

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

GLORIA CHANG
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON FINANCE
ON
SENATE BILL NO. 2390, S.D. 2, H.D. 1

April 4, 2022
2:30 p.m.
Room 308 and Videoconference

RELATING TO THE JUDICIARY

The Department of Budget and Finance (B&F) offers comments on this bill.

Senate Bill No. 2390, S.D. 2, H.D. 1, increases the number of judges on the intermediate appellate court from five to six associate judges. This bill also makes an unspecified general fund appropriation to the Judiciary in FY 23 for the purposes of establishing permanent full-time equivalent positions and covering incidental costs for:

- 1) one intermediate appellate court associate judge; 2) one judicial assistant; and 3) two law clerks.

B&F notes that, with respect to the general fund appropriation in this bill, the federal Coronavirus Response and Relief Supplemental Appropriations Act requires that states receiving Elementary and Secondary School Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and

- Higher education in FY 22 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

Further, the federal American Rescue Plan (ARP) Act requires that states receiving ARP ESSER funds must maintain state support for:

- Elementary and secondary education in FY 22 and FY 23 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 and FY 23 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

The U.S. Department of Education has issued rules governing how these maintenance of effort (MOE) requirements are to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with these ESSER MOE requirements.

Thank you for your consideration of our comments.



The Judiciary, State of Hawai‘i

Testimony to the Thirty-First Legislature 2022 Regular Session

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Kyle T. Yamashita, Vice Chair

Monday, April 4, 2022, 2:30 p.m.
Hawai‘i State Capitol
Conference Room 308 and Videoconference

by
Chief Judge Lisa M. Ginoza
Intermediate Court of Appeals

Bill No. and Title: Senate Bill No. 2390, S.D.2, H.D.1, Relating to the Judiciary.

Purpose: Increases the number of associate judges on the Intermediate Court of Appeals from five to six. Appropriates funds.

Judiciary's Position: Strong Support

This bill would amend Hawai‘i Revised Statutes (HRS) § 602-51 to add an associate judge to the Intermediate Court of Appeals (ICA), resulting in seven ICA judges – the chief judge and six associate judges. The bill also appropriates funds to establish the ICA judge position, a judicial assistant position, two law clerk positions, and for equipment, books and furniture for the new judge’s chambers.

The Judiciary supports this bill because an additional ICA associate judge and support staff will allow the court to resolve more appeals in a shorter amount of time and will greatly assist in the effort to address the historical backlog of appeals.

The ICA decides appeals in panels of three judges. The ICA was created in 1979 as a result of the 1978 Constitutional Convention. 1979 Haw. Sess. Laws, Act 111, § 3. The court began operations in April 1980, with a chief judge and two associate judges. Since then, HRS



§ 602-51 has twice been amended to increase the size of the court. First, in 1992, the Legislature created a fourth judge position. 1992 Haw. Sess. Laws, Act 253, § 2. Then, in 2001, two more judge positions were created. 2001 Haw. Sess. Laws, Act 248, § 1. Those two additional judge positions were filled in mid-2004, at which point the court reached its current number of six judges, a chief judge and five associate judges (almost eighteen years ago).

Thereafter, effective July 1, 2006, the Legislature restructured Hawai'i's appellate court system to increase the ICA's caseload and responsibilities. Prior to July 1, 2006, all appeals were filed with the Hawai'i Supreme Court, which then designated a portion of those appeals to the ICA for disposition. Since July 1, 2006, subject to certain exceptions, all appeals are filed with the ICA and the ICA is responsible for resolving each of these appeals (unless a transfer is requested and granted to the Hawai'i Supreme Court). The ICA's decisions are then subject to discretionary review by the Hawai'i Supreme Court.

At the end of fiscal year 2005-2006, just prior to the restructuring of the appellate court system, the number of pending appeals in the ICA was 347 appeals.¹ Due to the change in appellate structure, a large number of appeals were also transferred to the ICA. Then, over the course of the next fifteen years, between FY05-06 and FY20-21, there were 8,121 appeals filed in the ICA (an average of 541 appeals filed each year) and the ICA terminated 7,872 appeals (an average of 524 terminated each year). Although the ICA has resolved a large number of appeals since the appellate restructuring, there has been a net further increase of 249 pending appeals during that fifteen-year period. In total, with all of the above combined, there were 862 pending appeals at the end of fiscal year 2020-2021.

