



The Judiciary, State of Hawai'i

Testimony to the Thirty-First Legislature, 2021 Regular Session

Senate Committee on Judiciary

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Tuesday, March 16, 2021, 9:15 a.m.

VIA VIDEOCONFERENCE

Hawaii State Capitol

by

Tom Mick

Policy and Planning Department Director

Bill No. and Title: House Bill No. 185, H.D. 1, Relating to the Judiciary.

Purpose: To provide biennium operating and capital improvement appropriations for FYs 2022 and 2023.

Judiciary's Position:

The Judiciary strongly urges your support of House Bill No. 185, H.D. 1, which reflects the Judiciary's resource requirements for FYs 2022 and 2023.

The Judiciary is very cognizant of the depressed economic activity in Hawaii and the ongoing difficult budget situation facing the State resulting from the COVID-19 global pandemic. Accordingly, the Judiciary is not submitting any biennium budget requests for additions to its general fund operating base. However, it should be noted that: (1) our budget base includes funding for collective bargaining agreements passed in separate bills last session and funding and four permanent positions for the Criminal Justice Research Institute provided in Act 179/2019; and (2) Capital Improvement Program (CIP) funds totaling \$22.0 million in FY 2022 and \$18.6 million in FY 2023 are being requested to address certain critical needs as the Judiciary's infrastructure continues to age and deteriorate. Funding of CIP projects with bond funds can serve to stimulate the economy and economic recovery in periods of recession.



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The Judiciary is very grateful to the House Committee on Finance (FIN) and the House Committee on Judiciary and Hawaiian Affairs (JHA) for supporting our general fund operating base budget.

However, the Judiciary is extremely concerned that none of our nine CIP requests totaling \$40.6 million for the biennium were supported and in fact were completely eliminated even from mention in House Bill No. 185, H.D. 1 (that is, PART IV, SECTION 7, of the original bill). Also eliminated in House Bill No. 185, H.D. 1 from the original bill were PARTS V and VI (SECTIONS 8 to 14) related to the issuance of bonds and special provisions governing these bonds.

All of these CIP requests relate to the health and safety of Judiciary employees and the public, and would assist Hawaii on the road to recovery. First Circuit has three such requests:

- (1) Replace Ka‘ahumanu Hale’s fire alarm systems and elevators, both of which are more than 30 years old, are tied into each other, and which continue to malfunction with greater frequency. The fire alarm systems do not comply with fire codes or ADA requirements and must be replaced before replacing/upgrading the obsolete elevators - elevators for which it is almost impossible to obtain replacement parts.
- (2) Renovate Ka‘ahumanu Hale’s sheriff patrol station and create a Sergeant’s office to improve security and remove the screening station from public view.
- (3) Design and construct a new chiller and photovoltaic system for the Juvenile Detention Facility (JDF) at Ronald T.Y Moon Courthouse in Kapolei to reduce utility costs and keep the JDF operational during power outages.

For Second Circuit, CIP funds are requested to continue ongoing projects to improve security and renovate parking structure piping at Hoapili Hale. These ongoing projects are to fix critical security issues in a building that is more than 35 years old and was not built with the current security concerns related to court operations; and to replace corroded, non-compliant Hoapili Hale parking structure storm drain, fire suppression, sewer, and air conditioning piping systems. In Fifth Circuit, CIP funds are requested to continue an ongoing project to reroof and repair leaks and damages at Pu‘uhonua Kaulike. CIP funds are also being requested for two historic Judiciary buildings in the Capitol District of Honolulu, that is, to upgrade or replace all existing air conditioning equipment, ductwork, piping, sensors, actuators, and controls at Ali‘iōlani Hale, where the current air conditioning system is very old, has led to numerous trouble calls, and contributes to air quality issues and excessive humidity in some locations; and to replace a seriously degraded roof and upgrade roof drainage at the Kapuāiwa Building. Finally, lump sum funds are needed to allow the Judiciary some flexibility to address both continuing and emergent building issues statewide.



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The attached document provides a prioritized listing, additional information, and pictures related to each CIP request.

As a separate and distinct organizational matter, House Bill No. 185, H.D. 1, would transfer the positions and funding of the Office of the Public Defender (OPD), from the Executive Branch's Department of Budget and Finance, to the Judiciary. We have very significant concerns regarding this potential transfer:

- (1) Constitutional Issues.** Transferring OPD from the Executive Branch to the Judiciary could result in legal challenges on constitutional grounds. In 1980, pursuant to Act 302, SLH1980, OPD was transferred from the Governor's Office to the Executive Branch, Budget and Finance Office. In so doing, the legislature relied upon article V, section 6 of the Hawaii State Constitution, which mandates that "[a]ll executive and administrative offices, departments and instrumentalities of the State government and their respective powers and duties, shall be grouped within the principal departments in such a manner as to group the same according to common purposes and related functions."

Act 302 states that "It is the purpose of this Act to transfer certain programs and organizational segments among the existing 17 departments of the **Executive Branch** of the state government without altering the basic organizational structures of these departments. (Emphasis added.) This reassignment of programs and organizational segments would: (1) Comply with requirements of the Hawaii State Constitution."

A recent law review article notes that public defender offices are placed in the Executive Branch in 33 states. (Irene Oritseweyinmi Joe, "Structuring the Public Defender," 106 Iowa L. Rev. 113, 131 (2020).) It further notes that six states that recently restructured their provision of public defense services have opted to place their public defender services within the Executive Branch. While offices of the public defender are placed within the Judicial Branch in approximately 11 states, at least 6 of those states -- Connecticut, Indiana, Minnesota, Oregon, Texas and Washington -- do not appear to have a similar constitutional requirement as Hawaii's article V, Section 6.

We are unaware of any advantages that would result in a transfer of OPD to the Judiciary, but the legal concerns could undermine any possible financial or logistical advantages to such an arrangement.

