Powers and Duties Relating to Real Property Taxes are Reserved to the Counties by the State Constitution.

Article VII, Section 3 of the Hawaii Constitution states that the taxing power shall be reserved to the State, **except that all functions, powers, and duties relating to the taxation of real property shall be exercised exclusively by the counties.** As counties have testified on similar proposals in the past, this measure imposes upon their only permanent taxing authority for funding needed for important county fiscal expenses (such as housing, sewers, roads, parks, and waste), and significantly impacts their ability to raise property tax rates if necessary to address the counties' own fiscal requirements. Being that the State possesses much broader taxing authority than the counties, it is concerning that the Legislature finds it appropriate to impinge upon the counties' limited taxing authority via a questionable Constitutional amendment to address educational funding needs which are the sole responsibility of the State.

4. Sufficient Justification Has Not Been Produced to Support the Imposition of a Surcharge for Public Education.

While LURF acknowledges that teachers in this State may have defensible complaints about their jobs, workplace, and salaries, Hawaii salaries in general are reportedly amongst the lowest in the nation after considering the high cost of living in this State. The recent reported inability of the State Department of Education (DOE) to utilize hundreds of millions of dollars for funded projects due to its inability to successfully

complete them also does not support the imposition of the proposed surcharge due to lack of educational funding in Hawaii. LURF therefore believes that the purported need to increase financial resources for public education - and to effectuate amendments to the State Constitution for that purpose – should first be substantiated by compelling facts and evidence, including an audit of the DOE to prove that such prioritization is critically necessary.

The State Constitution provides for the establishment, support, and control of a statewide system of public schools **without discrimination**. It is therefore ironic and contrary to the spirit and intent of that Constitutional mandate that efforts are now being made to discriminate against a limited class of property owners by imposing the proposed surcharge upon that one particular group. There is, in fact, no relevant or rational basis for arbitrarily taxing a select class of residential property owners to fund education which is intended to benefit **all** students and residents of this State. As such, it may be more equitable and transparent for legislators to engage all members of the general public in a discussion regarding an increase in taxes across the board to address the need, if any, to provide additional financial resources for public education.

B. Substantive Concerns

1. Uniformity and Equality in Taxation is Required by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (the “Equal Protection Clause”).

As applied to state taxes, the Equal Protection Clause requires a minimum standard of uniformity to be maintained within classes and therefore protects the interests of taxpayers apart from any constitutional uniformity limitation imposed by any state levying a tax. And while the Equal Protection Clause does not require identical treatment, it does require that:

- a. the classification rest on real and not feigned differences;
- b. the distinction has relevance to the purpose for which the classification is made; and
- c. the different treatment be not so disparate, as to be wholly arbitrary.

This standard determines the legitimacy of state legislative tax classifications and tax legislation, and when applying said standard to the present bill, the proposed surcharge which targets owners of **residential investment property valued at \$3,000,000 or greater** fails (or at least has not been proven by proponents) to meet the above requirements in all respects and if legally challenged, would therefore likely be deemed by courts to violate the Equal Protection Clause.

It should also be noted that uniformity and equality in taxation is considered by courts to be even more critical with respect to taxes dealing with property (as opposed to other types of non-property taxes) under the general principle that any enactment

affecting **private property rights** must bear a substantial relation to the public health, safety, or general welfare.¹

2. The Bill Fails to Clearly Articulate the Details of the Proposed Surcharge and the Manner in Which it Will be Implemented.

As presently drafted, details relating to the surcharge proposed to be imposed have not been articulated so that the legal and practical validity of the proposal therefore cannot be properly assessed. For example, should the Constitutional amendment be authorized to allow the surcharge, an unreasonable tax rate could be set, or subsequently increased in the future, and there would be no restriction against lawmakers passing implementing legislation to set unreasonable terms upon which the tax would apply, or to identify certain property or ownership types which would be subject to the surcharge. Without explicit constraints on the power afforded to the Legislature by such an open-ended amendment, the possible negative consequences of the measure are unknown and virtually limitless.