In addition to the increased volume of appeals, restructuring of the appellate system resulted in a greater number of complex appeals being addressed by the ICA because it is now the court of first review in most appeals. However, parties can request that the Hawai'i Supreme Court transfer certain cases from the ICA to the Hawai'i Supreme Court, and under Act 48 (2016) certain categories of appeals go directly to the Supreme Court.

Under the restructured appellate system, the ICA is also required to conduct the initial review in each appeal before it to ensure appellate jurisdiction. This can sometimes be a time-consuming and adversarial issue. Additionally, the ICA must resolve between 2,000 to 3,000 procedural and substantive motions each year, which adds to the work load of each ICA judge.

As an appellate court, the ICA's opinions establish law that is binding upon and provides guidance to trial courts and administrative agencies. Due to the appellate restructuring, the ICA

¹ The testimony submitted to the Senate Judiciary Committee indicated 356 pending appeals at the end of FY05-06, but that number included nine pending motions.



is where most appeals will begin and end. The restructuring resulted in several staff attorneys being relocated from the Hawai'i Supreme Court to the ICA. In past years, the Judiciary's legislative package included a request for another staff attorney position, but that request was not approved. The Judiciary supports this current bill, which would provide even greater resources for the ICA's efforts to address its large and challenging case load. Enhancing the ICA's ability to render well-reasoned decisions more expeditiously provides a great benefit to the public and improves the administration of law in Hawai'i.

The amendments in the S.D.2 version of the bill changed the appropriations to unspecified amounts and changed the effective date, to facilitate further discussion. The Judiciary notes that an appropriation for the additional judge would be needed and that staff to support a new judge would be very important. A new associate judge would have great difficulty carrying out the duties of the position without staff support. Each of the current judges on the ICA has the support of a judicial assistant and two law clerks, who all work together as a team to tackle the many responsibilities in resolving challenging appellate cases. Given the complexity and volume of the work, appropriate staff support is important.

The House Committee on Judiciary and Hawaiian Affairs heard this bill on March 15, 2022, and recommended it be passed with an amendment to the effective date to encourage further discussion. The bill has been supported by the Hawaii State Bar Association (HSBA), the HSBA Appellate Section, former ICA judges and others.

In sum, adding another ICA associate judge, together with the full complement of support staff, would enable the Judiciary to resolve more appeals more expeditiously, including high priority matters such as cases involving termination of parental rights, child custody, criminal cases where the defendant is in custody, and other cases given priority by statute. The Judiciary strongly supports this bill. The Judiciary requests that the amounts in the S.D.1 version of the bill be restored and that the effective date also be restored to July 1, 2022. The Judiciary further requests that this bill not detract from the Judiciary's priorities set out in its legislative package.

Thank you for your consideration of the above and the opportunity to testify.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee on Finance**

April 4, 2022

S.B. No. 2390 SD2 HD1: RELATING TO JUDICIARY

Chair Luke, Vice Chair Yamashita, and Members of the Committee:

The Office of the Public Defender strongly supports S.B. No. 2390 SD2 HD1, which would increase the number of associate judges on the Intermediate Court of Appeals (“ICA”) from five to six.

The ICA, which is the appellate court of first review, issues written opinions that establish precedent for not only the lower courts and administrative agencies to follow, but also provide guidance for attorneys, litigants, and the other branches of government. The opinions are also analyzed and scrutinized by law students, legal scholars, and appellate courts from other jurisdictions. Moreover, the ICA issues numerous memorandum opinions and unpublished summary disposition orders, which, although they cannot be cited as precedent, do have persuasive value. *See* Rule 35 of the Hawai‘i Rules of Appellate Procedure.

Because each published and unpublished disposition has either precedential or persuasive value, each one must be thoroughly researched, well-reasoned, and thoughtfully written. Thus, for each case, the ICA associate judges must methodically review the record on appeal (e.g., court filings, transcript of proceedings), thoroughly research the applicable caselaw (not only from Hawai‘i but also from other jurisdictions) and write a well-reasoned and thoughtfully written disposition. This process cannot be rushed; issuing appellate dispositions simply takes time. Moreover, the litigants deserve written decisions which reflect that the issues were seriously and thoughtfully reviewed.¹ It is to the ICA’s credit that they are able to resolve as many cases as they do each year.

¹ During the period around the late 1990s/early 2000s, it was not uncommon for the appellate courts to issue one-word opinions: “Affirmed.” These dispositions were criticized and are no longer issued.