- (2) Conflict of Interest.** Having public defenders represent defendants in court before judges, who are part of the same judicial organization (and separate of course from the



office of the prosecuting attorney) could raise an appearance of a conflict of interest. As noted in the article *Structuring the Public Defender*, “In addition to acting as an opposing entity to prosecutor’s offices, public defenders need latitude to be able to oppose some actions of the court while still acting in the best interest of their clients. Thus, the public defender’s office requires a structural design enabling it to take actions to ensure the court system is functioning properly without fear of reprisal. Under certain assignments, the public defender loses its ability to act antagonistically against certain entities because the institution of the public defender is dependent upon these entities for funding or other institutional support.” (Oritseweyinmi Joe, “Structuring the Public Defender,” 106 Iowa L. Rev. 113, 156-157 (2020).)

- (3) Judiciary Human Resource Department (HRD) Issues.** The transfer of 133.5 employees would certainly increase the administrative burden on HRD and the other Judiciary administrative departments with respect to recruitments, onboarding, training, performance issues, timekeeping, leave records, and workers compensation, as well as the processing of the multitude of employee personnel transactions. OPD may also have employees in classes that do not exist in the Judiciary’s current classification system. These new classes would need to be analyzed and established within the Judiciary’s system and would entail an extensive review of the Judiciary’s Compensation Plan to determine appropriate pricing relationships, impact to other individual classes of work, and possible reorganizations within the Judiciary’s organizational structure. Considering the timeframe in this measure and existing resources, this is not feasible. Additionally, since OPD is currently part of the Executive Branch which is a separate employer jurisdiction, there may be service credit issues that could impact existing Judiciary employees with respect to seniority and other labor relations issues.
- (4) Increased Information Technology Costs.** Currently, the State Office of Enterprise and Technology Services pays for Microsoft Office 365 licenses for OPD. Transferring OPD to the Judiciary would require the Judiciary to pick up these and other software costs totaling \$42K annually. Connecting the five OPD offices to the Judiciary network would require another \$35K annually in network service costs, as well as one-time costs of about \$200K for network equipment. There are likely additional information technology costs as well.
- (5) Judiciary Financial Services Costs and Issues.** The Judiciary’s Financial Services Department (FSD) will need additional staffing and financial resources to incorporate OPD into the Judiciary’s financial management system. Transferring OPD to the Judiciary will have a major impact to the existing FSD divisions which include the Accounting and Payroll Sections of the Fiscal Services Division and the Contract and



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Purchasing Division. To effectively maintain the financial integrity of the Judiciary, each division will require one to two additional staff to support the increase in workload. The additional staffing for the Accounting and Payroll Sections will be needed to: (a) process the increased volume of accounting transactions such as vendor payments, journal vouchers, revenues collected; (b) meet financial reporting requirements; and (c) process the higher volume in salary payments and payroll actions for the 133.5 OPD employees. The additional staffing for the Contract and Purchasing Division will support the added need to assist with purchasing and procurement requisitions. Adding to the impact to FSD is that the transition from the Executive Branch to the Judiciary will require the OPD staff to be trained in all of the accounting programs and Judiciary financial policies and procedures. Furthermore, additional vendor contracting costs may need to be incurred to accommodate the addition of OPD to the financial management system. To be successful in the transition of OPD to the Judiciary, it is extremely critical to have sufficient time to facilitate the transition. In addition, the current HD1 appears to transfer from the Department of Budget and Finance approximately \$7 million pertaining to court-appointed counsel and witness fees—tracking and managing these funds will certainly require additional resources for the Judiciary’s fiscal operations.

In summary, the Judiciary is extremely appreciative for all the support provided by FIN and JHA for our operating budget, but respectfully requests (1) the restoration of the \$40.6 million in CIP funding and PARTS V and VI from the original bill related to the issuance and governing of these funds, and (2) omitting the transfer of OPD to the Judiciary. With the restoration of these funds and related PARTS V and VI, the Judiciary respectfully requests your support of House Bill No. 185, H.D. 1, the Judiciary’s biennium budget request.

Thank you for the opportunity to testify on this measure.



Hawai'i State Judiciary

CIP REQUESTS

FY 2022 & FY 2023

CIP Requests for FY 2022 and FY 2023



Priority	Circuit	Request	FY 2022	FY 2023
1	First Cir.	Ka'ahumanu Hale – Replace and upgrade obsolete fire alarm systems and unreliable elevators, which currently compromise safety of employees and the public, to comply with code and ADA requirements.	\$6.07m	\$7.95m
2	Admin.	Lump Sum CIP – Continue to provide the Judiciary flexibility to address ongoing and emergent building issues statewide.	\$3.0m	\$3.0m
3	Second Cir.	Hoapili Hale – Renovate and replace piping of wastewater, chilled water, storm drainage, and fire sprinkler system in the parking structure to avoid devastating health and safety impacts and comply with code. Spot repairs are no longer viable to address deterioration.	\$2.886m	\$1.535m
4	Fifth Cir.	Pu'uhonua Kaulike – Continue reroof and renovation of leaks and resultant environmental degradation to building. Final phase of the three phase project.	\$3.9m	\$0
5	Admin.	Kapuāiwa Building – Replace roof and upgrade storm water drainage from roof to avoid further degradation and damage to building, which is on the National Register of Historic Buildings.	\$0	\$1.4m
6	Admin.	Ali'iōlani Hale – Upgrade and replace existing A/C system, equipment, and controls that are very old, subject to numerous trouble calls, and contribute to air quality issues. The rapidly failing A/C equipment, which ranges from 30-40 years of age, is well past the expected useful service life of 15 - 25 years.	\$3.7m	\$0
7	First Cir.	Ronald Moon Courthouse – Design and construct a new chiller and photovoltaic system for the Juvenile Detention Facility in Kapolei, which operates 24/7, to keep the facility operational during extended power loss and reduce utility costs through use of renewable energy.	\$1.52m	\$2.52m
8	Second Cir.	Hoapili Hale – Address critical security vulnerabilities in parking structure, entry, and perimeter, which were built in the 1980s.	\$0	\$2.2m
9	First Cir.	Ka'ahumanu Hale – Renovate the sheriff patrol station at main security checkpoint to address serious security deficiencies related to screening and monitoring an old building, while taking the screening station out of public view.	\$940k	\$0
Total			\$22.016m	\$18.605m

#1: 1st Circuit - Ka'ahumanu Hale Fire Alarm Systems & Elevator Replacement



- ▶ An example of some upgrades needed for this project . . .

