



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary

Representative Chris Lee, Chair

Representative Joy A. San Buenaventura, Vice Chair

March 21, 2019, 2:05 p.m.

State Capitol, Conference Room 325

by

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Intermediate Court of Appeals

Bill No. and Title: Senate Bill No. 189, S.D. 1, Relating to Designating Substitute Judges on the Intermediate Court of Appeals.

Purpose: Provides statutory authorization for the Chief Justice to designate circuit court judges, retired intermediate appellate judges, or retired supreme court justices to temporarily fill a vacancy on the intermediate court of appeals.

Judiciary's Position: Support.

On February 7, 2019, the House Committee on Judiciary previously held a hearing on the House companion bill—House Bill No. 513—and recommended the measure be passed with a minor revision. Senate Bill No. 189, S.D. 1, includes a technical, nonsubstantive amendment for the purposes of clarity and consistency. The Judiciary requests the Committee pass Senate Bill No. 189, S.D. 1 in its current form.

The bill would amend Section 602-55 of the Hawaii Revised Statutes (HRS) to allow the intermediate court of appeals to have a full complement of six judges to address its heavy case load, even when there is a vacancy on the court.

To put the bill into perspective, the intermediate court of appeals was created in 1979 as a result of the 1978 Constitutional Convention. See 1979 Haw. Sess. Laws, Act 111, § 3. Initially, the intermediate court of appeals consisted of a chief judge and two associate judges. Id. The intermediate court of appeals began operations in April 1980. In the years that followed, the Legislature approved doubling the size of the intermediate court of appeals to six judges. A



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fourth judgeship was approved in 1992 and two more judgeships were approved in 2001. 1992 Haw. Sess. Laws, Act 253, § 2; 2001 Haw. Sess. Laws, Act 248, § 1. The intermediate court of appeals has a significant and complex caseload. With more flexibility and opportunity to address temporary vacancies on the court, while any vacancies are in the process of being filled, the court is better able to effectively and timely decide appeals.

Currently, HRS § 602-55 requires the intermediate court of appeals to decide cases in panels of not less than three judges, and authorizes the Chief Justice to designate circuit court judges, retired intermediate appellate judges, or retired supreme court justices to temporarily fill a need on the intermediate court of appeals when “the number of available intermediate appellate judges is insufficient to make up a panel because of vacancy or disqualification[.]”

The statute, previously codified at HRS § 602-16, originally appeared in the 1979 law that created the intermediate court of appeals. 1979 Haw. Sess. Laws, Act 111 § 3. The statute’s genesis is from a time when the intermediate court of appeals was comprised of only three judges. At that time, if there was a vacancy on the intermediate court of appeals, then the intermediate court of appeals necessarily could not make a three-judge panel and the Chief Justice could temporarily fill the vacancy. But now that the court is comprised of six judges, and the Chief Justice’s authority to designate a substitute judge arises only when the number of “available” intermediate court of appeals judges is insufficient to make up a panel, the threshold is met only when four of the six intermediate court of appeals judges are disqualified, or there is a combination of disqualifications and vacancies that leave fewer than three intermediate court of appeals judges available to comprise a panel.

The proposed amendment would allow the Chief Justice to designate the same category of circuit court judges, retired intermediate appellate judges, or retired supreme court justices to serve temporarily to fill a vacancy on the intermediate court of appeals, thus maintaining its full complement of six judges to address its heavy case load without compromising efficiencies.

Thank you for the opportunity to testify on this measure.