

STATE OF HAWAII  
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAI'I

CITY AND COUNTY OF HONOLULU,  
COUNTY OF HAWAI'I, COUNTY OF  
MAUI, COUNTY OF KAUA'I,

Plaintiffs,

vs.

DAVID Y. IGE, GOVERNOR, STATE OF  
HAWAI'I, in his official capacity; DOUGLAS  
S. CHIN, LIEUTENANT GOVERNOR,  
STATE OF HAWAI'I, in his official capacity;  
F.M. SCOTTY ANDERSON,  
CHAIRPERSON, ELECTIONS  
COMMISSION, in his official capacity;  
SCOTT NAGO, CHIEF ELECTION  
OFFICER, in his official capacity,

Defendants.

CIVIL NO. 18-1-1326-08 DEO  
(Declaratory Judgment; Injunctive Relief)

SECOND AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF; EXHIBIT 1; SUMMONS



I do hereby certify that this is a full, true, and  
correct copy of the original on file in this office.

Clerk of the Circuit Court, First Circuit

**SECOND AMENDED COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

**INTRODUCTION**

1. Plaintiffs City and County of Honolulu, County of Hawai‘i, County of Kau‘ai, and County of Maui (collectively “**Counties**”) seek declaratory and injunctive relief to prevent an improperly proposed ballot question for constitutional amendments from being placed on the ballot for the November 6, 2018, general election. Upon information and belief, the proposed ballot will be sent to the publisher for printing on Friday, September 7, 2018, and the Counties have an urgent need to obtain a court ruling prior to that date.

2. During its 2018 legislative session, the Twenty-Ninth Legislature of Hawai‘i adopted a measure containing proposed constitutional amendments. Senate Bill 2922, S.D.1, H.D. 1 (“**SB 2922**”), seeks to amend two provisions of the Hawai‘i Constitution: article VIII, section 3 (“Taxation and Finance”), and article X, section 1 (“Public Education”). See Exhibit 1.

3. Since the 1978 Constitutional Convention, the Hawai‘i Constitution has granted the Counties exclusive authority over real property taxation, which is the only constitutionally-dedicated source of tax revenue available to the Counties. The revenues derived from real property taxes for the Counties in fiscal year 2018-2019 total: \$1,265 billion, or about 85% of the General Funds (City and County of Honolulu), \$318 million for Maui, \$310 million for Hawai‘i County, and \$135 million for Kau‘ai. This tax revenue is critical to support a number of county-provided core services, including, among others, public safety, sanitation and sewer facilities, parks and recreation, human resources, facility maintenance, planning and permitting, and maintenance and repair of highways and streets, and the legislative and administrative governance functions of the City. Such tax revenue is also necessary to pay for the Counties’ numerous capital improvement projects and provides the basis upon which the Counties can

issue general obligation bonds to finance capital improvement projects.

4. The proposed constitutional amendments would authorize the legislature to expand its taxing powers by imposing an additional real property tax on investment real property, which may adversely affect the Counties' ability to raise their own real property tax revenue and may affect the Counties' issuance of general obligation bonds necessary to finance capital improvement projects.

5. The State of Hawai'i, by contrast, has numerous major sources of tax revenues that are not available to the Counties. For example, 48% of State revenues (\$3.2 billion) were derived from the general excise tax in fiscal year 2016-2017, and 32% (\$2.1 billion) from individual income tax. The State also derives substantial revenues from the transient accommodations tax, the corporate income tax, the insurance premiums tax, and other taxes, altogether producing over \$6 billion in revenues.

6. If passed, the constitutional amendments proposed by SB 2922 would encroach upon the Counties' exclusive authority over real property taxation by imposing a State "surcharge" on top of the Counties' real property taxes. That "surcharge" is just a tax disguised under a different name; it is an additional taxing power that the legislature seeks to obtain. The effect of SB 2922 would be to impose double real property taxation on the Counties' taxpayers.

7. The "surcharge" would be imposed on "investment real property," but no definition of "investment" is provided. Since all real property can be bought and sold (like stocks and bonds), all forms of real property—including personal residences with home exemptions—could be considered "investment" property and double-taxed.

8. As set forth further below, the ballot measure based on SB 2922 is improper for a number of independent reasons:

- (a) the ballot title is misleading and deceptive;
- (b) the ballot question is misleading and deceptive;
- (c) “investment real property” is not defined and is therefore vague and overbroad;
- (d) the legislative procedure for adopting SB 2922 was flawed, was not transparent

and was improper; and

- (e) SB 2922 interferes with the “home rule” of the Counties.

**I. The Ballot Title is Misleading and Deceptive.**

9. Hawai‘i law mandates that the “language and meaning of a constitutional amendment shall be clear and it shall be neither misleading nor deceptive.” Hawai‘i Revised Statutes § 11-118.5. The Hawai‘i Supreme Court has stated: “Hawai‘i votes have a legitimate interest in protecting the validity of their votes on constitutional amendment ballot questions.” *McDermott v. Ige*, 135 Hawaii 275, 291 (2015).

