

SB2152



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Judiciary and Government Operations

The Honorable Brian T. Taniguchi, Chair
The Honorable Dwight Y. Takamine, Vice Chair

Wednesday, February 10, 2010, 9:30 a.m.
State Capitol, Conference Room 016

by
The Honorable Sabrina McKenna
Deputy Chief Judge / Senior Family Court Judge
Family Court, First Circuit

Bill No. and Title: Senate Bill No. 2152, Relating to District Court

Purpose: Allows circuit court judges to preside over district court matters.

Judiciary's Position:

This bill is part of the Judiciary's 2010 legislative package. The Judiciary supports Senate Bill No. 2152, Relating to District Court, along with Senate Bill No. 2158, Proposing an Amendment To Article VI, Section 2, of the Hawaii Constitution, to Authorize the Temporary Assignment of Circuit Judges to District Court. The constitutional amendment must be passed by the Legislature and ratified by the electorate to make this bill effective.

At present, circuit court judges have no legal authority over district court matters. Therefore, when a district court or district family court judge are unavailable, a per diem district court judge must be called and paid, even if there may be a circuit court judge available to serve, such as the circuit court judges sitting in Kaneohe or Kapolei. Also, a circuit court judge has no jurisdiction over pending district court matters that are to be disposed of or dismissed pursuant to a plea to a felony, which requires that the district court matters be resubmitted to district court. Senate Bill No. 2152 along with Senate Bill No. 2158, proposing the related constitutional amendment, would allow for more efficient and economical judicial proceedings and the conservation of public resources by allowing circuit judges to provide coverage in district court, and would allow for conservation of public resources, especially in this economic climate.

Thank you for the opportunity to testify on Senate Bill No. 2152.

**Testimony of the Office of the Public Defender, State of Hawaii,
to the Senate Committee on Judiciary and Government Operations**

February 10, 2010

S.B. No. 2152: RELATING TO DISTRICT COURT

Chair Taniguchi and Members of the Committee:

We oppose the passage of S.B. No. 2152 because we believe the measure is violative of the constitutional doctrine of separation of powers. S.B. No. 2152 would allow the chief justice to freely move judges between the circuit courts and district courts of the State. Currently, the chief justice has the power to temporarily elevate a district court judge to sit in the place of a circuit court judge however cannot designate a circuit court judge to hear district court cases. This bill would provide the latter power to the chief justice and would, in effect, establish the controversial "single tier" judge system which was advocated by the Judiciary a number of years ago. At the time, many members of the bar voiced opposition and concerns about the "single tier" system.

Because the chief justice would, under S.B. No. 2152, be able to freely assign district court judges to circuit court and circuit court judges to district court "for any reason," all district and circuit judges would be transformed into interchangeable members of the Judiciary. Under Article VI, Section 3 of the Hawaii Constitution, one of the executive powers accorded the Governor is the power, subject to the consent of the senate, to appoint judges of the circuit court. The governor exercises this power by appointing judges who are uniquely qualified to hear cases which fall within the jurisdiction of the circuit court. S.B. No. 2152 would usurp this executive power by allowing the Judiciary to move a circuit court judge to the district court for any reason of its choosing. S.B. No. 2152 contains no time limit on such a designation and contains no requirement that a specific reason be cited for the designation. The executive branch of government has a constitutional right to expect that circuit court judges will be assigned to hear cases of the type for which they were appointed. In order to achieve the goals set forth in S.B. No. 2152, it is our belief that an amendment to the Hawaii Constitution would be required.

Thank for the opportunity to comment on this measure.