Accordingly, the only solution to enable the ICA to resolve more appeals expeditiously and to reduce the current backlog without compromising the quality of their work is to add another ICA associate judge together with the full complement of staff.

Thank you for the opportunity to comment on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

S.B. NO. 2390, S.D. 2, H.D. 1, RELATING TO THE JUDICIARY.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Monday, April 4, 2022 **TIME:** 2:30 p.m.

LOCATION: State Capitol, Room 308 and Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Randall S. Nishiyama, Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General supports this bill.

The purposes of this measure are to:

- (1) Increase the number of associate judges in the Intermediate Court of Appeals from five to six; and
- (2) Appropriate funds to the Judiciary for the additional intermediate appellate court associate judge, support staff, and equipment, books, and furniture.

We believe that the addition of an Intermediate Court of Appeals associate judge and support staff will allow the Intermediate Court of Appeals to address a larger number of cases in a shorter period of time, which is beneficial for the community and is in the interest of justice.

We respectfully ask the Committee to pass this bill.

Appellate Section Hawaii State Bar Association

Hearing on S.B. No. 2390 S.D. 2 H.D. 1, Relating to the Judiciary
April 4, 2022 at 2:30 p.m.

House Committee on Finance
Honorable Sylvia Luke, Chair
Honorable Kyle T. Yamashita, 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 S.B. 2390 S.D. 2 H.D. 1. Members of the section are appellate specialists, 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. By the numbers, the ICA does the work of more than six judges. But for years, it has ended the fiscal year with a backlog of more than 700 pending cases. As a result, it often takes three or more years for normal appeals to be decided.

Due to the delays in the ICA, the Legislature has enacted or considered measures that permit certain cases to bypass the ICA with appeals directly to the Hawaii Supreme Court. For example, in 2016, Act 48 allowed specified contested case proceedings to appeal directly to the Hawaii Supreme Court. Bills such as H.B. 339 and S.B. 2343 this session would provide for direct appeals to the supreme court in family court proceedings. These proposals may fix a symptom for some cases, but ultimately will lead to more problems because the Hawaii Supreme Court cannot shoulder a substantially increased caseload. As a result, delays will increase for all cases.

The ICA needs another judge. With an added associate judge, the ICA will be able to reduce its backlog to a manageable size, significantly decreasing the current delays experienced by parties. This proposal will provide stability and help maintain public trust in the Judiciary as an institution that can provide *timely* justice.

Thank you for the opportunity to testify in **strong support** of S.B. 2390 S.D. 2 H.D. 1.

Deirdre Marie-Iha, Section Chair

¹ 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.



74 Kihapai Street,
Kailua, HI 96734
Ph: 808.346.3239
Em: kailaw.la@gmail.com

April 1, 2022

House Committee on Finance
Chair Luke
Vice Chair Yamashita
Hawaii State Capitol

RE: SB 2390 – Testimony Supporting Adding a Judge to the Appellate Court

Aloha Distinguished Chair and Vice Chair,

My name is Kai Lawrence, and I am an appellate attorney, specializing in criminal and divorce appeals before Hawaii's Appellate Courts. I am writing today to voice strong support for the creation of, and funding for, a new associate judge position at the Intermediate Court of Appeals. In doing appellate work, one of the chief complaints I run into from members of the public is that the process is relentlessly slow-moving. Although this is on the longer end, I have had some appeals recently that have been outstanding for more than two years. Surety and finality are mainstays of our judicial system, but the extreme backlog at the Court makes such finality a very slow and drawn-out process.

I write in strong support of the above bill because adding a position and funding to the Court will reduce the current Judges' caseloads, making them more able to reduce the backlog in a timely fashion. Additionally, the motions calendar for the judges is extremely long as well. Adding the position and funding will allow more hands to task the many motions pending before the court, again as a means of reducing the backlog.

Based on the above, this Committee should approve the bill and move it forward in the legislative process as quickly as possible.

Thank you for your time. Please reach out to me if you have any questions. Have a great day.

Sincerely,

Kai Lawrence,
The Surfing Lawyer



TESTIMONY
 House Committee on Finance
Hearing: Monday, April 4, 2022 (2:30 p.m.)

