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Senate Committee on Judiciary and Labor

SB 2129 SD 1, RELATING TO ELDER AFFAIRS

**Testimony of Noemi Pendleton
Director of Executive Office on Aging
Attached Agency to Department of Health**

Monday, February 25, 2008

10:00 a.m.

1 **Department's Position:** The Department of Health and the Executive Office on Aging (EOA)
2 have serious concerns with the measure and respectfully oppose it as written.

3 **Fiscal Implications:** Unknown.

4 **Purpose and Justification:** The purpose of this measure is to prohibit the Director of the
5 Executive Office on Aging (EOA) and any other state officer from altering, editing, or
6 withholding any recommendation, position statement, paper, or other work product issued by the
7 Policy Advisory Board for Elder Affairs (PABEA).

8 All appointed Board members of PABEA, including ex-officio non-voting members who
9 have been appointed by the Administration to represent the various state agencies that provide
10 services and programs to Hawaii's older adults, have an equal opportunity to voice their positions
11 on any recommendations. As it is common in many boards, there are times that EOA and the ex-
12 officio members have occasionally held different viewpoints from PABEA. However, the view
13 points of each member are respected and PABEA Board members can vote their conscience.

1 EOA, like PABEA, is acting in the best interest of Hawaii's kupuna. It is a priority of the
2 Administration to effectively support Hawaii's elder population and to work together with various
3 stakeholders in the aging network. However, amending HRS 349-4 is not necessarily the most
4 appropriate approach.

5 Thank you for the opportunity to testify.

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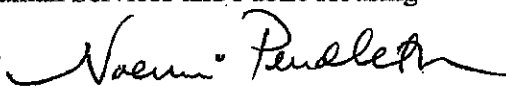
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Senate Committee on Human Services and Public Housing

SB 2129, RELATING TO ELDER AFFAIRS

February 12, 2008

TO: Honorable Chair Suzanne Chun Oakland
Honorable Vice Chair Les Ihara
Committee Members on Human Services and Public Housing

FROM: Noemi Pendleton, Director 

SUBJECT: SB 2129, Relating to Elder Affairs

Per the committee's request during the hearing on January 29, 2008, The Executive Office on Aging (EOA) was directed to research the rights of the Policy Advisory Board on Elder Affairs (PABEA) as it relates to SB 2129. The questions posed by committee members were: 1) Does PABEA have, as a board, the right to express its own opinion even though it may contradict the Administration's? 2) What are PABEA's rights thru the Older Americans Act?

First and foremost, I would like to reiterate my testimony on SB 2129 that "All appointed Board members of PABEA, including ex-officio non-voting members who have been appointed by the Administration to represent the various state agencies that provide services and programs to Hawaii's older adults, have an equal opportunity to voice their positions on any recommendations. EOA, like PABEA, is acting in the best interest of Hawaii's kupuna. It is a priority of the

Administration to effectively support Hawaii's elder population and to work together with various stakeholders in the aging network.”

According to the Older Americans Act (OAA) as amended in 2006, it does not explicitly declare that a state unit on aging shall have an advisory council. Instead, the OAA clearly states in Area Plans Section 306 (6)(D): “Provide that the area agency on aging (AAA) will establish an advisory council consisting of older individuals (including minority individuals and older individuals residing in rural areas) who are participants or who are eligible to participate in programs assisted under this Act, family caregivers of such individuals, representatives of older individuals, service providers, representatives of the business community, local elected officials, providers of veterans' health care (if appropriate), and the general public, to advise continuously the area agency on aging on all matters relating to the development of the area plan, the administration of the plan and operations conducted under the plan.”

The U.S. Administration on Aging affirms that the OAA reauthorized in 2006 refers only to AAA Advisory Boards and that there are no references to State Advisory Boards in the OAA. In fact, the requirement was never in the OAA.

Hawaii Revised Statutes (HRS) section 349-4 clearly defines that PABEA's role is to advise the director of the EOA. HRS subsection 26-35(a) provides that: “The head of the department shall represent the board or commission in communications with the governor and with the legislature.” With this said, the following assertion may be made: When PABEA members submit testimonies to the Legislature, they are exercising their rights as citizens. They are not speaking for PABEA.

Under federal and state law, EOA is the designated state unit on aging responsible for the planning, policy development, administration, coordination, priority setting and evaluation of all state activities related to the Older Americans Act. It also has the legal mandate to serve as

advocate for the older population. EOA is not authorized to delegate this function to PABEA, nor is PABEA authorized to serve in this capacity.

Having shed some light and clarification on the rights and roles of PABEA according to the OAA and HRS 349-4, EOA hopes that this information gives the committee a better understanding on the matter at hand. SB 2129 is not the most appropriate approach to address the concerns of the committee and some PABEA members.

As such, EOA respects the advice of PABEA and views them as an important partner in the aging network. As the new director of EOA, I am honored to work with members in PABEA to help enable Hawaii's *kupuna* to live healthy, dignified, and independent lives by assuring an accessible, responsive, and comprehensive system of services through advocacy, planning, coordination, research, and evaluation.

Let us all work together in the spirit of Aloha. "*E Loa Ke Ola*" – May Life Be Long!