- ▶ The elevator controls operate on hundreds of relay and electro-mechanical contacts, which are obsolete. This will be replaced with new microprocessor based controls.
- ▶ The current system servicing the public occasionally shuts down during times of high heat & humidity as the mechanical rooms are not air conditioned.



Elevator "Out of Order"



Machine room air cooled through wall vents



Electro mechanical contacts

#2: Admin - Lump Sum CIP



Example of unanticipated issue:
Damage from malfunctioning sprinkler head
in courtrooms and hallways at
Ka'ahumanu Hale in the First Circuit.

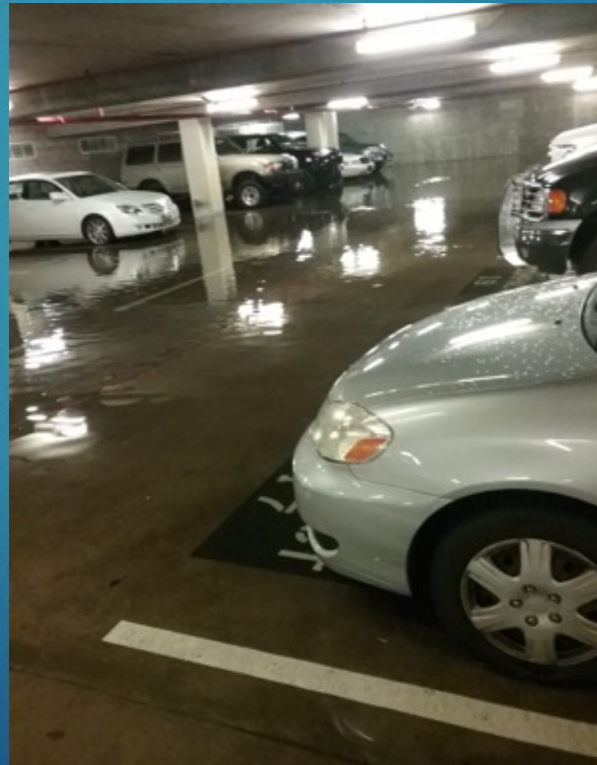


#3: 2nd Circuit – Hoapili Hale Parking Structure Renovation & Piping Replacement



Flooded parking structure after sprinkler failure

Failed sprinkler system joint
Note: Hanger support has corroded and failed



Burnt State vehicle under failed sprinkler head

#4: 5th Circuit - Pu'uhonua Kaulike Roof Replacement and Renovation (Phase 3 of 3)



Attempt to seal open joints



Corrosive effects on structure in attic



Blistering coating, corrosion of underlying ferrous metal

Water streaming at interior wall and distressed finishes



#5: Admin - Kapuāiwa Building Roof Replacement and Drainage Upgrades



Exposed blisters with deteriorated coating and foam

Open blisters and surface penetrations on parapet
→



Temporary repairs of parapet
←



Temporary catchment with water draining into trash receptacle

#6: Admin – Ali‘iōlani Hale Air Conditioning Replacement



Discharge duct

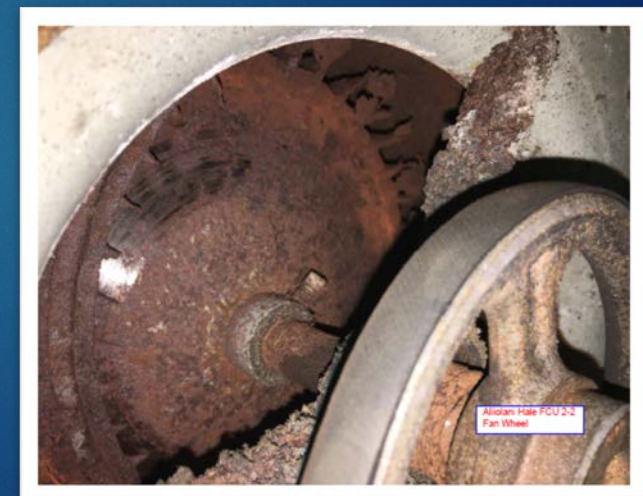


Photos (L to R) Wrapped ductwork; Sidewall Register; and Linear Diffuser



Wrapped duct work; Sidewall register; Linear diffuser

Fan wheel

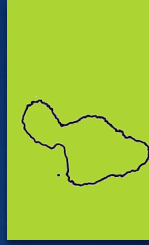


#7: 1st Circuit – Ronald Moon Courthouse New Chiller & Photovoltaic System



Design and construct a new chiller and photovoltaic system for the Juvenile Detention Facility in Kapolei, which operates 24/7, to keep the facility operational during extended power loss and reduce utility costs through use of renewable energy.

#8: 2nd Circuit – Hoapili Hale Security Renovation



Elevator used by
custodies, judges,
and staff

Custodies transfer from
van to cell block in open
parking structure



Cellblock lacks juvenile
holding. Sometimes
juvenile holding is
diverted to a remote
conference room

Hardware is rusted
and obsolete



#9: 1st Circuit – Ka‘ahumanu Hale Sheriff Patrol Station Renovation



Current Situation:

- 97 sq. ft. Sheriff Patrol Station to accommodate 4 sheriffs w/ 6 monitors and 3 desktops.
 - Currently within full view of the public.
 - Equipment prone to overheating given space.
 - No space for Sergeant's office.

Anticipated Sheriff Patrol Station for Improved Security:

- Station with monitoring room that is adequately sized for its intended use.
 - Not visible to the public.
- Equiped with sufficient air conditioning to protect expensive and sensitive equipment on a 24/7 basis.
- Space for Sergeant's office to provide day to day oversight of the office.



STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on Judiciary**

March 16, 2021

H.B. No. 185 HD1 : RELATING TO THE JUDICIARY

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

H.B. No. 185 HD1, specifically Part II, Section 3, No. 8, seeks to remove the Office of the Public Defender (OPD) from the Executive Branch, specifically the Department of Budget and Finance (DBF), and move it to the Judiciary Branch.