Additionally, the fact that the term “surcharge” and not “tax” is used throughout this measure without explanation, and the word “tax” is not at all included in the question proposed to be printed on the ballot proposing the subject Constitutional Amendment, is believed by LURF to be unclear and potentially misleading and deceptive, and therefore legally deficient or invalid for purposes of generating the “knowing and deliberate expression of voter choice” necessary for ratification by the voting public.²

3. The Proposed Surcharge Would Cause Unintended Negative Consequences.

The measure may create disincentive for investment in real property and have other negative economic impacts on the State of Hawaii. At a time when the State continues to reel from the effects of the Covid pandemic and the Maui wildfires, and is still attempting to encourage business expansion in, and attract business to Hawaii, this bill would create a disincentive for real property investment, which in turn will no doubt have a negative impact on construction and development. Increased construction costs will be passed on to home buyers and will thus increase the price of homes and worsen the affordable housing problem in the State.

Increased taxes on investment real property would also be passed down by property and business owners to **all** local residents and consumers (including public school teachers) as increased costs, thereby raising the overall cost of living in this State. In short, this Committee should be aware that this proposed amendment intended to target owners of higher priced properties or non-residents may likely **impact many industries and harm broad segments of Hawaii’s economy.**

¹ This is because in the event a regulation operates to deprive the owner of beneficial economic use of the property (i.e., a “taking”), there exists an additional issue as to whether that owner may be entitled to monetary compensation under the Fifth and Fourteenth Amendments to the U.S. Constitution.

² See, City & County of Honolulu v. State of Hawaii, 143 Haw.455 (2018).

Despite those dire consequences, as far as LURF has been able to ascertain, proponents of this bill have never consulted with housing and commercial developers (e.g., NAIOP, Land Use Foundation of Hawaii), or experts in the real estate industry (e.g., Hawaii Association of Realtors), as to the impact of this bill. Neither is it known whether proponents of this measure have consulted with or addressed the comments and concerns of tax and economic experts (e.g., DoTax, the Tax Foundation, the University of Hawaii, and other independent experts) relating to the proposed Constitutional Amendment and what legal and negative economic effects and consequences may result therefrom.

Further, it appears that proponents of this bill have not offered any information or provided any factual data regarding the number and types of property owners and transactions which would be impacted by, as well as the expected dollar amounts which will actually be generated by this measure, which is necessary to support the proposed surcharge.

Implementation of the proposed surcharge would cause hardship and expense for the State and counties. The counties have previously unanimously expressed concern relating to the practical hardships and difficulties expected to be encountered in implementing this type of proposed surcharge due to the uniqueness of their respective real property tax systems and classification methods, which would impede, if not preclude consistent statewide application of the proposed surcharge to real property located in different counties. Establishment and implementation of a uniform state-wide system would certainly entail additional resources including workforce and expense.

This bill will impact local working-class families. Proponents of this bill may assume that application of the surcharge to residences valued at \$3,000,000 or greater will not affect Hawaii's average property owners, however, the median price of a home in this State is already \$1,000,000. Very soon the \$3,000,000 threshold will apply to many more property owners, impacting rental prices and further increasing housing costs in Hawaii. Therefore, the real estate "investors" impacted by this bill will not be limited to wealthy foreigners but will also include local, average working-class residents who invest in real estate to make a living, or who may be relying on investment property to fund their retirement. These "investors" also include hard-working parents who purchase property to house their children, or to pay otherwise unaffordable college tuitions, as well as kama`aina who wish to retain inherited property which has been passed down by their family members for generations.

Conclusion

LURF must respectfully caution that any government action taken to amend the Constitutional rights of the public and potentially divest them of their private property, must not be done so heedlessly, particularly where the underlying bases used to justify such action are subjective and unsupported by hard facts and clear evidence, and when current and future consequences to private property owners and to the public could be economically destructive. To support the pursuit of what may be

unlawful, unnecessary, and unwarranted taxation, passage of such bill must be clearly defensible, with measurable benefits resulting therefrom that would sufficiently outweigh potential detriment to the identified limited group of real property owners, as well as to the community at large.

What is so troubling about the Legislature taking such arbitrary action, especially through the mechanism of a Constitutional amendment, is the poor example being set, and the bad precedent being laid, demonstrating the ease with which the government may so easily elect to utilize its power and influence to overregulate and improperly tax private property without valid purpose or justification, and to inequitably cast upon a select group, the responsibility to fund public education which should rightfully be shouldered equally by all taxpayers. The resulting real and greater danger is that such government overreaching may then be potentially interpreted and exploited by self-interest groups as precedent and support for further advancing improper efforts to regulate use of and impose taxes upon private property in their own favor.