10. The proposed ballot title or heading for the constitutional amendments is highly misleading and deceptive because it fails to mention the tax surcharge on investment real property that may have a highly deleterious effect on the Counties’ ability to raise revenue to support their infrastructure and services.

11. The proposed title states: “CON AMEND: Relating to Public Education and Investment Property.” This title is highly misleading and deceptive because:

- (a) it fails to mention that the state legislature seeks concurrent power to tax real property by disguising the tax as a “surcharge”; and

- (b) it fails to state that it adds a provision to the state constitution that empowers the legislature alone to determine the funding of public education, which would include the University of Hawaii and all public schools throughout the State of

Hawai'i.

**II. The Ballot Question is Misleading and Deceptive.**

12. The draft ballot question states:

“Shall the legislature be authorized to establish, as provided by law, a surcharge on investment real property to be used to support public education?”

This ballot question is highly misleading and deceptive because:

(a) the proposed amendment to section 3 of article VIII of the Hawai'i Constitution relates to “Taxation and Finance,” yet the ballot question fails to reveal the substantive nature and effect of the amendment, which is to grant a new *taxation* power to the state legislature and not merely to allow a “surcharge,” which can simply be an additional charge; and

(b) the proposed amendment to section 1 of article X of the constitution relates to “Public Education” and would grant to the legislature the sole power to determine “funding of public education,” yet the ballot question fails to mention this further expansion of legislative authority through the exclusive right to determine funding, which could usurp the operational autonomy granted to the University of Hawai'i and its Board of Regents as well as the Board of Education in administering their respective educational institutions.

**III. “Investment Real Property” is Not Defined and Is Therefore Vague and Overbroad.**

13. The proposed ballot title for the constitutional amendment states: “CON AMEND: Relating to Public Education and Investment Property.” However, no definition of “Investment Property” is provided, either in the ballot measure or in SB 2922 from which it is derived. The phrase is therefore vague and overbroad. Absent such a definition, the legislature could consider any classification of real property to be “Investment Property” and impose a

surcharge on each such classification. For example, at the last committee hearing on the bill on or about April 4, 2018, in the House Committee on Education, there was significant testimony from the hotel industry in opposition to SB 2922, S.D. 1, which specified that the “surcharge” would apply to “visitor accommodations.” As a result of that hearing, that Committee materially changed SB 2922, S.D. 1 by deleting that reference to “visitor accommodations” and inserting, instead, “investment real property.” In this example, the measure is vague because real property that is owned and operated for “visitor accommodations” is “investment real property.”

#### **IV. The Legislative Procedure for Adopting SB 2922 Was Improper.**

14. The proposed constitutional amendment to section 3 of article VIII of the Hawai‘i Constitution, which relates to “Taxation and Finance,” involves such a fundamental structural change in government and the relations between the State and the Counties that it should be addressed in a constitutional convention rather than by a legislative proposal. It was a constitutional convention — not the legislature — that proposed the constitutional amendment that granted the Counties exclusive power over real property taxation. The constitutional convention took place in 1978 and consisted of 102 delegates, 14 standing committees, 2 administrative committees, and a Committee of the Whole consisting of all 102 delegates.

15. The legislature used flawed and improper procedures that were not transparent to effectuate the major public policy changes it proposes in SB 2922. The bill was initially referred to the Senate Ways and Means Committee (“WAM”), and after being transmitted to the House, the bill was initially referred to the House Finance Committee (“FIN”). Yet, in both houses, the bill was re-referred to other committees and was never considered by WAM or FIN. This improperly removed both finance committees from the bill referral process, even though the amendments involve taxation and a significant restructuring of the relationship between the

Counties and the state.

16. The final language of SB 2922 found in H.D.1 was not the draft posted for the agenda at the last committee hearing on the bill on or about April 4, 2018, in the House Committee on Education. Rather, as a result of that hearing, that Committee materially changed SB 2922, S.D. 1 by (a) greatly expanding the real properties to which the state legislature's proposed real property tax would apply to include all "investment real properties," and (b) empowering the legislature alone to determine the funding of public education. The final language of SB 2922 was vitiated by a lack of transparency of the legislative process, due to the flawed and improper Committee referrals, which excluded FIN and WAM.

**V. SB 2922 Interferes with the "Home Rule" of the Counties.**

17. The proposed ballot question fails to reflect the fundamental change in the allocation of authority under the home rule doctrine between the State and the Counties. Among other things, the proposed constitutional amendment interferes with and undermines the exclusive authority granted to the Counties related "to the taxation of real property" set forth in section 3 of article VIII of the constitution in order for the Counties to provide their core services and to make necessary capital improvements for the public benefit.