For the reasons set forth below, the Office of the Public Defender (OPD) cannot support HD1 of H.B. No. 185.

Constitutional

Article V of the Hawai‘i Constitution sets forth the powers, responsibilities, and structure of the executive branch of the state government. All executive and administrative offices, departments and instrumentalities of the state government and their respective powers and duties are specifically allocated to executive departments under the supervision of the government.

Article VI of our Constitution provides for the judicial power of the State to be vested in one supreme court, one intermediate court of appeals, and various enumerated courts as established by the legislature. Article VI provides that the chief justice shall be the administrative head of the courts and provides that the chief justice shall appoint an administrative director to assist in directing the administration of the judiciary pursuant to HRS § 601-3. The administrative director is tasked with carrying out all duties and responsibilities specified in Title 7 as it pertains to employees of the judiciary.

Separation of powers

In Briscoe v. Tanaka, 76 Haw. 380, 878 P.2d 719 (1994), the Hawai‘i Supreme Court adopted the following test when a party challenges a statutory scheme that assigns the performance of a particular task to the judiciary:

The test is whether the statute authorizes the courts to perform a function so closely connected with and so far incidental to strictly judicial proceedings that the courts in obeying the statute would not be exercising executive or nonjudicial powers.

Id. at 383, 878 P.2d at 722. (Citations, quotations marks omitted).

In Briscoe, the appellant argued that the placement of the Administrative Driver's License Revocation Office (ADLRO) in the judiciary branch violated the separation of powers doctrine. In addressing the issue, the Court examined the functions of the officers of the ADLRO. In performing the tasks, the officers are required to determine whether the police have proven the following: (1) reasonable suspicion existed to stop the vehicle; (2) probable cause existed to believe the arrestee was driving under the influence; and (3) by a preponderance of the evidence, the arrestee did in fact drive under the influence. The Court found that the task of reviewing evidence and determining matters such as the existence of reasonable suspicion, probable cause, and proof of facts by a preponderance of the evidence are *clearly judicial in nature and do not require officers of the judiciary to exercise executive or nonjudicial powers*. Thus, the Court held that the placement of the ADLRO within the judiciary did not violate the separation of powers doctrine.

It appears that the placement of the OPD within the Judiciary does violate the separation of powers doctrine. The mission of the OPD is to provide legal representation for indigent defendants charged in state court with offenses involving the possibility of incarceration. The primary duties that the OPD owes to their clients are to serve as their clients' counselor and advocate, to ensure that constitutional and other legal rights of their clients are protected, and to render effective, high quality legal representation with integrity. Clearly, the functions of the OPD are not judicial in nature.

Conflict of interest

The Judiciary is tasked with serving as a neutral arbiter in judicial proceedings, interpreting applicable laws and regulations, and ensuring the due process of law. The Judiciary's role as neutral arbiter and monitor is inconsistent with the role of the OPD.

The OPD is one of the two opposing parties in criminal court proceedings, in which a member of the Judiciary is the arbiter. As noted above, the mission of the

OPD to provide legal representation for indigent defendants charged in state court with offenses involving the possibility of incarceration is a role of advocacy, not neutrality. This role necessarily involves advocacy challenging the ruling of judges, both in court when making a record and on appeal when seeking relief from claimed judicial mistakes.

As one example of how the Judiciary undertakes to perform its role in the courtroom, the Judiciary tasks the probation departments under its supervision with investigating and recommending specific sentences in individual cases and monitoring and supervising sentenced defendants and juvenile law violators. While the OPD and probation officers may sometimes work together on occasion to assist a defendant, the OPD attorneys often find themselves on opposing sides from the probation office in court hearings. In representing defendants, an OPD attorney may attack the credibility and performance of the probation officer. HD1 would place opposing parties, both supervised by the Judiciary, in court appearing before judges, also supervised by the Judiciary.

The constitutionally mandated neutrality of the judicial branch of government is clearly inconsistent with the constitutionally mandated role of a deputy public defender to zealously and effectively advocate for his or her client's position. To move the OPD to the administrative management and control of the judiciary would unnecessarily blur the critical distinction of the two very different roles each entity has in the broader judicial process.

Public Perception

Currently, it is not uncommon for defendants to mistrust attorneys who are employed by the State of Hawai'i. They unfortunately believe that as State employees, the attorneys are simply "part of the system" and that the attorneys' interest and loyalties are to the State and not to the clients. This mistaken belief is often summed up in the equally mistaken assertion "the same people that pay you also pays the judge." Placing the OPD under the Judiciary will certainly exacerbate this misconception. Instead of "working for the State," they will believe that the attorneys are "working with the judges and with the probation officers."

The OPD attorneys often debunk this misconception and are able to convince most of the clients who are distrustful by simply providing quality legal services. However, a few will remain unconvinced; they will seek the withdrawal of the OPD and the appointment of private counsel. If the OPD is placed under the Judiciary

with the judges and probation officer, we foresee the number of clients seeking the withdrawal of the OPD to increase substantially.

Logistical and Administrative Issues

Currently, the OPD has five offices on four islands, four of which are in privately owned buildings requiring rent payments. We service all islands, requiring flights to Moloka'i and Lana'i, as examples. Each island office requires support staff and investigative services, in addition to attorneys. These make up the 130-plus statewide OPD employees. Accomplishing the herculean task of transferring the OPD and its employees from the executive to the judicial branch simply cannot be accomplished by the effective date of this measure – July 1, 2021. The transfer will involve and impact not only the OPD, DBF and the Judiciary; the impact will also affect the Department of Accounting and General Services (DAGS), the Office of Enterprise Technology Services (ETS), and the Department of Human Resources Development (DHRD). DBF and DHRD must coordinate with the Judiciary to transfer all OPD-related human resource files. DAGS, ETS and the Judiciary will need to transfer all payroll-related information. DAGS must coordinate with the Judiciary to ensure that all accounts, payments, recordation of payments, funds, etc. are transferred from DBF to the Judiciary. ETS and Judiciary will need to make sure that all IT-related license, network connections, websites, and IT-support are transferred smoothly to the Judiciary. In addition, other administrative support matters (e.g., leases, contracts, any matter referencing DBF) must be transferred from DBF to the Judiciary. All of the above will require a substantial amount of time, effort and coordination among DBF, DAGS, ETS, DHRD, OPD, and the Judiciary to ensure a smooth transition and to avoid anything falling through the cracks and/or being left behind.