Based on the procedural and substantive concerns articulated above, LURF believes it would be unreasonable, if not irresponsible for this Committee to support this measure as drafted without thorough review and analysis of facts and information relating to the legality and propriety of such Constitutional amendment to impose a surcharge for the purposes alleged in this bill; legitimacy of the present need for such an amendment and proposed surcharge; the bill's true purpose; clearer articulation of the proposed surcharge and implementation thereof; and further consideration of the potential unintended consequences of such a measure, and must therefore respectfully request that **this bill be deferred.**

Thank you for your consideration and the opportunity to present LURF's position regarding this matter.

Feb. 8, 2024, 2 p.m.
Hawaii State Capitol
Conference Room 325 and Videoconference

To: House Committee on Judiciary & Hawaiian Affairs
Rep. David A. Tarnas, Chair
Rep. Gregg Takayama, Vice-Chair

From: Ted Kefalas, Director of Strategic Campaigns
Grassroot Institute of Hawaii

RE: TESTIMONY IN OPPOSITION TO HB1537 HD1 — PROPOSING AMENDMENTS TO ARTICLES VIII AND X OF THE CONSTITUTION OF THE STATE OF HAWAII TO AUTHORIZE THE LEGISLATURE TO ESTABLISH A SURCHARGE ON RESIDENTIAL INVESTMENT PROPERTY TO INCREASE FUNDING FOR PUBLIC EDUCATION.

Aloha Chair Tarnas, Vice-Chair Takayama and other members of the Committee,

The Grassroot Institute of Hawaii would like to offer its comments opposing [HB1537 HD1](#), which proposes amending the state Constitution in order to facilitate a state property tax on homes that are valued at \$3 million or greater and are not the owner's primary residence.

The stated purpose of this proposal is to "increase funding for public education for all students of Hawaii," but that does not erase the fact that this would be a dramatic break with historical precedent regarding Hawaii's property tax system and its method of funding public education.

There is a reason that the Hawaii Constitution bars the state from levying property taxes, making it the exclusive domain of the counties and a significant element of the county budget. Inserting state taxation into this scheme would frustrate that intent and opens the door to yet more state capture of county revenues.

As with any proposed tax increase, HB1537 threatens to increase the cost of living in Hawaii, as well as add to the burden of Hawaii homeowners at the very time our counties are searching for ways to offset soaring property taxes due to increased valuations.

The bill's proponents might believe that limiting the tax to homes valued at \$3 million or more will not affect average homeowners, but in fact, the effects of a tax hike cannot be segregated from the rest of the economy. What affects one segment of the housing market will ripple through the state's housing market as a whole.

For example, the proposed tax surcharge could incentivize the purchase and construction of housing under the threshold, creating a domino effect that would reduce housing availability and affordability in this "middle" tier.

Furthermore, with land-use, zoning and other regulations continuing to throttle Hawaii homebuilding — leaving Hawaii with a massive housing shortage and no prospect of a building boom any time in the near future — one should not assume that a \$3 million home will remain a high-value investment property in Hawaii rather than a slightly-above-average or even median-cost home.

That might seem to be a stretch, but few people thought that Hawaii's median price would soon reach even \$1 million when Honolulu County established its tiered Residential A property tax classification for tax year 2018, with properties valued above \$1 million facing a higher tax rate.¹

Now, that Residential A category encompasses many Oahu homes, with political pressure building to increase the threshold or abolish the tax category completely.²

Over time, the \$3 million threshold envisioned in this bill could cease to be a high-value investment category and instead become a burden to more and more homeowners, which in turn could affect rental prices and increase the cost of housing in Hawaii.

Looking at the broader picture, one must consider that tax increases in general are not a good idea for Hawaii's economy, especially not now when it already has one of the highest tax burdens in the nation.³

Consider these points:

>> Hawaii's population has been declining for the past six years.⁴ Tens of thousands of Hawaii residents have moved to the mainland over the past six years — mainly to states without income taxes, such as Washington, Nevada, Texas and Florida.⁵ Their departure from the islands is not only emotionally distressing, but economically depressing as well.

