



The Judiciary, State of Hawai‘i
Testimony to the House Committee on Finance
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

Wednesday, March 28, 2018, 3:00 p.m. (Agenda #2)
Room 308

by
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Bill No. and Title: Senate Bill No. 2150, S.D. 2, H.D. 1, Relating to the Judiciary.

Purpose: To provide supplemental operating and capital improvement appropriations for FY 2019.

Judiciary's Position:

The Judiciary urges your support of Senate Bill No. 2150, S.D. 2, H.D. 1, which reflects the Judiciary's resource requirements for FY 2019.

The Judiciary recognizes that the Hawai‘i economy continues to be strong and the overall economic outlook is relatively stable at the moment, but even with that and a projected budget surplus, funds will continue to be tight as there are many outstanding issues that need to be addressed such as health care costs and their effect on premiums. Accordingly, in our supplemental budget request, the Judiciary has been very prudent and focused only on its most pressing needs, primarily in the areas of essential staffing for court and administrative operations, and client services. Specifically, with these factors in mind, the Judiciary is requesting 30.5 new permanent positions and additional funding of \$1.57 million for FY 2019, which is less than one percent of its current budget.

The Judiciary is grateful to the House Committee on Judiciary (JUD) for providing 6.5 positions and funding of \$266K in FY 2019 for our supplemental budget requests related to: (1) three social worker/probation officer positions for the Adult Client Services Branch in the Second Circuit, (2) two facilities staff positions for the New Kona Courthouse, (3) a part-time janitorial position for Lahaina District Court, and (4) one of two bailiff positions requested for the Third Circuit. With respect to the lack of support for a second bailiff position, we are



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concerned that Third Circuit will not be able to provide for Hilo Family Court, where there is now just one bailiff for two Family Court judges with full calendars running simultaneously, or South Kohala, where a bailiff from Kona must make a two hour roundtrip trip drive whenever coverage is needed in South Kohala.

The Judiciary's supplemental budget request for FY 2019 includes requests for three judgeships and related staffing – funding for a District Family Court judge and staffing in First Circuit as the positions were previously provided by the 2007 Legislature, and funding and positions for a District Court judge in Second Circuit and a District Family Court judge in Fifth Circuit. While the Senate Ways and Means Committee (WAM) supported the First and Fifth Circuit requests, we are concerned that SB 2150, S.D. 2, H.D. 1 did not support any of the three judgeship requests. We believe that it is important to stress that all three judgeships are important to and needed by the island and/or community in which they are located. In all three circuits/locations, workload has been increasing and the cases have become more complex and time consuming, especially as the number of self-represented litigants has been growing. Further, neither the Second Circuit (Maui) nor the Fifth Circuit (Kaua'i) has had a new District judgeship position in more than 30 years, yet over this period of time, the population has more than doubled on Maui and increased by more than 70% on Kaua'i. In addition, it should be noted that First Circuit Family Court is located in Kapolei, one of the fastest growing areas on O'ahu.

We are also concerned that JUD also did not support two other budget requests related to client services – one for First Circuit related to the Interagency Council on Intermediate Sanctions (ICIS) and Hawai'i Opportunity Probation with Enforcement (HOPE) programs, and one for Second Circuit related to additional purchase of service (POS) contract funds for the Maui/Moloka'i Drug Court. Specifically, First Circuit is requesting twelve no-cost temporary to permanent position conversions for its very successful ICIS and HOPE programs. ICIS was created with a vision to reduce recidivism by 30% among adult offenders across the criminal justice system, with a focus on higher risk offenders, while HOPE was designed to target higher risk, higher need probationers to effect behavioral change to reduce recidivism. With ICIS, overall recidivism has been reduced by 27.6% to date. HOPE, which began in 2004 with 34 felony probationers, now has 2,600 probationers on active supervision with the latest study showing that HOPE probationers were arrested for new crimes 23% less often and were sent to prison 50% less often than those in a control group. Permanent positions for these programs would play a vital role in their continued success and longevity, and help stabilize these very successful and life changing programs that are geared to monitor the high risk offender. For Second Circuit, the lack of an additional \$80K in POS contract funding for its Maui/Moloka'i Drug Court may jeopardize the availability of continued treatment services with the contractor and will definitely not allow for the expansion of the number of clients served.



The last two supplemental budget requests not supported by JUD were for a Staff Attorney position for the Intermediate Court of Appeals (ICA), and two positions for Kona – a Facilities Manager and a janitor position. With the restructuring of the appellate court system in 2006, almost all appeals are filed with and resolved in the first instance by the ICA. The number of appeals and motions filed has been increasing, as has the complexity and fundamental importance of the appeals, which together impose greater demands on judicial resources and the need for the additional position. Indeed, since the restructuring, the ICA's appeals caseload has almost doubled and its motions caseload has increased by more than ten times. For Kona, the Facilities Manager position is especially important to allow hiring of a Manager six months in advance of the scheduled opening of the new Kona Courthouse in late summer 2019 so that the Manager can become familiar with and receive on-site training from the specialized contractors/vendors on the building and its new operating and mechanical systems.

