

STAND. COM. REP. NO.

364

Honolulu, Hawaii

FEB 18 2011

RE: S.B. No. 1073
S.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 1073 entitled:

"A BILL FOR AN ACT RELATING TO SURCHARGE FOR INDIGENT LEGAL
SERVICES,"

begs leave to report as follows:

The purpose and intent of this measure is to increase the
amount of the surcharges for indigent legal fees.

Your Committee received testimony in support of this measure
from the Department of the Prosecuting Attorney of the City and
County of Honolulu; the Hawaii Access to Justice Commission;
Volunteer Legal Services Hawai'i; Hawaii State Coalition Against
Domestic Violence; Japanese American Citizens League; The
Mediation Center of the Pacific, Inc.; Domestic Violence Action
Center; Hawaii Justice Foundation; Hawaii Disability Rights
Center; Legal Aid Society of Hawaii; and two individuals. Your
Committee received testimony in opposition to this measure from
the Collection Law Section of the Hawaii State Bar Association;
The League of Women Voters of Hawaii; forty small businesses and
numerous private individuals.

Your Committee finds that the purpose of the Indigent Legal
Assistance Fund is to support legal services. Currently, the law
provides for a \$25 surcharge in civil cases in Circuit Court when
there is an initial filing, such as a complaint or petition, a \$10
surcharge when filing a summary possession charge in District
Court, and a \$25 surcharge when filing a civil action in the

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Supreme Court. The funds generated are placed in the Indigent Legal Assistance Fund for distribution to organizations that provide civil legal assistance to indigent persons. The Administrative Director of the Courts administers the funds in cooperation with the Hawai'i Justice Foundation. For reference, in fiscal year 2007-2008, the amount to be distributed to eight legal service providers was \$305,000.

Funding from the Indigent Legal Assistance Fund helps to support legal service providers such as Domestic Violence Action Center, Hawaii Disability Rights Center, Legal Aid Society of Hawaii, Mediation Center of the Pacific, Native Hawaiian Legal Corporation, University of Hawaii Elder Law Program, and Volunteer Legal Services Hawai'i, enabling these agencies to provide civil legal services to low- and moderate-income residents. According to a 2007 report prepared by the Access to Justice Hui, "Achieving Access to Justice for Hawai'i's People" (the report), these legal service providers provide a wide variety of critical legal services to the public. Approximately 37.37 percent of these services consists of family law matters, 13.08 percent involves public entitlements, 12.82 percent pertain to domestic violence, 11.61 percent consist of housing or land issues, while the remaining services pertain to other various areas of law.

The fees from which these legal services are funded have not increased since their establishment in 1996, pursuant to Act 305, Session Laws of Hawaii 1996. Since that time, inflation has increased substantially, eroding the buying power of the aggregate fees collected. For example, in Hawaii, the price of unleaded gasoline in 1996 was \$1.10 per gallon, and today it is \$3.75, a 240 percent increase. In 1996, the Consumer Price Index (CPI), a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services, was 170.7. In 2011, the CPI is projected to be 240.2, a 40.7 percent increase. The annual expenditure by household for food in Hawaii averaged over the two-year period from 1996 to 1997, was \$5,672; for the two-year period 2004-2005 (the last year for which expenditures for Honolulu households were reported separately), the average annual expenditure by household for food in Hawaii was \$8,089, a 42.6 percent increase.

Moreover, the base from which these fees are generated may have decreased since 1996. In 1996, there were 15,630 Circuit Court cases filed and 552,378 District Court cases filed. By contrast, in 2009, there were 12,347 Circuit Court cases filed and



480,665 District Court cases filed. Because the funds available for indigent legal services are based on filing fees, it appears that the aggregate funding for these services has actually decreased since 1996.

Additionally, other sources of funding for these legal providers have diminished. Currently, the funding from the Indigent Legal Assistance Fund comprises approximately fourteen percent of the appropriations to these services providers for indigent legal services. Other funding is being curtailed, making this source of funding much more critical to the agencies attempting to assist those that gravely need civil legal assistance. For example, those service providers who receive federal funding have already been told to anticipate significant cuts in funding, potentially in excess of twenty-five percent.

By contrast, the demand for legal services funded by these fees has increased. Unlike other court cases, initial court filings for domestic violence cases, such as restraining orders, has increased dramatically from 2,553 cases in 1996 to 5,095 cases in 2009, a 99.6 percent increase. Given the current state of the economy, many residents and their families are struggling to stay in their homes and to feed their families and do not have the resources to retain a private attorney to assist them with their legal needs. According to the report, one quarter of Hawaii's residents live below 200 percent of the federal poverty guideline. Since 1989, the number of people living below 125 percent of the federal poverty guideline in Hawaii has grown almost 30 percent to 156,321. These are the residents that the Indigent Legal Assistance Fund helps, and their numbers are growing.

Your Committee finds that while the establishment of the Indigent Legal Assistance Fund has helped reduce the portion of Hawaii's residents with unmet legal needs from less than ten percent in 1993 to twenty percent in 2007, there are still a substantial number of low- and moderate-income Hawaii residents who are not getting the legal assistance they need. Accordingly, your Committee believes that an increase in the surcharge on filing fees is entirely appropriate.

Your Committee has amended this measure by inserting an effective date of July 1, 2050, to allow for further discussion.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report,



your Committee is in accord with the intent and purpose of S.B. No. 1073, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1073, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair

The Senate
 Twenty-Sixth Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|------------------------|----------|----------|
| Bill / Resolution No.:* SB 1073 | Committee Referral: JDL, WAM | Date: 2/7/11 | | |
| <input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____ | | | | |
| The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313 | | | | |
| Members | Aye | Aye (WR) | Nay | Excused |
| HEE, Clayton (C) | ✓ | | | |
| SHIMABUKURO, Maile (VC) | ✓ | | | |
| GABBARD, Mike | | | | ✓ |
| IHARA, Jr., Les | ✓ | | | |
| SLOM, Sam | | | ✓ | |
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| TOTAL | 3 | 0 | 1 | 1 |
| Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted | | | | |
| Chair's or Designee's Signature: | | | | |
| Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy | | | | |

*Only one measure per Record of Votes