¹ ["Real Property Tax Rates in Hawaii, Fiscal Year July 1, 2017 to June 30, 2018,"](#) Real Property Assessment Division, Department of Budget and Fiscal Services, City and County of Honolulu, accessed Feb. 20, 2022.

² Jim Howe and Linda Howe, ["Blangiardi, Kiaaina Must Act On 'Residential A' Property Taxes,"](#) Honolulu Civil Beat, Jan. 5, 2023.

³ Jared Walczak and Erica York, ["State and Local Tax Burdens, Calendar Year 2022,"](#) Tax Foundation, April 7, 2022.

⁴ Maria Wood, ["Where People from Hawaii Are Moving to the Most,"](#) 24/7 Wall Street, Jan. 23, 2022.

⁵ Katherine Loughhead, ["How Do Taxes Affect Interstate Migration?"](#) Tax Foundation, Oct. 11, 2022.

>> Fewer people remaining means fewer people to work at our private businesses, or even staff our government agencies. It also means fewer people to help pay for Hawaii's ever-increasing tax burden.

>> Higher taxes for those who remain is more fuel for the exodus of our friends, neighbors and family to places that are more affordable. It's a downward spiral economically fostered by the relentless upward spiral of more and more taxes.

>> To put our tax system in context, Hawaii taxes high-income earners at 11%, second only to California at 13.3%.⁶ Hawaii's top 1.5% of taxpayers already pay 34.9% of all income taxes in the state.⁷

>> Hawaii is suffering from a stagnant economy, and both the Economic Research Organization at the University of Hawai'i⁸ and the state Department of Business, Economic Development and Tourism⁹ have predicted continued slow economic growth in 2024. Tax hikes could exacerbate this slowdown, since entrepreneurs will be less likely to want to invest their capital — or “wealth assets,” as the case may be¹⁰ — in Hawaii's economy.

In short, Hawaii's residents and businesses need a break from new taxes, tax increase, fees and surcharges. The last attempt to amend the Hawaii Constitution to allow for state property taxes ended in a lawsuit and a poor showing at the polls.

Meanwhile, Hawaii residents are “voting with their feet” to flee the state's high taxation. This is not the time to make Hawaii a more expensive place to live and do business.

Thank you for the opportunity to submit our comments.

Sincerely,

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii

⁶ Timothy Vermeer, “[State Individual Income Tax Rates and Brackets for 2023](#),” Tax Foundation, Feb. 21, 2023.

⁷ “[Hawaii Individual Income Tax Statistics](#),” Hawaii Department of Taxation report for Tax Year 2021, August 2023, Table 12A.

⁸ Carl Bonham, Byron Gagnes, Steven Bond-Smith, et al., “[State Facing Headwinds as Maui Recovery Begins](#),” Economic Research Organization at the University of Hawai'i, Dec. 15, 2023.

⁹ Hawaii Department of Business, Economic Development, and Tourism, “[Hawaii Economic Growth Remains Low for 2024 as Recovery Continues](#),” Dec. 11, 2023.

¹⁰ Aaron Hedlund, “[How Do Taxes Affect Entrepreneurship, Innovation, and Productivity?](#)” Center for Growth and Opportunity at Utah State University, Dec. 23, 2019; Ergete Ferede, “[The Effects on Entrepreneurship of Increasing Provincial Top Personal Income Tax Rates in Canada](#),” Fraser Institute, July 10, 2018; Robert Carroll, Douglas Holtz-Eakin, Mark Rider and Harvey S. Rosen, “[Personal Income Taxes and the Growth of Small Firms](#),” National Bureau of Economic Research, October 2000.

To: House Committee on Judiciary & Hawaiian Affairs
Re: **HB 1537 HD1 – Proposing amendments to Articles VIII and X of the Constitution of the State of Hawaii to authorize the Legislature to establish a surcharge on residential investment property to increase funding for public education**
Hawai'i State Capitol & Via Videoconference
February 8, 2024, 2:00 PM

Dear Chair Tarnas, Vice Chair Takayama, and Committee Members,

On behalf of Hawai'i Children's Action Network Speaks!, I am writing in **SUPPORT of HB 1537 HD1**. This bill proposes amendments to the Hawai'i State Constitution to increase funding for public education by authorizing the Legislature to establish a surcharge on residential investment property valued at \$3,000,000 or greater.

Our public school system is chronically underfunded. One of the most serious consequences of that underfunding is teacher shortages¹, which undermine the quality of education that our keiki receive.

