

Honolulu, Hawaii

Feb. 17

, 2006

RE: S.B. No. 2607
S.D. 1

Honorable Robert Bunda
President of the Senate
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Judiciary and Hawaiian Affairs, to which was referred S.B. No. 2607 entitled:

"A BILL FOR AN ACT RELATING TO TRANSFER OF APPEALS,"

begs leave to report as follows:

The purpose of this measure is to authorize the Supreme Court to entertain applications to transfer any case within the jurisdiction of the Intermediate Appellate Court to the Supreme Court and to specify the grounds for transfer.

Testimony in support of this measure was submitted by the Judiciary. The Office of the Public Defender submitted testimony in support of the measure with amendments. The Hawaii Appellate Review Task Force submitted comments on the measure. The Attorney General submitted testimony in opposition to the measure.

Under the current law, and the new law effective July 1, 2006, the Hawaii Supreme Court will hear appeals only on a discretionary writ of certiorari to the Intermediate Court of Appeals. Therefore, all appeals will be decided by the Intermediate Court of Appeals before the Supreme Court may hear a case upon the filing of an appeal.

Your Committee finds that there are certain types of cases that should have direct appeals to the Supreme Court. Since Hawaii has no death penalty, the highest sentence a criminal defendant may receive is imprisonment for life. Many states provide that defendants subject to the most serious criminal



penalty have a right of direct appeal to the state's supreme court. Direct appeal in cases in which the sentence is life imprisonment without parole is the Hawaii equivalent. Without a direct appeal provision for these cases, some defendants subject to this sentence will be denied review by the State's highest court.

In addition, direct appeal is warranted when a trial court or administrative agency declares a state statute, constitutional amendment, or administrative rule invalid or unconstitutional. In almost all instances, these cases will involve important and pressing issues of public importance. Uncertainty about the constitutionality or enforceability of a state statute, constitutional amendment, or administrative rule militates strongly in favor of having the State's highest court resolve such issues directly and immediately.

Based on the above, your Committee has amended this measure to require the Supreme Court to grant an application to transfer an appeal when the appeal involves:

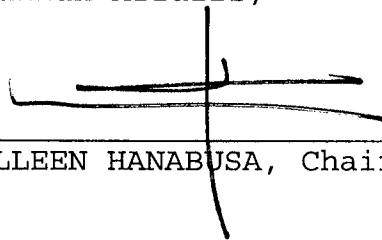
- (1) A question of imperative or fundamental public importance;
- (2) An appeal from a decision of any court or agency when appeals are allowed by law:
 - (A) Invalidating an amendment to the state constitution; or
 - (B) Determining a state statute, county ordinance, or agency rule to be invalid on the grounds that it was invalidly enacted or is unconstitutional, on its face or as applied, under either the constitution of the State or the United States; or
- (3) A sentence of life imprisonment without the possibility of parole.

The measure, as amended, allows the Supreme Court discretion in determining whether to grant an application for transfer for appeals that involve questions of first impression and issues upon which there is an inconsistency in the decisions of the Intermediate Appellate Court or the Supreme Court.



As affirmed by the record of votes of the members of your Committee on Judiciary and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2607, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2607, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Hawaiian Affairs,

A handwritten signature in black ink, appearing to read 'COLLEEN HANABUSA', is written over a horizontal line. A vertical line extends downwards from the center of the signature.

COLLEEN HANABUSA, Chair



