



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary

Representative Scott Y. Nishimoto, Chair

Representative Joy A. San Buenaventura, Vice Chair

Tuesday, February 13, 2018 2:00 PM

State Capitol, Conference Room 325

by

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Bill No. and Title: House Bill No. 2194, Relating to the Judiciary; Supreme Court; Certified Question.

Purpose: Provides that a court of inferior jurisdiction may certify to the Hawai‘i Supreme Court a question or proposition of law on which the court of inferior jurisdiction seeks instruction for the proper decision of a remanded case. Requires the Supreme Court to answer the question within 15 calendar days.

Judiciary's Position:

The Judiciary supports the intent of the bill, which we understand is to provide an expedited method for designated courts to seek clarification of a supreme court decision when a question arises as to the remand instructions directed to that court.

By way of background, the Judiciary notes that pursuant to Hawai‘i Revised Statutes (HRS) § 602-5(2), the supreme court already has jurisdiction:

To answer, in its discretion, any question of law, reserved by the circuit court, the land court, or the tax appeal court, or any question or proposition of law certified to it by a federal district or appellate court if the supreme court shall so provide by rule.

In accordance with HRS § 602-5(2), the supreme court adopted Rule 13 of the Hawai‘i Rules of Appellate Procedure (HRAP) to provide for a process to handle certified questions from the federal courts. In addition, the supreme court adopted HRAP Rule 15¹ for reserved questions

¹ Rule 15. RESERVED QUESTIONS.



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from the Circuit court, land court, and the tax appeal court. If this measure is passed, the supreme court will adopt corresponding court rules.

Inasmuch as HRS § 602-5(2) provides that certified questions to the supreme court are from the federal courts and reserved questions to the supreme court are from Hawai'i circuit and other specified courts, the Judiciary suggests that the questions contemplated by HB 2194 be designated as "reserved questions" instead of certified questions. Accordingly, the Judiciary suggests that "certify" or "certified" be replaced with "reserve" or "reserved" as applicable.

Because circuit, tax appeal, and land courts already may reserve questions of law to the supreme court under current law, it appears this proposal is intended to provide these courts with a process to seek clarification of instructions given in supreme court decisions upon remand. The Judiciary, therefore, suggests the word "clarify" or "clarification" be substituted as appropriate.

It is also noted that the 15-day deadline proposed in the bill in which the supreme court is required to provide a response to the reserved question may not be sufficient in many circumstances. The Judiciary suggests the bill provide a 60-day response time to allow the supreme court time to request briefing by the parties, when necessary. Finally, any reserved question seeking clarification of the remand instructions should be submitted to the court within 90 days of the judgment on appeal.

If these suggestions are adopted, the proposed language would provide as follows:

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- (a) From what court.** A circuit court, the land court, the tax appeal court and any other court empowered by statute, may reserve for the consideration of the supreme court a question of law arising in any proceedings before it. Questions may be reserved on motion of any party or on the court's own motion. Reserved questions shall be electronically filed by the clerk of the court.
- (b) Record.** The court reserving the question shall electronically transmit images of as much of the record as may be necessary to a full understanding of the questions reserved to the appellate clerk.
- (c) Disposition.** The supreme court may, in its discretion, return any reserved question for decision in the first instance by the court reserving it.



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§602-____ **Reserved Question Seeking Clarification of Instructions on Remand; Procedure** (a) A circuit court, land court, or tax appeal court may reserve for consideration by the supreme court a question on which the court seeks clarification of remand instructions in a case decided by the supreme court. The reserved question shall contain a statement as to the nature of the case and the facts on which the question arises. Only questions regarding remand instructions in decisions of the supreme court may be reserved for clarification under this section, and such questions shall be stated with precision.

(b) The supreme court shall answer the reserved question within 60 calendar days of receipt. Any question seeking clarification of remand instructions must be reserved within 90 days of the judgment on appeal.

The Judiciary believes that with these suggested changes, this measure, if passed, will be more consistent with the processes already in place for certified and reserved questions.

Thank you for the opportunity to comment on HB 2194.