



The Judiciary, State of Hawai'i

Testimony to the Senate Committee on Ways and Means

The Honorable David Y. Ige, Chair

The Honorable Michelle N. Kidani, Vice Chair

Monday, April 1, 2013, 10:00 a.m.

State Capitol, Room 211

by

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WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 197, H.D. 2, S.D. 1, Relating to the Judiciary

Purpose: To provide biennium operating and capital improvement appropriations for FYs 2014 and 2015.

Judiciary's Position:

The Judiciary strongly urges your support of House Bill No.197, H.D. 2, S.D. 1, which reflects the Judiciary's resource requirements for FYs 2014 and 2015.

The Judiciary is aware of the fact that the economy and economic outlook for Hawai'i have improved and are on a significant upswing from the devastating effects of the prior three years. But we are also very cognizant of concerns related to the Federal budget (i.e., fiscal cliff, sequestration, and Senator Inouye's passing) and their potential impact on Hawaii's economy; the State's unfunded pension and other post-employment benefit liabilities; and the need for and potential costs associated with the State Information Technology initiatives and the recapitalization of the Emergency Budget and Reserve and Hurricane Relief Funds. We are also quite mindful of the many competing demands for the limited resources available, and that other State departments and agencies have important needs and desires as well. Therefore, we tried to be quite prudent with our biennium budget request and focus on those items required by law or where we felt that there was a pressing, demonstrated need to better serve the public, our employees, and our clients. To that end, the Judiciary has requested 40 new permanent



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positions, of which 20 are no-cost conversions, and additional funding of \$10.8 million and \$11.5 million in FYs 2014 and 2015, respectively.

The Judiciary is grateful for the Senate Judiciary and Labor Committee's and House Finance and Judiciary Committee's approval of our biennium budget requests of \$8.6 million to restore employee salaries to the levels prior to the five percent pay cut experienced by all Judiciary employees in FYs 2012 and 2013, and to restore judges' salaries to the legislatively mandated pay levels set by the 2007 Commission on Salaries. We are also thankful for the positions and funding provided for the neighbor island branches of the Children's Justice Center and for First Circuit's juvenile weekend program, for the funding of a temporary account clerk position in the Courts of Appeal and a temporary social worker position and two half-time research aides for Project HOPE (Hawai'i's Opportunity Probation with Enforcement), for monies to cover increased utility costs in the First Circuit, and for the \$1 million increase to the ceiling of the Indigent Legal Assistance Special Fund. We are very pleased with Senate Committee on Judiciary and Labor's restoration of more than \$1 million cut by the House Finance Committee to lease space in Kapolei for 81 employees in the Juvenile Client Services Branch of the Family Court to move from Honolulu, as well as for two positions and funding for the Community Service Sentencing Program on Maui. And while we appreciate the more than \$600K provided by the Senate Committee on Judiciary and Labor for Purchase of Service (POS) restoration funding in the First and Third Circuits, we note that the Committee did not support the additional \$107K in POS funding provided by the House Committees on Finance and Judiciary.

However, the Judiciary is very concerned that few of the new permanent positions and other specific requests were funded. Specifically, none of the 20 no-cost conversions of budgeted temporary to budgeted permanent positions were approved - seven for Hawai'i Girls Court, two for Mental Health Court, seven for Project HOPE, one for the Third Circuit Traffic Violations Bureau, and three law clerk positions for the Legal Research and Adoption Records Unit for the First Circuit Family Court. The lack of permanency in the positions creates program instability, inefficiencies, and added costs since there is continual personnel turnover as people in these temporary positions seek and leave for permanent positions elsewhere. Further, the length of time it takes from someone leaving to a person being hired and fully trained to fill that position results in less clients being able to be served, a condition that occurs more often than not as a result of the turnover associated with temporary positions.

Ten of the other 20 new positions requested were not funded - two clerks for the Ho'okele program in First Circuit; one Social Services Assistant on Maui to establish a randomized urinalysis program for high risk offenders; two bailiffs in the Third Circuit; one Judicial Clerk in the Fifth Circuit; and a Capital Improvement Program (CIP) Specialist, a Judicial Education Specialist, an Office of Public Guardian (OPG) supervisor, and an