Moreover, there are additional serious problems involving the practical administrative logistics of this measure's proposed movement of the OPD from the executive to the judicial branch. To put it mildly, it would create new tensions between the courts and deputy public defenders. By the provisions of the proposed HD1, the OPD budget would become part of the Judiciary budget. Therefore, the Chief Justice would have a say in appropriations for the OPD who would be competing for funding with other judicial circuits, the ADLRO, the Children's Justice Center, the Center for Alternative Dispute Resolution, the Criminal Justice Research Center, the Supreme Court Law Library and any other programs within the Judiciary. The chief administrator of the courts would understandably have a role in personnel and hiring decisions. As the administrative head of the Judiciary (*see* HRS § 601-2) involved in budget and personnel decision-making and/or supervision,

would the Chief Justice need to recuse him/herself in all appearances involving the OPD before the Hawai'i Supreme Court? What would opposing counsel (county prosecutor or attorney general) think of not having the Chief Justice sitting in any case involving the OPD? What would happen in cases requiring the need for substantial expert witness costs (such as those involving DNA, accident reconstruction, battered women syndrome, just to mention a few that have come up over the years)? Would the budgetary constraints of the entire judicial branch affect the approval or denial of the expenditure of such funds in individual cases, arguably impacting due process rights?

Related Issues

There should also be consideration of the role of the OPD as it currently affects the Judiciary. Presently, the Public Defender is one of the regular resources for the Judicial Selection Commission (JSC) for comment on the retention and appointment of judges, including the Chief Justice. How would our ability to give independent and honest appraisals be impacted if the OPD was under the supervision and control of the Judiciary? Would it not adversely affect the work of the JSC to have to eliminate one of the primary consumers of the day-to-day work of the courts?

What about the role of the OPD at the Legislature? We believe we do serve a purpose in testifying on bills that affect our clients and the judicial system. We strive to offer credible, reliable testimony. For example, we do not cry "unconstitutional" at the drop of a hat but do raise such concerns when appropriate. We point out when a bill would have unintended consequences, particularly when it would have significant costs that had not yet been noted. Over the years, we believe our input has positively affected legislation through timely amendments and other changes.

We have also been called upon, on occasion, to assist in the drafting or review of proposed legislation, which we have always been willing to do. Would the OPD under the proposed HD1 have to stop all such activity if we were part of the branch of government which might be called upon to interpret the legislation if it ever came before the courts in a case?

The Judiciary as a rule do not take positions on proposed changes to statutes. Their representatives offer comment rather than support or opposition. How would our role change if we came under Judiciary supervision? Would the Legislature be well-served to have less input on such important issues as changes to the penal code

affecting time of incarceration, penal responsibility and such other significant issues?

There is no indication that these and other unforeseen consequences were fully considered in the process leading up to the proposed HD1.

Rationale

We are at a loss to understand the purpose of the proposed HD1. There was little explanation and no discussion prior to passage of the HD1 as it relates to the OPD. There was no explanation offered in the Committee Report that accompanied passage of the HD1.

There was no prior notice to or discussion with the affected parties. There are a number of statutory provisions that would be affected and/or impacted by the transfer of an office from the executive to the judicial branch, none of which are addressed in the proposed HD1.

It seems to come down to the simple but very wise adage, “If it ain’t broke, don’t fix it.” Our current placement in the executive branch is not broken but working well and requires no “fixing.”

Thank you for the opportunity to comment on H.B. No. 185 HD1.

Appellate Section Hawaii State Bar Association

Hearing on H.B. No. 185 H.D. 1, Relating to the Judiciary

March 16, 2021 at 9:15 a.m.

Honorable Karl Rhoads, Chair and
Honorable Jarrett Keohokalole, Vice Chair

Dear Chair, Vice Chair, and Members of the Committee:

On behalf of our colleagues in the Hawaii State Bar Association's Appellate Section,¹ we write in **strong support** of H.B. 185. However, as to the latest version of the Judiciary's budget contained in H.B. 185 H.D. 1, we **oppose** the lack of funding for capital improvement projects. We also **urge careful consideration** of the amendments that transfer the Office of the Public Defender to the Judiciary.

H.B. 185 H.D. 1 proposes to generally maintain the operational budget of the Judiciary at the same level through the next fiscal year. Given the tremendous efforts made by the Judiciary this past year to adapt to the many challenges posed by the COVID-19 pandemic, and the expectant surge in the need for the Judiciary's services in the coming year, this proposal is reasonable, even in the light of any projected State budget shortfall (which we hope will be mitigated by expected federal relief).

During the pandemic, the Judiciary has ensured public court access alongside protection of the health and safety of litigants, counsel, jury members, court staff, and public safety personnel. A transition to remote proceedings when available, however, does not obviate the necessity of in-person hearings and trials. Thus, courts will face an increased number of jury trials due to delays caused by the need for social distancing and other safety protocols. Additionally, the economic consequences of the pandemic will increase the public's future reliance on the courts. The Judiciary will continue to be vital in helping both the public and the State economy recover from the pandemic. We understand there are a number of Judiciary capital improvement projects that require urgent attention, including fire alarm systems, piping, security systems, and elevators. Courthouses across the State, including our appellate courts, require funding for these sort of capital improvement projects to remain safe and operable for Judiciary staff and the public. Thus, to the extent that H.B. 185 H.D. 1 fails to fund capital improvement projects, we **oppose** the amendment.

As to the amendment that transfers the Office of the Public Defender (OPD) to the Judiciary, it is our understanding that this was first proposed in the H.D. 1. We are concerned that this will cause significant logistical challenges and believe this amendment would benefit from careful and thorough review. Since the OPD exists in order to provide criminal defendants with representation in the courts, we are also concerned that housing the office within the Judiciary might create an appearance of impropriety.