One of the main reasons for our teacher shortage is their low pay. The average annual wage for preschool teachers in Hawai'i is less than \$44,000 per year.² When adjusted for the cost of living, our state's teachers have some of the lowest salaries in the nations. For example, the cost of a one-bedroom rental in Hawai'i is 41 percent of a new teacher's gross salary,³ far above the level of affordability.

In order to better educate our keiki, we need better funding for our public school system. This bill would be a first step towards tapping a new funding stream for public education, by asking those at top – the owners of investment properties worth at least \$3 million dollars – to support our school system by paying a little more.

Mahalo for the opportunity to provide this testimony. Please pass this bill.

Thank you,

Nicole Woo
Director of Research and Economic Policy

¹ https://www.kitv.com/news/local/many-emergency-hire-teachers-brought-in-to-fight-hawaiis-teacher-shortage/article_08fed366-bb22-11ee-b057-bb8f356226a5.html

² https://www.bls.gov/oes/current/oes_hi.htm#25-0000

³ <https://www.nctq.org/blog/Teacher-salaries,-cost-of-rent,-and-home-prices:-Can-teachers-afford-to-live-where-they-teach>



COMMITTEE ON EDUCATION

BILL INSERT HB1537
POSITION: SUPPORT

Hearing Date: February 8, 224

Aloha Chair Tarnas, Vice Chair Takayama, and Committee Members:

Aloha United Way supports HB1537, which proposes amendments to the Hawaii State Constitution to increase funding for public education for the children and adults of Hawaii by authorizing the Legislature to establish, as provided by law, a surcharge on residential investment property valued at \$3,000,000 or greater.

There is a clear correlation between increased funding for public education and social and economic success for students, families, and those who work in public education. Investing funds into our education system will elevate our keiki, giving them substantial opportunity to thrive in our competitive economy, regardless of their income or social status. It will save ALICE families from difficult decisions like removing their keiki from our public school system in place of private education. ALICE stands for Asset Limited, Income Constrained, Employed, and refers to households who are employed but whose incomes are not sufficient to meet their basic costs. According to our 2022 report, more Hawai'i households have fallen below the ALICE Threshold, with an alarming increase in households now in poverty, from 9% in 2019 to 15% in 2022.

As stated on HB1537, "A majority of public school students are now considered high-needs students... who qualify for free or reduced price lunch, English language learners, or special education students." Proposing amendments like HB1537 will improve a substantial number of ALICE families in multiple aspects of their lives.

Thank you for the opportunity to testify and for your action to support ALICE families and the non-profit programs working to improve financial stability in Hawaii. We urge you to pass HB1537.

Sincerely,

A handwritten signature in black ink, appearing to read "Kayla Keehu-Alexander".

Kayla Keehu-Alexander
Vice President, Community Impact
Aloha United Way

A handwritten signature in blue ink, appearing to read "Suzanne Skjold".

Suzanne Skjold
Chief Operating Officer
Aloha United Way

HB-1537-HD-1

Submitted on: 2/6/2024 5:24:42 PM

Testimony for JHA on 2/8/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Colleen Rost-Banik	Individual	Support	Written Testimony Only

Comments:

Dear Representatives,

My name is Colleen Rost-Banik and I am a Sociology Instructor at the University of Hawaii, Manoa. My research focuses on the sociology of education.

I write in support of HB1537 and request that you support this bill as well. As is well documented, Hawaii's public education system is woefully underfunded and its teachers grossly underpaid. This has resulted in school facilities falling into disrepair, lack of resources for students, and an exodus of teachers leaving the profession. To the legislature's and governor's credit, critical steps have been made to try to address building repairs and the wave of qualified teachers exiting the teaching profession. Mahalo for beginning to address these serious issues.

However, more needs to be done. Public schools need adequate funding for basic resources and to ensure that qualified teachers remain in the profession. Public schools are responsible for serving every young person in Hawaii—not just those with high test scores, stable housing and food, the means to hire tutors, and no behavioral or physical disabilities. Since 2008, there has been a 33% increase in the numbers of students from low-income families in the public schools, who now constitute a majority of students. Native Hawaiians, Filipino Americans, and other ethnic minority groups constitute 68% of the 172,000 public school students. Public education affects everyone, but is particularly important to our State's most vulnerable children.