TO: The Honorable Sylvia Luke, Chair
 The Honorable Kyle T. Yamashita, Vice Chair

FROM: Rhonda L. Griswold
 HSBA President-elect

RE: Senate Bill No. 2390, SD2, HD1
 Relating to the Judiciary

The hallmark pillar of the American Judicial System is the accurate and expeditious application of statutes, ordinances, administrative rules and regulations, and case precedent to the issues raised in a dispute brought to the attention of a Court. Equally important is the provision of a forum that is fair and gives parties an opportunity to raise their concerns for dispute resolution in an expeditious manner. Dispute resolution allows parties to move on and plan for the future. This is true for personal disputes as well as commercial disputes and criminal charges. These principles are applicable in all levels of State and Federal Courts. In both judicial systems, there are trial levels and appellate levels.

In Hawaii we are fortunate to have two appellate levels—the Intermediate Court of Appeals (ICA) and the Supreme Court. The Hawaii State Bar Association (HSBA) is here today to **SUPPORT** Senate Bill 2390, SD2, HD1, which proposes to expand the ICA from 5 associate judges to 6 associate judges. This expansion would allow the formation of additional three-judge panels to resolve civil, criminal, and family court appeals.

The local legal community is very familiar with the significant caseload of the ICA, which will only increase when the trial courts are fully operational to accommodate the backlog of jury trials and non-jury caused by COVID preventative health and safety Executive and Judicial Orders.

The ICA caseload for the past three years was as follows:

	Pending Cases	New Cases Filed	TOTAL Caseload and Motions	Resolved or Terminated	Pending EOY
FY 2018-2019	923	3013	3936	3039	897
FY 2019-2020	897	2718	3615	2694	921
FY 2020-2021	921	2328	3248	2316	932

Source: Intermediate Court of Appeals

OFFICERS

Shannon S. Sheldon, President
 Rhonda L. Griswold, President-Elect
 Jesse K. Souki, Vice-President
 Lanson K. Kupau, Secretary
 Alika L. Piper, Treasurer

DIRECTORS

Jocelyn W.C. Chang
 Steven J.T. Chow
 Vladimir Devens
 Jessica R. Domingo
 William A. Harrison
 Geraldine N. Hasegawa (East Hawaii)
 Kristin E. Izumi-Nitao
 Carol S. Kitaoka (West Hawaii)
 Erin M. Kobayashi
 Jacob K. Lowenthal (Maui)
 Emiko Meyers (Kauai)
 Mark K. Murakami
 Paul W. Naso
 Zale T. Okazaki
 Mark G. Valencia

YLD PRESIDENT

Jasmine Wong

IMMEDIATE PAST PRESIDENT

Levi Hookano

HSBA/ABA DELEGATE

Leslie A. Hayashi

EXECUTIVE DIRECTOR

Patricia A. Mau-Shimizu

Cases are disposed of through: Published Opinions, Memorandum Opinions, Summary Disposition Orders, Motions to Dismiss granted, Dismissed by Court Orders, Withdrawn or Discontinued, or other actions.

Even during the peak of the COVID lockdowns Executive Orders and Judiciary Orders involving delays of in-person proceedings, the ICA was able to pivot and continue its work.

As Hawaii looks forward to eventually move to an endemic from the pandemic, the ICA can anticipate a significant increase in its caseload as the trial courts dispose of their backlogs of civil, criminal and family cases. The backlog is especially acute in civil cases requesting jury trials or involving out-of-state witnesses or extensive exhibits for evidentiary purposes. Criminal cases with constitutional considerations and certain family cases involving imminent danger receive priority case disposition.

Resolution of civil commercial disputes is also important to Hawaii's economic recovery. The timely resolution of family disputes, especially cases involving the health and safety of our most vulnerable keiki and kupuna, is also of profound importance.

The bill provides for the additional associate judge position and for necessary support staff, which includes 1 judicial assistant, 2 law clerks, and furniture and equipment. This draft bill does not yet include a specific dollar amount for FYI 2022-2023 in the appropriation section. It is respectfully requested that a dollar amount be inserted, and this amount not detract from the Judiciary's priorities noted in its legislative package introduced at the request of the Chief Justice.

Thank you for this opportunity to provide comments in **STRONG SUPPORT** of Senate Bill 2390, SD2, HD1.

SB-2390-HD-1

Submitted on: 3/31/2022 8:23:28 PM

Testimony for FIN on 4/4/2022 2:30:00 PM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Support	Written Testimony Only

Comments:

I support SB2390 but find it wanting. I object to the use of defective effective dates and find that they do not serve to encourage future discussion, they are a cop out, and often end in the defeat of a bill during conference committee. None of us will be alive on Jan. 1, 2222. Absolutely disgraceful. The effective date should be changed to effective upon approval.