Thank you for the opportunity to testify in **strong support** of H.B. 185, and in **opposition** to amendments contained in H.B. 185 H.D. 1 that fail to fund the Judiciary's capital improvement projects. We also **urge caution and careful consideration** of amendments contained in H.B. 185 H.D.1 that transfer the Office of the Public Defender to the Judiciary. Thank you for the opportunity to testify.

Deirdre Marie-Iha, Section Chair

¹ Members of the section are appellate practitioners, and we have a keen interest in the proper functioning of the State appellate courts and the State Judiciary as a whole. The views and opinions expressed here are those of the HSBA's Appellate Section. The HSBA Board has not reviewed or approved the substance of the testimony submitted.



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TESTIMONY

Senate Committee on Judiciary

Hearing: Tuesday, March 16, 2021 (9:15 a.m.)

TO: The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair

FROM: Gemma-Rose Poland Soon, Esq.
Hawai'i State Bar Association, Family Law Section Chair

RE: House Bill No. 185, HD1 Relating to the Judiciary

Chair Rhoads, Vice Chair Keohokalole and members of the Senate Committee on Judiciary, The Family Law Section **strongly supports** House Bill 185, HD1 setting forth provisions for the 2021-2022 operating budget and line items that include, among other things, the funds necessary to operate and maintain the services for the State Judiciary for the coming year.

The services provided by the state judiciary include the operation of the Family Court and adjacent services that have helped to maintain our communities. These services ensure that legal relief for fundamentally important actions such as divorce, paternity, adoption, guardianship, foster custody hearings, child support, family-related temporary restraining orders and many other services is available even during the difficulty period our island communities have suffered over the past year. The judiciary also provides services to the underserved and unrepresented portions of the community. These services provide our community with crucial support by protecting victims of domestic violence, ensuring that children are safe and ensuring that families have stability. Our strong court system creates a foundation upon which a healthy and orderly society can thrive, and it is essential for community's well-being.

It is important to note that the judiciary's budget has been reduced both of the last two (2) fiscal years. As a result, the Family Court has had continuing vacant positions for judges and staff. These absences are acutely felt by the current judges and staff as they manage to find ways to handle an increasing case load with less funds. Avoiding any further reduction in cuts to these funds is imperative to avoiding a very real loss of the important social services the Family Court provides.

The functions performed by the Family Court and its related programs provide access to justice and family support that is even more crucial than usual due to the extraordinary pressure the covid-19 pandemic and the resulting economic downturn has placed on local families.

As such, we respectfully request that the Senate pass HB 185, HD 1 to ensure that the state's courts continue to have the funding needed with no further reductions in order to administer justice and provide their crucial services in a stable and consistent fashion. Sincerely,

Gemma-Rose Poland Soon, Esq., Chair
Hawaii State Bar Association, Family Law Section

[This testimony was prepared by the officers of the Family Law Section of the Hawaii State Bar Association and may not necessarily reflect the views of all members. In addition, this testimony represents the views of the Family Law Section of the Hawaii State Bar Association only and does not necessarily reflect the views of the Hawaii State Bar Association as a whole.]



TESTIMONY

Senate Committee on Judiciary

Hearing: Tuesday, March 16, 2021 (9:15 a.m.)

TO: The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair

FROM: Levi Hookano
HSBA President

RE: House Bill No. 185, HD1
Relating to the Judiciary

Chair Rhoads, Vice Chair Keohokalole and Members of the Senate Committee on Judiciary, thank you for the opportunity to offer testimony on behalf of the Hawaii State Bar Association (HSBA) in **STRONG SUPPORT** of House Bill 185, HD1 **as introduced** which sets forth provisions for the 2021-2022 operating budget and line items, and the CIP budget and line items.

There is no doubt that the State is facing challenges of a historic magnitude, and you as our elected leaders have the unenviable task of balancing diminished State revenues with increasing expenses as a result of the COVID pandemic.

Similarly, the Chief Justice and the Courts face financial challenges, perhaps not on the level of the State’s Executive Budget, but significant nonetheless. Throughout the pandemic, the Judiciary continuously worked with attorneys and public partners to meet the demand for increased services, moving to heavier reliance on technology, all while protecting public health and safety for all who must enter court facilities--judges, support staff and the public.

As we move into a more optimistic chapter in the fight against COVID with vaccination implementation plans, we understand that everyone in Hawai‘i will be called upon to continue to sacrifice. We believe the Judiciary has been responsible in its recognition of the limited financial resources of the State as a whole. The Judiciary currently accounts for less than 2% of the overall State budget, and over the past decade the Judiciary’s share of the State budget has decreased even before COVID hit.

The Judiciary worked hard to do more with less. At the end of the 2020 fiscal year, the Judiciary’s budget was reduced by 5.3%. In the current 2021 fiscal year the Judiciary’s budget was further reduced by 8.6%. Despite these reductions, and with some financial assistance from Governor Ige through the CARES Act, the Judiciary was able to pivot and retrofit courtrooms to utilize technological advances, providing greater access to the Courts via remote hearings, including criminal and civil trials.

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These steps forward were not made without a few steps back. Judges and staff were called upon to undertake different responsibilities and learn new skills outside of their comfort zone to make up for the fact that some staff positions were left vacant and the filling of some judicial bench vacancies was deferred, delaying judicial proceedings.

Recent reports from community agencies and organizations indicate that there will be a greater need for judicial support in 2021. There is an unfortunate increase in criminal citations and domestic violence complaints. Additionally, there is an anticipated “tsunami” of landlord tenant eviction and rent cases the Court is preparing for once the current moratoriums are lifted by the Federal and State government. The Judiciary’s proposed budget helps to ensure that it can handle these anticipated challenges.

The HSBA Board took all this information into consideration in coming to its decision to support House Bill 185 as introduced, which does not request additional sources of funding not required by law such as collective bargaining adjustments.

Two significant amendments were made to House Bill 185 as introduced.