As a human right afforded to all, education costs money. Public education is expensive – and that is OK. It is time that we become more comfortable with this. We cannot run education like a business and assume that it should be inexpensive and that its budget should not be significantly increased, especially to make up for the decades that it has been underfunded. Indeed, it is costly to educate the next generation. We should embrace this. If budgets are moral documents, then the money we put towards public education reveals our commitment to it. Families who can afford to send their children to private schools in Hawaii often do. We must ask hard questions about why this is and reinvest in **public** education.

Creating a residential investment property tax on property valued at \$3,000,000 and over will assist in generating the money needed to augment the State budget for public education. I urge you to please support HB1537.

Sincerely,
Colleen Rost-Banik, Ph.D.

HB-1537-HD-1

Submitted on: 2/6/2024 5:44:29 PM

Testimony for JHA on 2/8/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

Our children are our future. Each day, our state's public schools are building the foundation for equality and prosperity for tomorrow's generations. Numerous studies show that every dollar spent on education yields exponential returns, not just for our economy, but for the promise of a more open and democratic society. Yet, Hawai'i continues to spend the lowest amount of total state and county tax revenue on public education. That needs to change.

Supporting this proposal will help lift Hawai'i's schools into the 21st Century. With additional funding, we can ensure that every child has access to a quality early learning system, wraparound support services, modern facilities, and engaging curriculum. We will also be able to provide greater resources for students with special needs, professional pay that reflects the value of our hardworking teachers, and programs that make the dream of higher education attainable for all local students.

Investing in education delivers the promise of a brighter future for our island home. That's an opportunity that our children cannot afford to miss. Funding our keiki's future through a surcharge on second-home mansions, is a highly equitable method to go about this, and I wholeheartedly support this bill.

Mahalo!

HB-1537-HD-1

Submitted on: 2/6/2024 6:39:44 PM

Testimony for JHA on 2/8/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Keoni Shizuma	Individual	Support	Written Testimony Only

Comments:

Aloha Chair, Vice Chair, and members of the committee,

I stand in full support of HB1537.

Investment homes of \$3,000,000 or greater can definitely afford an extra tax, and as outlined well in section 1 of this bill, the added funds is sorely needed for our public education system and our students in need.

I applaud this effort and hope this passes.

Mahalo for your time and consideration.

Keoni Shizuma

TO: Members of the Committee on Judiciary and Hawaiian Affairs

FROM: Natalie Iwasa, CPA, CFE
808-395-3233

HEARING: 2 p.m. Thursday, February 8, 2024

SUBJECT: HB1537, HD1, Proposed Constitution Amendment to Establish
Real Property Tax Surcharge for Education - **OPPOSED**

Aloha Chair Tarnas and Committee Members,

Thank you for allowing the opportunity to provide testimony on HB1537, HD1, which proposes an amendment to the state constitution to establish a surcharge on certain real property to fund education. **This is a bad proposal.**

First of all, one type of residential property that would be subject to this surcharge is apartment buildings, unless they qualify as affordable housing that “is subject to a regulatory agreement with the State or a county.”

Following are examples of apartment buildings on Oahu that would apparently fall into this new taxable classification:

- 55 Walker Avenue, 33 units, assessed value \$3.2 million
- 211 Kellog Street, 14 units, assessed value \$3.2 million
- 2234 Citron Street, 24 units, assessed value \$4.7 million
- 1442 Kewalo Street, 36 units, assessed value \$4.4 million
- 2064 Young Street, 18 units, assessed value \$3.1 million
- 952 Ahana Street, 55 units, assessed value \$7.6 million
- 1724 Beckley Street, 40 units, assessed value \$3.4 million

These are not luxury units, and the renters who live in them would likely face rent increases if this surcharge were to become law.

Second, we learned from the Honolulu Residential A classification that it doesn’t take very long to ensnare many more properties when a static threshold is established.

There are other reasons to oppose this. For example, would funding for education really increase? Or would the funding burden merely fall on different taxpayers?

We do not need new taxes. We need more efficient use of our current taxpayer dollars.

Please vote “**no**” on HB1537, HD1.