The Judiciary is also very concerned that 8.2 temporary position counts and related funding totaling about \$358K were eliminated by Senate Bill 2150, S.D. 2, H.D. 1. These positions were the oldest vacant positions (older than 18 months) shown on a listing provided to the House Finance Committee in February 2018. **Regarding these positions:**

- (1) Position #500287 (\$44K), a temporary Social Worker IV position in First Circuit, has been filled and if the position is not restored, it would cause the Judiciary to have to take action to remove the individual filling the position from employment.
- (2) Position #500666, a 0.2 temporary position count for a per diem judge in Fifth Circuit, was valued at \$90K. We think that this was based on a footnote in our vacancy listing that said the following: "per diem judges used on an intermittent basis, therefore no budgeted amounts assigned to individual positions; Fifth Circuit has \$90K budgeted for **"all"** per diem judges in FY 2018." There are eight per diem judges in Fifth Circuit so the correct amount to be associated with a per diem judge position in Fifth Circuit is about \$11K. Further, this per diem judge is needed on an intermittent basis in Fifth Circuit; the difficulty is in finding qualified applicants that are available and want to serve in such a position on an intermittent basis and that do not have conflicts of interest with a court if they are practicing law in that court.
- (3) Positions #500702 (\$19K), #500614 (\$30K), and #500531 (\$19K) are all Juvenile Detention Worker intermittent positions for the Juvenile Detention Facility in First Circuit. Because these positions are intermittent (i.e., the person filling an intermittent position is called as needed and is generally not on a set schedule), they are very difficult to recruit and hire for since most people looking for jobs want something more stable and dependable. Even when finding a person to fill such a position, that person often does not stay long as he/she really continues to look for a



more permanent position. The Judiciary is now on its 11th Open Competitive (external) listing trying to hire for these positions which means there was no one acceptable on any prior listings after being interviewed, or that acceptable applicants were found but they declined when offered the position.

- (4) Positions #500775 (\$31K), #500773 (\$51K), and #500788 (\$27K) are all temporary Social Worker positions in First Circuit. Qualified social workers are difficult to find in this booming economy, especially again considering these are temporary and not permanent positions. Position #500775 is for the Hawai'i Zero to Three Court, is in active recruitment, and would provide stability to a vital program that provides services to at-risk infants and toddlers in our community. The other two positions are related to the mental health unit and to lose them would be devastating to First Circuit's sustainability plan to address and help probationers on Conditional Release or with Severe Mental Illness. Such a loss would adversely affect being able to have trained individuals deal with this vulnerable population and network with partner agencies to bring about a systemic response.
- (5) Position #500748 (\$47K) is a temporary Court Operations Specialist position assigned to the Courts of Appeal. This position is needed to perform building management duties for those locations housing the Courts of Appeal, and to provide staff support to and help with special projects for the Chief Clerk of the Supreme Court. Again, there have been difficulties in obtaining any qualified applicants because of the temporary nature of this position so qualifications were recently loosened to try to make this position more attractive to potential applicants. This proved successful and an offer was recently made and accepted by an applicant so the **position is now filled.**

It should also be noted that while the Senate Committee on Judiciary added \$250K for civil legal services in S.D. 1 and WAM retained this support in S.D. 2, JUD added another \$200K to this amount to make it \$450K. While we support and understand that funding for civil legal services is essential to continuing work and programs that are critical for those in the need of such services in the community, we request that such funding not come at the expense of other items in the Judiciary's supplemental budget request.

With regard to Capital Improvement Project (CIP) requirements, the Judiciary is extremely appreciative of JUD's support and funding of \$4.55 million of the \$5.8 million requested for furniture, fixtures, and equipment for the new Kona Courthouse. The additional \$1.3 million not funded primarily related to price escalation and contingency factors that would ensure our ability to adequately equip and move into the new courthouse as scheduled in late summer 2019, and thereby provide West Hawai'i people with the central, one-stop court services



location that they deserve and have been waiting for. However, we are also quite concerned with the lack of support for our other three CIP projects:

- **Ka‘ahumanu Hale Fire Alarms/Elevator System Upgrades** – None of the \$8.98 million requested for this project was funded by JUD. Both the fire alarm and elevator systems are over 30 years old and obsolete, continue to malfunction with greater frequency, and have become increasingly difficult to keep in safe working order. The fire alarm system does not meet current fire codes or ADA requirements in various locations. Elevator replacement parts are unavailable and must be drawn from other decommissioned elevators. The fire alarm upgrade must be done before proceeding with the nine elevator replacements. This is the fourth year requesting funding, and during the last two years, the annual maintenance cost for the fire alarm system increased by 35% and the elevator maintenance cost by 28%. Further, construction costs are increasing 11% annually.
- **Lump Sum CIP** - JUD did not provide any of the \$3 million in lump sum funding requested. Such funding is needed to address both continuing and emergent building issues, as well as our deferred repair and maintenance backlog estimated to be in the \$60 to \$70 million range. Most of the maintenance issues relate to water intrusion and/or air conditioning issues, which contribute to mold growth and poor indoor air quality. The lack of additional funding may affect our flexibility in responding timely to some of these issues and needs.
- **Kaua‘i Courthouse Reroof and Building Repairs** – JUD also did not provide any of the \$1.1 million requested for Phase 2 of this project, although \$1.39 million was provided last year for Phase 1. The lack of requested funding would delay Phase 2 of a three-part effort to address significant premature degradation of the building envelope; repair construction and design defects; stop leaks that contribute to further building deterioration and mold; and add fall protection to the roof, thereby prolonging our inability to safely access and maintain large expanses of roofing that is subject to harsh climate and other environmental conditions.

In summary, the Judiciary is very appreciative for the support provided by JUD for our Judiciary supplemental budget, but also respectfully requests restoration of those operating positions and funding, as well as the CIP requests, that were not supported and/or eliminated by JUD. With these changes and the restoration of funding and positions, the Judiciary respectfully requests your support of Senate Bill No. 2150, S.D. 2, H.D. 1, the Judiciary’s supplemental budget request.

Thank you for the opportunity to testify on this measure.