**PRAYER FOR RELIEF**

1. The Counties pray for relief and seek a declaration that SB 2922 is invalid and that the proposed constitutional amendment ballot title and ballot question are invalid; and seek an order enjoining the Defendants from placing the proposed constitutional amendment on the ballot for the November 6, 2018, general election.


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2. The Counties also seeks their costs of suit and such further relief that the Court may provide.

DATED: Honolulu, Hawai'i, August 29, 2018.

DONNA Y. L. LEONG  
Corporation Counsel

By 

ROBERT M. KOHN  
NICOLETTE WINTER  
Deputies Corporation Counsel

Attorneys for Plaintiff  
CITY AND COUNTY OF HONOLULU



Dated: Wailuku, Hawaii, AUG 29 2018.

PATRICK K. WONG  
Corporation Counsel  
Attorney for Plaintiff  
COUNTY OF MAUI

By  \_\_\_\_\_  
BRIAN A. BILBERRY  
Deputy Corporation Counsel

DATED: Līhu'e, Hawai'i, August 29, 2018.

MAUNA KEA TRASK  
County Attorney

By Mat Bracken  
MATTHEW M. BRACKEN  
First Deputy County Attorney

Attorneys for Plaintiff  
COUNTY OF KAUA'I

First Amended Complaint for Declaratory and Injunctive Relief; City and County of  
Honolulu, *et al.* v. Ige, *et al.*, Civil No. 18-1-1326-08 DEO

DATED: Honolulu, Hawaii, August 29, 2018.

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Corporation Counsel

By  \_\_\_\_\_  
LAUREEN L. MARTIN  
Deputy Corporation Counsel

Attorneys for Plaintiff  
COUNTY OF HAWAII

First Amended Complaint for Declaratory Judgment and Injunctive Relief; City and County of  
Honolulu, *et al.* v. Ige, *et al.*, Civil No. 18-1-1326-08 DEO



1 to apportion state revenues among the several political  
2 subdivisions."

3 SECTION 3. Article X, section 1, of the Constitution of  
4 the State of Hawaii is amended to read as follows:

5 "PUBLIC EDUCATION

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

18 1. Not-for-profit corporations that provide early  
19 childhood education and care facilities serving the general  
20 public; and



1           2. Not-for-profit private nonsectarian and sectarian  
2 elementary schools, secondary schools, colleges and  
3 universities.

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

8           SECTION 4. The question to be printed on the ballot shall  
9 be as follows:

10           "Shall the legislature be authorized to establish, as  
11 provided by law, a surcharge on investment real property to  
12 be used to support public education?"

13           SECTION 5. Constitutional material to be repealed is  
14 bracketed and stricken. New constitutional material is  
15 underscored.

16           SECTION 6. This amendment shall take effect upon  
17 compliance with article XVII, section 3, of the Constitution of  
18 the State of Hawaii.



**S.B. NO.** 2922  
S.D. 1  
H.D. 1

**Report Title:**

Public Education; Investment Real Property; Surcharge;  
Constitutional Amendment

**Description:**

Proposes amendments to the Constitution of the State of Hawaii to authorize the Legislature to establish, as provided by law, a surcharge on investment real property to support public education. (SB2922 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

SB2922 HD1 HMS 2018-3526



IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

CITY AND COUNTY OF HONOLULU,

Plaintiff,

vs.

DAVID Y. IGE, GOVERNOR, STATE OF  
HAWAI'I, in his official capacity; DOUGLAS  
S. CHIN, LIEUTENANT GOVERNOR,  
STATE OF HAWAI'I, in his official capacity;  
F.M. SCOTTY ANDERSON,  
CHAIRPERSON, ELECTIONS  
COMMISSION, in his official capacity;  
SCOTT NAGO, CHIEF ELECTION  
OFFICER, in his official capacity,

Defendants.

CIVIL NO. 18-1-1326-08 DEO  
(Declaratory Judgment; Injunctive Relief)

SUMMONS

SUMMONS

STATE OF HAWAII

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to file with the Court and serve upon Donna Y. L. Leong, Corporation Counsel, Robert M. Kohn and Nicolette Winter, Deputies Corporation Counsel, City and County of Hawaii Plaintiff's attorneys, whose address is 530 South King Street, Room 110, Honolulu, Hawaii 96813, Joseph K. Kamelamela, Corporation Counsel and Lauren L. Martin, Deputy Corporation Counsel, County of Hawaii Plaintiff's Attorneys, whose address is 101 Aupuni Street, Unit 325, Hilo, Hawaii 96720, Patrick Wong, Corporation Counsel and Brian A. Bilberry, Deputy Corporation Counsel, County of Maui Plaintiff's Attorneys, whose address is 200 S. High Street, Wailuku, Hawaii 96793 and Mauna Kea Trask, County Attorney and Matthew Bracken, First Deputy County Attorney, County of Kauai Plaintiff's Attorneys whose address is 4444 Rice Street, Suite 220, Lihue, Hawaii 96766, an answer to the Second Amended Complaint which is