HB-1537-HD-1

Submitted on: 2/7/2024 9:04:20 AM

Testimony for JHA on 2/8/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Erendira Aldana	Individual	Support	Written Testimony Only

Comments:

I support HB1537. As a home owner in Honolulu myself it does make sense to me that if I were to buy a second home worth this amount of money that my tax bill could be less than the families that are served by public schools and the employees that work at public schools because of tax breaks and incentives. To own a second home should come with the responsibility of being taxed properly.

HB-1537-HD-1

Submitted on: 2/7/2024 10:03:20 AM

Testimony for JHA on 2/8/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Glen Kagamida	Individual	Oppose	Written Testimony Only

Comments:

Good intention but not good enough for amending the constitution.

If you want to raise money from residential investment properties, just tax 'em. No need to change the constitution.

Also, there's no provision for inflation or deflation adjustments.

If the high cost of living is a reason for this bill, you should solve that problem. Then this bill will be unnecessary.

Any proposal to raise taxes should include areas to cut.

Oppose.

HB-1537-HD-1

Submitted on: 2/7/2024 10:46:54 AM

Testimony for JHA on 2/8/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
L Toriki	Individual	Oppose	Written Testimony Only

Comments:

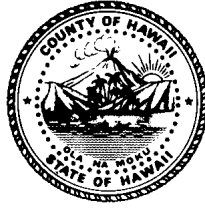
I oppose this bill.

Property taxes are for the counties. The state needs to keep their hands out of county funds.

This bill does not guarantee that these property tax funds will be used solely for education. As has always been the case, monies dumped into the general fund somehow disappear for other purposes besides what it was intended.

If more money is needed for education, the state must find other ways besides raiding county funds.

Jennifer Kagiwada
Council Member District 2 South Hilo



Office: (808) 961-8272
jennifer.kagiwada@hawaiicounty.gov

HAWAI'I COUNTY COUNCIL - DISTRICT 2

25 Aupuni Street • Hilo, Hawai'i 96720

DATE: February 7, 2024
TO: House Committee on Judiciary and Hawaiian Affairs
FROM: Jennifer Kagiwada, Council Member
Council District 2
SUBJECT: HB 1537 HD1

Aloha Chair Tarnas, Vice Chair Takayama and members of the Committee,

I am in opposition of HB 1537 HD1. With my background in Early Childhood Education with an emphasis in Public Policy Development, this is an issue that is of special importance to me. It is essential that our State delivers on the promise of quality education to all Hawai'i residents and dedicated funding of education is a crucial part of that promise. However, as our Counties rely on property taxation as a primary source of funding for our budgets, I am not in support of this being the mechanism in which we fund our education needs. Our County was not consulted on this proposal and we have not been provided with any sort of fiscal report detailing what the impact of this legislation may be and on which properties. Please find a funding source within your State budget to fund public education.

Mahalo,

A handwritten signature in black ink, appearing to read 'Jenn Kagiwada', written in a cursive style.

Jenn Kagiwada

HB-1537-HD-1

Submitted on: 2/7/2024 12:26:26 PM

Testimony for JHA on 2/8/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ken Sim	Individual	Oppose	Written Testimony Only

Comments:

I oppose this Bill and request the committee defer it.

The schools should be funded from the general fund. It is a matter of appropriation from the annual budget. Please do not compete with the counties for resources.

If the State starts taxing property the counties will ultimately suffer. It could impact police, fire, roads, parks, etc. These are very important functions for citizens and they should have a stable funding as created long ago in the Hawaii Constitution.

Thank you.

HB-1537-HD-1

Submitted on: 2/7/2024 10:31:19 PM

Testimony for JHA on 2/8/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kori Oros	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Tarnas and Members of the Committee,

I support this bill. This could help expand preschool access, fix some UH dorms, help with rebuilding Lahaina schools and more. I strongly hope that the DOE would steward these funds with integrity and efficiency.

Mahalo,

3rd Grade Public School Teacher and North Shore O'ahu Resident

Kori Ann Harvey Oros

HB-1537-HD-1

Submitted on: 2/8/2024 7:40:25 AM

Testimony for JHA on 2/8/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
David Ball	Individual	Support	Written Testimony Only

Comments:

If we are able to ensure this is a tax solely on vacation, investment, and non-primary residences, this is a bill that can dramatically improve the lives of local families in Hawaii. Our public schools, and future generations of keiki, deserve such support.

Wth aloha,

David Ball

Waialae-Kahala