Information Technology (IT) Specialist in Administration. Not funding the two clerks for the Ho‘okele program will result in clients at these service centers having to wait longer to be helped and get their requests answered. This is a matter of concern as more and more people become self-litigants. Further, when court users are unable to obtain timely assistance and turn in improper or incomplete documentation, it can cause denial of requests or delays in judges hearing or reviewing cases and make the whole court experience less accessible and more stressful. The lack of a position to establish a randomized urinalysis program on Maui means that high risk offenders will continue to be tested in a more scheduled manner which, in turn, may allow them to “game the system”. Without providing additional bailiff positions for the Third Circuit, Hilo or Kona bailiffs will continue to have to travel to the Kohala courthouse (about a one hour trip each way) whenever court is in session, which further exacerbates the situation in Hilo where an additional bailiff is already needed just to support court operations. Bailiffs are important for case processing and in helping to maintain decorum and security in court, which is even more important in Kohala where sheriff staffing is sometimes short. Workload and responsibilities for the three Judicial Clerks on Kauai have continued to increase over the years so the absence of funding for an additional clerk means that the current three clerks will continue to be overworked and that it is unlikely that the three to four week backlog in processing cases will be decreased by any significant degree in the near term.

In Administration, no additional CIP Specialist means that there will be only two people in the CIP Office to help initiate, manage, monitor, and coordinate two new courthouse projects as well as more than 20 other CIP and repair and maintenance projects, monitor leases, assist programs with space planning, and be available for any other facility related matters/discussions/analysis/etc. Without an additional Education Specialist, training for Judiciary employees and judges, an important area in the Judiciary’s 20/20 Strategic Vision Plan, may not be able to be expanded to the extent needed. Not funding the OPG Supervisor will result in the current Director having to continue to supervise the eight Oahu personnel, as well as the neighbor island guardians, and handle all administrative and management responsibilities for the office as well. The lack of an additional IT position means that there will be delays in handling IT related problems and in keeping up with and applying IT type knowledge to various applications such as internet/intranet, cloud, mainframe work, and system support.

Other specific requests not funded by House Bill 197, H.D. 2, S.D. 1 related to six replacement x-ray security machines for First Circuit rural courts, ten replacement stenograph machines for First Circuit (although both House Committees on Finance and Judiciary had funded these stenograph machines), an electronic scheduling system for the Detention Home, and additional training funds. Without new x-ray security machines, the security of the public, employees, and clients could be compromised to the extent these machines malfunction or break down and cannot be repaired timely due to lack of or obsolete replacement parts. The ten steno machines used by the Court Reporters Branch have become old and outdated, out of warranty,



and increasingly costly to maintain and difficult to find replacement parts/supplies and servicing for. No electronic scheduling system means that the Detention Home will have to continue to operate with its inefficient, error-prone, and time-consuming manual system. Not receiving additional training funds means that the Judiciary will not be able to expand training for its employees and judges to the extent desired by the Chief Justice and hoped for by Judiciary employees who, overall, have indicated that lack of training is one of their major concerns.

We are extremely pleased that the Senate Committee on Judiciary and Labor restored nine vacant positions that were eliminated by House Finance Committee in House Bill 197, H.D. 2 – four permanent and two temporary in First Circuit and three permanent in Administration. These nine positions were those shown as being vacant for more than one year on a November 30, 2012 vacancy listing provided the Senate Ways and Means and House Finance Committees with our written testimony in late December 2012. However, **four of these positions (#14896, #59529, #57119, and #57144) had already been filled and if not restored, would have caused the Judiciary to have to take action to remove the individuals filling the positions from employment**; one other (#59432 for a Law Clerk for the Chief Judge of the First Circuit) was filled subsequent to the November 30 listing but again became vacant on February 7, 2013 with an estimated fill date of March 31, 2013; one (#59484, a social worker for Drug Court) is pending selection (that is, a candidate list has been referred to the hiring program, interviews and reference checks are being conducted, and an applicant may have been selected but not yet notified); and two (#58219, a Court Operations Specialist in First Circuit's Chief Court Administrator's Office and #58932, a newly established Research Statistician) were the subject of reorganizations that were not finalized between the Judiciary and HGEA until February 13, 2013 and January 17, 2013, respectively. Position #500191, a Social Worker IV temporary position at Girls Court, had been frozen due to budget constraints and was just recently reopened for recruitment with an expected fill date of April 30, 2013.

House Bill 197, H.D. 2, S.D. 1, also provided a position and funding for a staff attorney for the District Court in Hilo, for a Special Assistant to the Administrative Director, and for a Social Worker for the Veteran's Court; and funding for a Public Defender position and two City and County of Honolulu Prosecuting Attorney positions (although no position counts for either of these three positions). Although the Judiciary did not request these positions in its biennium budget request, we are grateful for their addition as long as these items do not come at the expense of other items included in our budget request. It should also be noted, however, that the amounts provided for the Public Defender (\$75K) and the two Prosecuting Attorneys (\$150K) are less than their cost, that is, \$112,699 for a Public Defender and \$192,713 for two Prosecuting Attorneys.