Hawai'i Alliance for Retired Americans

AFT Hawaii Retirees
 HGEA Retirees
 HSTA – Retired
 ILWU Retirees
 Kokua Council
 Machinists Union Retirees
 UPW Retirees
 ADA/Hawaii

An affiliate of the Alliance for Retired Americans
 c/o AFSCME · 888 Millilani Street, Suite 101 · Honolulu, Hawaii 96813

(Submitted via email, February 23, 2008, to testimony@capitol.hawaii.gov.)

Hearing by Senate Committee on Judiciary and Labor February 25, 2008, 10 a.m. Conference Room 016

Joint statement of Al Hamai, President, and Carol Nitta, Legislative Committee Member, **Supporting SB2129, SD1, Relating to PABEA**

Chair Brian T. Taniguchi and Members of the Committee,

We are submitting testimony on behalf of the Hawaii Alliance for Retired Americans (HARA). HARA represents 17,000 retirees, members of the above organizations and individuals. We are a chapter of the Alliance for Retired Americans (ARA), a national advocacy organization for retirees.

The Policy Advisory Board for Elderly Affairs (PABEA) has served the people of Hawaii, including the elderly with great distinction over the years, primarily because the members of the Board, past and present, have been able to give their kupuna advice, free and uncensored, to the Governor and the State Legislature. They have been prime movers in promoting legislation that have really helped our state government deal with the growing number of elderly citizens and related aging issues such as: reduction in drug costs, reasonable transportation, long term care, support for family caregivers, and living-in-place.

It is appalling to us that we need legislation, such as SB2129, SD1, to assure the members of PABEA and for that matter all advisory committees of this state administration that members of PABEA may continue to give their advice without the fear or even the embarrassment that their advice would be edited by EOA. Allowing the EOA to do this will surely spread a message loud and clear: this state administration wants PABEA and other advisory groups to follow blindly the direction of the administration, rather than providing advice based on the best thinking of the members of PABEA, in their meetings assembled. To have the executive director of the Executive Office of Aging take the position that she has the right to edit the advice of PABEA is incomprehensible and clearly unacceptable to HARA and the people of Hawaii. HARA supports SB2129, SD1 and urges your Committee to approve it. Mahalo.

Ke hana like nei na kupuna i 'oi loa a'e 'o Hawai'i
 Senior citizens working together for a better Hawai'i

ADA/Hawaii

(Submitted via email, February 24, 2008, to testimony@capitol.hawaii.gov.)

**Hearing by Senate Committee on Judiciary and Labor
February 25, 2008, 10 a.m. Conference Room 016**

In Support of SB2129, SD1, Relating to PABEA

Chair Brian T. Taniguchi and Members of the Committee,

As the current Chair of PABEA, I am submitting testimony in firm support of SB2129. This bill represents a very basic concept in regard to the right and lawful functioning of the Policy Advisory Board for Elder Affairs, that we are able to advise the Governor and the State Legislature from an open and independent position.

We are most grateful to Senator Mizuna for presenting this legislation. We appreciate the concern and support of Senators Chun-Oakland and Les Ihara in supporting this bill, which not only acknowledges PABEA's efforts, but also paves the way for all boards and commissions to be able to function unencumbered.

Al Hamai, President of HARA and Laura Manis, member of the PABEA Legislative Committee, have already offered important testimony to you that I wholehearted support. Please seize this opportunity to make a difference by passing this important piece of legislation, SB2129.

Thank you for your time and consideration.

Michael B. Sumja

Chair of PABEA

COMMITTEE ON JUDICIARY AND LABOR

LATE

Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice Chair

Monday, February 25, 2008, 10:00 a.m., Conference Room 016

SB2129, SD1 RELATING TO ELDER AFFAIRS. Prohibits the director of the executive office on aging from altering, editing or withholding any work product issued by the policy advisory board for elder affairs because it is inconsistent with the policy of the administration.

SUPPORT

My name is Laura Manis and I have been a member of the Legislative Committee of the Policy Board for Elder Affairs for many years.

I hold my seat, by law, as representing the elders in the community and so have not been appointed by the Governor. The Legislative committee is required to have a majority of Governor appointees but the minority is appointed by the committee. We explore the needs and concerns of the elderly population in the state and decide with the approval of PABEA which to pursue in the State Legislature as advocates. We act under the Regulations of the Older Americans Act and the By-laws of PABEA and the Legislative Committee. The directors also have their priorities. We rarely disagree but on the few occasions when this has happened, we each submit our own testimony.

However, in 2003 and again in 2004 and 2007, the administration requested that we submit our testimony for approval before testifying to the Governor's office. After lengthy discussion each time, it was agreed, considering time constraints and our obligation to represent the concerns of the community to precede each testimony with the following disclaimer.

"I am offering testimony on behalf of PABEA, the Policy Advisory Board for Elder Affairs, which is an appointed board tasked with advising the Executive Office on Aging (EOA). My testimony does not represent the views of the EOA but of the Board."

This disclaimer was written by representatives of the Governor and since then those testifying for PABEA have done so and also send their testimony as information only to the Governor's office.

As far as I know, no one on the legislative committee or PABEA has instigated this bill. However, I am in support of it in the hope that the role of all advisory boards are clarified and not expected to follow or support the policies of whatever political party or administrator that happen to be in office at the time.

Laura G. Manis
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