The first amendment proposes to transfer the Office of the Public Defender from its current administrative oversight agency, the Department of Budget and Finance, to the Judiciary. It is respectfully suggested that the following issues be thoroughly discussed before a final decision is made:

- The rationale of the proposed transfer.
- Estimated cost savings of the proposed transfer.
- The perspective of the Department of Budget and Finance as to its current administrative oversight responsibilities and the proposed transfer.
- The perspective of the Defender Council as to the current administrative oversight of the Department of Budget and Finance and the proposed transfer.
- The perspective of the Public Defender and the staff as to the current administrative oversight of the Budget and Finance and the proposed transfer.

While the Federal Public Defender’s Office is administered by the Federal Courts, the indigent defendant caseload of the State Public Defender’s Office is significantly larger.

The second amendment deletes in its entirety the CIP project budget proposed by the Judiciary for public health and safety improvements and renovations. The HSBA remains in STRONG SUPPORT of all of Judiciary’s CIP project requests.

Oahu First Circuit

- Ka’ahumanu Hale: Replace and/or repair obsolete fire alarm system and unreliable elevators.
- Ka’ahumanu Hale: Renovate the patrol station of the main security checkpoint.
- Ronald Moon Courthouse: Design and construct new chiller and photovoltaic system for the Juvenile Detention Facility.

Maui Second Circuit

- Hoapili Hale: Renovate and replace piping of wastewater, chilled water, storm drainage, and fire sprinkler system in the parking structure.
- Hoapili Hale: Address security vulnerabilities in parking structure, entry, and perimeter.

Kauai Fifth Circuit

- Continue to reroof and address environmental degradation.

Supreme Court and Intermediate Court of Appeals

- Ali‘iolani Hale: Replace existing a/c system, equipment, and controls.
- Kapuaiwa Building: Replace roof and upgrade storm water drainage from the roof.

The Judiciary dispenses equal justice for all and plays a vital role in maintaining a fair and civil society. Individuals utilize court services during some of the most stressful times of their lives. Families rely on the Judiciary to settle or resolve disputes which tear at the fabric of their households, and at the same time rely on the Judiciary to restore the family or create new familial bonds with adoptions. Business owners and entrepreneurs rely on the Judiciary to resolve contract or insurance disputes which threaten their continued existence. Individuals who have been wronged, intentionally or unintentionally, by others rely on the Judiciary to make them whole. Those accused of crimes rely on the Judiciary to hear their “side of the story” and enforce their “speedy trial” constitutional rights, and the government has the opportunity to present its case for public safety.

The HSBA recognizes that Hawai‘i still faces challenges before we can overcome the harm done by COVID. The judicial system is essential to getting things back to normal by ensuring the rights of every person who wishes to be heard can participate in a fair and just process. Every citizen must do their share to adhere to guidelines to combat and contain COVID, and contribute to the recovery of our island way of life. The HSBA is committed to working with the Judiciary to help make this a reality.

Thank you for this opportunity to submit these comments on House Bill 185, HD1, and reiterates its **STRONG SUPPORT** of the measure as originally introduced.

HAWAII COUNTY BAR ASSOCIATION

P.O. Box 585
Hilo, Hawaii 96721
HCBA@hsba.org

March 14, 2021

Via <https://www.capitol.hawaii.gov/submittestimonyss.aspx>

Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair
Senate Committee on Judiciary
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

RE: HB 185 HD1
RELATING TO THE JUDICIARY

Dear Senator Rhoads, Senator Keohokalole and Committee Members:

The Hawaii County Bar Association (“HCBA”) respectfully submits this letter of concern with regard to HB 185 HD1 Relating to the Judiciary.

The first point of concern is the apparent removal of funding for the Judiciary’s capital improvement projects. The CIP projects proposed by the Judiciary were narrowly focused on addressing health, safety and security concerns, therefore, the removal of these funds could jeopardize the safety of not only Judiciary employees, but attorneys and members of the public who enter Judiciary facilities. The HCBA asks that this Committee amend the Judiciary’s budget to include the necessary CIP projects.

The second point of concern is the transfer of the Office of the Public Defender from the Department of Budget and Finance to the Judiciary. Given the limited time frame, there has not been sufficient opportunity to determine what constitutional, administrative or logistical problems, if any, may arise. The HCBA asks that this proposal be removed from the Judiciary’s budget and perhaps revisited at a later time.

Thank you for your time and attention to this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Michelle S.K. Oishi, Esq.
President, Hawaii County Bar Association

TESTIMONY OF THOMAS D. FARRELL
Regarding HB 185, HD1, Relating to the Judiciary
Committee on Judiciary
Sen. Karl Rhoads, Chair/Sen. Jarrett Keohokalole, Vice Chair
Tuesday, March 16, 2021 9:15 a.m.
(via videoteleconference)

Good Afternoon Chair Rhoads, Vice Chair Keohokalole and Members of the Committee:

As one of the largest family law firms in Hawaii, we have a special interest in and support those Judiciary budget items that are significant to our clientele and their access to justice in the Family Court. We support HB 185, HD1 and urge your favorable action.

Notably, this bill does not request any increases in or additional operating items. It is only a CIP bill.

All of the funding requests are necessary and amply justified. Without working elevators, for example, I don't know how some of the elderly litigants in First Circuit probate matters can make it up all the stairs to the courtroom. However, if difficult choices must be made, I would suggest three priorities.

First on the list is the upgrade to electrical systems at the Ronald J. Moon judiciary complex, to include the Juvenile Detention Facility. In my former life as a deputy attorney general, I represented the Corrections Division and was heavily involved in the ACLU Consent Decree litigation. I can tell you from experience that one simply cannot operate a safe detention facility without continuity of electrical power. This presents a significant danger to detainees and staff.

Second should be the repairs to Hoapili Hale, the consolidated courthouse in Wailuku. Bursting pipes in the garage there could potentially result in tort liability that would exceed the cost of making repairs. Security upgrades there are also long overdue in a building that was designed in a kinder and gentler era when courthouse violence was virtually unheard of.

