



*The Judiciary, State of Hawai‘i*

**Testimony to the Thirty-First Legislature, 2021 Regular Session**

**House Committee on Finance**

Representative Sylvia Luke, Chair

Representative Ty J.K. Cullen, Vice Chair

Tuesday, March 2, 2021, 12:00 PM (Agenda #2)

VIA VIDEOCONFERENCE

State Capitol, Conference Room 308

by

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Intermediate Court of Appeals

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**Bill No. and Title:** House Bill No. 189, 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.**

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 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.



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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.

In 2019, the Legislature considered an identical bill in House Bill No. 513 / Senate Bill No. 189. On February 7, 2019, the House Committee on Judiciary held a hearing on House Bill No. 513, and unanimously recommended the measure be passed with a minor revision. On February 21, 2019, the Senate Judiciary Committee held a hearing on the companion bill, Senate Bill No. 189, and approved Senate Bill No. 189, S.D. 1, with a technical, nonsubstantive amendment for the purposes of clarity and consistency. On March 21, 2019, the House Committee on Judiciary held a hearing on Senate Bill No. 189, S.D. 1 and recommended the measure be deferred. The Legislature took no further action on House Bill No. 513 or Senate Bill No. 189, S.D. 1. The version before the Committee now in House Bill No. 189 is identical to the version approved by the Senate Judiciary Committee in Senate Bill No. 189, S.D. 1 in 2019. The Judiciary requests the Committee pass House Bill No. 189 in its current form.

Thank you for the opportunity to testify on this measure.

## Appellate Section Hawaii State Bar Association

Hearing on H.B. No. 189, Relating to Designating  
Substitute Judges on the Intermediate Court of Appeals  
March 2, 2021 at 12:00 p.m.

House Committee on Finance  
Honorable Sylvia Luke, Chair  
Honorable Ty J.K. Cullen, 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,<sup>1</sup> we write in **strong support** of H.B. 189. Members of the section are appellate practitioners, and we have a keen interest in the proper functioning of the state appellate courts.

The Intermediate Court of Appeals (ICA) resolves the vast majority of the state court appeals with only a chief judge and 5 associate judges. Vacancies on the ICA are common while cases are pending review. But under current law, when a vacancy occurs, five judges must do the work expected of six.<sup>2</sup>

Thus, every time there is a vacancy, it exacerbates the ICA's backlog. HB 189 would keep the ICA on track by designating judges under a mechanism already well established, publicly accepted, and commonly used by the Hawai'i Supreme Court when it has vacancies or disqualifications. This proposal will provide stability and help maintain public trust in the Judiciary as an institution that can provide timely justice.

In the end, H.B. 189 will allow the Judiciary to operate more efficiently. The current law was enacted when the ICA had only three judges, so it is restrictive simply because it is outdated. H.B. 189 modernizes the law to reflect the current composition of the ICA and provides a substantial public benefit.

Thank you for the opportunity to testify in **strong support** of HB 189.

Deirdre Marie-Iha, Section Chair

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<sup>1</sup> 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.

<sup>2</sup> By the numbers, the ICA does the work of more than six judges. H.B. 189, however, does not require significant expenditure of taxpayer monies to start addressing that issue because it allows the Judiciary to allocate existing resources rather than incurring the cost of additional permanent ICA judges.