

PROPOSED CON-AM #2

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Relating to the tax rebate requirement

Amendment proposed to Article VII, section 6 of the Hawai'i Constitution to read as follows:

DISPOSITION OF EXCESS REVENUES

Section 6. Whenever the state general fund balance at the close of each of two successive fiscal years exceeds five percent of general fund revenues for each of the two fiscal years, the legislature in the next regular session shall provide for a tax refund or tax credit to the taxpayers of the State, or make a deposit into one or more funds, as provided by law, which shall serve in times of an emergency, economic downturn, or unforeseen reduction in revenue, as provided by law.

(The underscored material has been added to the original Section 6.)

The question on the ballot will read:

“Shall the legislature be provided with the choice, when the state general fund balance at the close of each of two successive fiscal years exceeds five per cent of the general fund revenues for each of the two fiscal years, to provide a tax refund or tax credit to the taxpayers of the State, or to make a deposit into one or more funds, as provided by law, which shall serve as temporary supplemental sources of funding for the State in times of an emergency, economic downturn, or unforeseen reduction in revenue?”

Explanation

At present, the Legislature is mandated by the Constitution to provide a refund or tax credit to the taxpayers of the State when there is the required amount of surplus revenues. The proportion of the tax surplus to be refunded is left to the Legislature, and to date the amount has never exceeded \$1 per taxpayer. The amendment, if passed, will provide the Legislature with another option in disposing of the surplus. The Legislature may make a deposit into one or more funds, as provided by law, which may be used in times of an emergency, economic downturn, or unforeseen reduction in revenue.

In the provisions in any constitution, we will see the phrase, “as provided by law”. Constitutional law provides the policy, the general principle, etc., and leaves the details to statutory law. So how any provision will be carried out will be determined by the enabling legislation that the Legislature enacts to carry out the constitutional mandate or suggestion.

According to Ann Feder Lee's reference book on the Hawai'i State Constitution, while the 1978 ConCon did not initially give serious consideration to any provision for a tax rebate when introduced from the floor, it finally “found its way into the Constitution as a result of what could be called a populist taxpayers' uprising among delegates”, and the provision was included among the standing committee proposals.

Proponents of this Constitutional Amendment Say:

1. As illustrated by the scramble at the last legislature to find money in different special funds to divert toward meeting the needs of our budget, we do need a 'Rainy Day' fund where we secrete whatever money is left over, big or small, for use when we face huge revenue shortfalls.
2. We have used much of the money in special funds in this session, and they need to be replenished. This vehicle provides a good way of doing that.
3. This amendment may abolish the mandate for excess revenues to be returned to the taxpayer while it gives the option putting the excess money into one or more funds as provided by law, but an aroused and vocal public can put pressure on the legislators to do what we think is appropriate at the moment.

Opponents of the Constitutional Amendment Say:

1. There are not enough regulations and requirements built in to ensure the accumulation of a healthy rainy day fund which would be available when economic conditions require its use.
2. The measure would make the tax refund an option instead of a constitutional requirement when excess balances are available and past history would suggest the money would be spent instead of being returned or put into special rainy day funds.
3. The provision would have the same effect as a repeal of the 'excess revenues' provision.
4. This amendment is a way of getting rid of the mandatory tax rebate provision. In 1984, taxpayers rejected a proposed amendment to do away with it.
5. The refund provision serves a purpose. Even if only \$1 is returned each time we have the required surplus as has been the custom, it would make the people aware of the state's current financial condition. The same purpose could be served by lowering the income tax or the general excise tax as adjustments on those taxes, thus far, have always been upward.