Finally, it is essential that the Judiciary have the ability to deal with unanticipated crises, such as the flooding incident in Kaahumanu Hale (First Circuit Court). I would make "unanticipated" CIP number three.

Mahalo for your consideration of this bill.

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LATE

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March 15, 2021

Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair
Committee on the Judiciary, Members

RE: HB 185, HD1 RELATING TO THE JUDICIARY

Hearing Date: March 16, 2021

Hearing Time: 9:15 a.m.

Not requesting personal appearance

SUPPORT for HB185
SOME SUPPORT for HB 185, HD1

Dear Senators Rhoads and Keohokalole and Committee Members,

Thank you for this opportunity to provide testimony on this bill.

As concerns the original HB 185, maybe Hawai'i Attorney Noah Gibson said it best and most direct in his written testimony submitted for consideration by the House Finance Committee at its hearing held on the bill on March 2, 2021. Noah wrote: "the Judiciary budget has been cut every year since 2011 and is now a manini 1.9% of the total budget. As a co-equal branch of government, the Judiciary deserves equal treatment. The Judiciary has already done its budget cutting over the past 10 years. More is not appropriate, or fair, or smart right now for our Hawaii." In concert with testimony provided by the Judiciary, Hawaii State Bar Association, and others, I add my voice respectfully to request passage of the original HB 185.

As concerns the Finance Committee's unanimous action to amend the bill, specifically at paragraph 8, proposing to install the Office of the Public Defender (OPD) within the Judiciary, I would expect that many members of your committee, like me, are baffled. For one, having examined written testimony, the committee reports, and the youtube video of the March 2, 2021 Finance committee testimony, it appears that this provision was added by the committee sua sponte during decision-making. Accordingly, we also can expect that your committee will receive testimony that will help inform your action on this amendment, including hopefully from its progenitor(s).

It is important to note that in FY2020 while "housed" in the Dept. of Budget and Finance, for administrative purposes only, the OPD budget was \$12,609,534.00 and 139.5 positions and in FY2021 the budget is \$12,473,680 and 139.5 positions. Paragraph 8 of HB 185, HD1 proposes FYs

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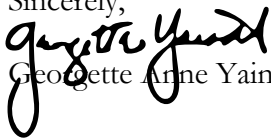


2022 and 2023 OPD budgets of \$19,607,095 and 133.5 positions. **Wherever OPD is “housed”, I write in strong support of increasing the OPD budget as proposed to \$19,607,095.**

The constitution is clear that it is “**The State** [that] shall provide counsel for an indigent defendant charged with an offense punishable by imprisonment.” Article 1, section 14. The Judiciary is not The State. The Executive is. Accordingly, maybe the Dept. of the Attorney General is better suited, given its mission to “to preserve, protect, and defend the constitution and laws of the State of Hawaii and the United States; to enforce the State’s constitution and laws, . . . and to assist and coordinate statewide programs and activities that improve the criminal justice system and law enforcement.”

Thank you for the opportunity to provide this testimony. Mahalo.

Sincerely,



Georgette Anne Yaindl 8940



LATE

Testimony of the Noah H. Gibson relating to Bill HB185

TO: The Honorable Karl Rhoads, Chair
The Honorable Jarett Keohokalole, Vice Chair

FROM: Noah H. Gibson
Managing Attorney, Coates Frey Tanimoto & Gibson

HEARING: Tuesday March 16, 2021 at 9:15 a.m.

The Judiciary services are absolutely essential for ensuring public safety, protecting families, and facilitating our economic recovery. If the Judiciary budget is cut further all aspects of life in Hawaii will suffer the consequences. Below are bullet pointed reasons why NO further cuts to the Judiciary Budget is so absolutely critical to Hawaii's future.

IMPACT TO CONSTITUENTS, TAXPAYERS AND THE ECONOMY

- Courts exist to serve the public and ability to have access to the courts for any purpose will be negatively affected.
- At a time in our nation's history when the constitution and the rule of law are being challenged like they never have before it is absolutely critical that we have access to our courts. You must protect your constituent's ability to access justice. You must protect your constituent's ability to resolve their family disputes, their business disputes, and their land-lord tenant disputes.
- A strong judicial branch is essential to maintaining responsible government and protecting citizen's rights. The judiciary allows economic, political and social life to function properly.

ECONOMICS

- The judiciary is at the core of every business transaction. And if we expect to have a healthy thriving economy then we absolutely must have a robust and AVAILABLE and ACCESSIBLE place to resolve disputes, economic and otherwise.
- The courts are an economic driver and every court room drives commerce one way or another.
- Delays raise incarceration costs, wasting taxpayer money.
- Effective and efficient courts save taxpayer money.
- Backlogs hurt small business owners, stifling job creation and hurting small businesses when they can least afford it.
- The Judiciary already makes up a very very very small 1.9% of the budget. Every cut from their budget has an enormous effect and also immediate effect on the public it serves.

FAMILY LAW DISPUTES

- We need to have a system that provides fair and timely justice. If we do not, the government is failing the people that it serves, perhaps in one of the most vulnerable and difficult times in their lives during a divorce or custody case—an already high-stress process becomes even more of a stressor if people do not feel that they are given timely access to the courts.
- Overburdened court dockets keep children in unsafe situations and keep victims of domestic violence in abuse situations or shelters.

- Lack of criminal trials can affect parents' abilities to gain custody of their children because they do not have the ability to prove their innocence.
- You MUST ensure that there is always the threat of taking someone to court to resolve a dispute. IF we lose fear of consequences for our actions then there will be chaos. We cannot risk that. Especially now. Especially with our economy as fragile as it is. Especially with our democracy as fragile as it is. .
- The courts were already in danger of closing for a week in 2020 and now the budget is going to get cut further is just not feasible or smart—Financially, economically, socially, or nationally.

In conclusion, the Judiciary budget has been cut every year since 2011 and is now a manini 1.9% of the total budget. As a co-equal branch of government, the Judiciary deserves equal treatment. The Judiciary has already done its budget cutting over the past 10 years. More is not appropriate, or fair, or smart right now for our Hawaii.

With Aloha,
Noah