Relative to the CIP budget included in House Bill 197, H.D. 2, S.D. 1, the Judiciary is very appreciative of the restoration of construction funding by the Senate Committee on



Judiciary and Labor for the new Judiciary Court Complex in Kona. There is an urgent need for a new courthouse in Kona, since we are currently holding court in three different locations there, in buildings that were not designed for that purpose, and that are accordingly difficult to secure. We have completed a detailed environmental study, selected a site on state-owned land, and are moving forward with design work. Construction funding is the next step in the process and will allow us to provide our citizens in Kona with a secure, efficient, and modern court facility. However, we are concerned over the lack of funding for any of our other five important CIP projects - design and construction of a new District Court facility in Wahiawa, renovation work at Ka'ahumanu Hale (the Circuit Court building on O'ahu), funding for an environmental impact assessment at Alder Street, and two safety related projects at Hoapili Hale, the main court building on Maui. For Wahiawa, the Judiciary has received some initial planning money, but without the additional design and construction funding requested, we will not be able to continue forward with this project and will have to continue leasing space in a former retail building that was not designed for court operations usage. The lack of funding for renovations of the second floor of Ka'ahumanu Hale means that the Judiciary cannot begin the design process to create a minimum of four courtroom "sets" (that is, courtrooms, chambers, and office space) for four circuit judges that would move from Kauikeaouli Hale (the District Court building in Honolulu) and cannot achieve its long-term goal of having all of First Circuit's circuit court divisions in one location. Without funding for an environmental assessment at Alder Street, the Judiciary cannot continue moving forward towards providing a juvenile services center at this location along with the co-located existing status offender shelter Home Maluhia. Not funding the projects for structural repairs/exterior remedial improvements and for replacement/upgrade of the carbon monoxide monitoring and garage ducting systems at Hoapili Hale could eventually affect the structural integrity of the building, lead to much more expensive repairs in the future, and jeopardize employee and public safety.

It should also be noted that the Senate Committee on Judiciary and Labor in House Bill 197, H.D. 2, S.D. 1, included an additional unspecified appropriation amount for JUD 601 (Administration) CIP, specifically the Kona Judiciary Complex, for the design and construction of an adjacent correctional facility. While we certainly concur in the need for a new correctional facility in the Kona area, we respectfully submit that the Judiciary generally does not manage nor construct such correctional facilities. Rather, the responsibility for such correctional facilities in Hawai'i lies solely with the Department of Public Safety (PSD) and such funding would seem more appropriately directed towards them. We would definitely support any provisions in the PSD budget to construct such a facility in Kona. One other point – the land selected by the Judiciary to build its courthouse is not large enough to also build a correctional facility, and the land adjacent to it is currently being planned for a regional park by the County of Hawai'i. It may not be appropriate to have a correctional facility next to a regional park.



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There had been one last item of concern for the Judiciary with House Bill 197, H.D. 2 which the Senate Committee on Judiciary and Labor rectified in House Bill 197, H.D. 2, S.D. 1 – that is, approval of the budget base transfer of \$150,000 to Courts of Appeal in varying amounts from each of the other Judiciary programs to cover continuing shortages over the past few years in the Courts of Appeal appropriation. Courts of Appeal did not have this funding problem four to five years ago because there were always vacancies to cover any shortages in payroll, but there have been few if any vacancies in the last few years so there are no extra funds to help cover shortages. As it is, the payroll percentage of the Courts of Appeal total allocation of more than \$5 million is 96%, leaving only about \$200,000 to cover all its other expenses. For the last few years, we have had to transfer funds from other programs to cover the shortage in Courts of Appeal so we thought it would be a better and more efficient management of money and programs to transfer these funds up front in the budget base.

The proposed biennium budget request is the Judiciary's best estimate of the resources necessary to maintain the integrity of the courts and to fulfill our statutory, constitutional, and public service mandates. The Judiciary respectfully requests your support of House Bill 197, H.D. 2, S.D. 1, which includes the Judiciary's biennium budget request, and that you strongly consider reinstating the 20 no-cost conversions of budgeted temporary to budgeted permanent positions, and restoring positions and funding for our other biennium budget requests that were not funded. The Judiciary also respectfully requests restoration of CIP funding of \$37.7 million for the Wahiawa District Court facility, \$2.8 million for renovation work at Ka'ahumanu Hale, \$250K for an environmental impact assessment at Alder Street, and almost \$2.8 million for two projects at Hoapili Hale on Maui.

I hope that the information provided today will assist your committee in its deliberations relating to this bill. Thank you for your consideration and the opportunity to testify on this measure.