I do not know what necessitated the introduction of this bill, but it makes sense. There should be an odd number of justices to easily determine a majority. Please move this bill forward.

SB-2390-HD-1

Submitted on: 4/1/2022 10:04:04 AM

Testimony for FIN on 4/4/2022 2:30:00 PM

Submitted By	Organization	Testifier Position	Testify
Gary G. Grimmer	Individual	Support	Written Testimony Only

Comments:

Please add a new judge because the ICA has an unacceptable backlog and Justice delayed is Justice denied.

April 1, 2022

The Honorable Sylvia Luke
Chair, House Committee on Finance
Hawai'i State Capital, Conference Room 308 via Videoconference

Re: SB 2390, SD2, HD1 -- RELATING TO THE JUDICIARY

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

I strongly support SB 2390, SD2, HD1 which adds an Associate Judge to the Intermediate Court of Appeals (ICA) and provides related funding for the new judge position.

As a former Chief Judge and Associate Judge of the ICA (2004-2018), I can attest to the dedication and hard work of the judges and staff on the court. Despite our best efforts, keeping up with the ICA's heavy caseload has always presented an extremely difficult challenge.

The 2006 restructuring of Hawai'i's appellate system elevated the importance and role of the ICA. Under the restructured system, the ICA became responsible for a markedly increased caseload and for resolving more complex cases. Since 2006, almost all appeals are filed with the ICA, and the ICA is the court that finally resolves the vast majority of appeals.

The new Associate Judge position will provide the ICA with critical resources necessary to address its caseload. It will enable the ICA to resolve more cases at a faster pace, while maintaining the ICA's high standards for rendering well-reasoned and thoughtful decisions. Adding a new Associate Judge to the ICA is an investment in the administration of justice that will greatly benefit our community.

Thank you for the opportunity to present testimony in support of SB 2390, SD2, HD1.

Sincerely,



Craig H. Nakamura

To the Honorable Representative Sylvia Luke, Chair, and Members of the House Committee on Finance:

Thank you for this opportunity to submit testimony in strong support of SB2390 SD2 HD1.

We are retired judges who served on the Hawai`i Intermediate Court of Appeals.

It is important that the people of this State not only have access to the judicial system, but that the resolution of their business before the courts is done in a fair and timely manner. The judges on the ICA do their level best to achieve both of these goals. However, without sufficient personnel, their ability to accomplish this is limited. When Act 202 took effect in January 2006, there were over eight hundred cases pending. One of the reasons for the dramatic change in responsibility for these appeals was the hope that, by tasking the ICA with the initial review of virtually all appeals, a reduction in the so-called backlog in appeals could be achieved. However, no increase in the number of judges on the ICA came with the dramatic increase in caseload.

Over the last sixteen years for which statistics are available, the average number of new cases filed roughly mirrors the average number of resolutions. It is true that in some years new filings increased or decreased and in some years the number of cases terminated also varied. It is true that over the years significant turnover in judges occurred, which on average, reduced the number of judges for six months at a time. It is also true that the number of new filings peaked back in the 2016-17 fiscal year. It should also be noted that a case filed in one fiscal year is not necessarily resolved in that same fiscal year. Nevertheless, the new and concluded case numbers are, on average, virtually identical, and in most years the raw numbers increased or decreased in tandem. Notwithstanding these variables, that the number of terminations roughly equals the number of new cases over these many years speaks to the constancy of the effort and leads to the conclusion that these numbers are not likely to change without some significant kind of intervention. Additional personnel is the most direct method of resolving more cases while keeping the quality of the review consistent.

Based on our experience and the performance of the ICA, we strongly support passage of this measure.

Respectfully submitted,
Corinne K.A. Watanabe
Alexa D. M. Fujise

SB-2390-HD-1

Submitted on: 4/4/2022 7:14:41 AM

Testimony for FIN on 4/4/2022 2:30:00 PM

Submitted By	Organization	Testifier Position	Testify
Tred Eyerly	Individual	Support	Written Testimony Only

Comments:

Strongly support the bill with the addition of another judge in the Intermediate Court of Appeals. Passage of the bill will help ensure more timely justice. Several years ago, the ICA issued a decision six years after the briefing was completed. This is not justice served.

Thank you.