

MAR 16 2011

SENATE CONCURRENT RESOLUTION

AFFIRMING THAT THE STATE HEALTH PLANNING AND DEVELOPMENT AGENCY IS SUBJECT TO HAWAII'S SUNSHINE LAW AND THAT THE STATE HEALTH SERVICES AND FACILITIES PLAN IS AN AGENCY RULE SUBJECT TO THE PUBLIC HEARING REQUIREMENTS OF CHAPTERS 91 AND 92, HAWAII REVISED STATUTES.

1 WHEREAS, the government's role in health care planning had
2 its beginnings with the Hill-Burton Act of 1946 which authorized
3 federal funds for hospital construction; and
4

5 WHEREAS, in 1966 the Federal Comprehensive Health Planning
6 Act (Public Law 89-749) mandated all states to establish health
7 planning agencies in order to receive federal funding through
8 the Hill-Burton Act, Social Security Act and other related
9 federal funding programs; and
10

11 WHEREAS, Congress amended the Social Security Act in 1972
12 to give states the power to deny Medicare, Medicaid, and other
13 government reimbursements to facilities whose major capital
14 projects were not approved by their state's health planning
15 agency; and
16

17 WHEREAS, in 1974, Congress enacted Public Law 63-641 which
18 more firmly tied a state's receipt of federal funding for health
19 care, including grants, to adoption of a Certificate of Need
20 Program as a sub-function of a state's health planning agency;
21 and
22

23 WHEREAS, Public Law 96-79 required that all regulatory
24 Certificate of Need decisions follow a state's regional health
25 plan as developed by the appropriate planning committees; and
26

27 WHEREAS, pursuant to Act 152, Session Laws of Hawaii 1976,
28 the Legislature established the State Health Planning and
29 Development Agency (SHPDA); and



1 WHEREAS, in Act 152, the Legislature recognizes that health
2 planning for the State is a complex area that requires the input
3 of persons of various interests and representing various
4 geographical areas; and
5

6 WHEREAS, the Legislature also found that the process of
7 planning must seek to best meet the health needs of the State,
8 as perceived by the residents of the State who, depending upon
9 the community of residence, may perceive different needs; and
10

11 WHEREAS, the development of health programs, services, and
12 facilities largely follow the growth of the State in some areas,
13 while other areas may not have adequate services available; and
14

15 WHEREAS, the purpose of Act 152 is to "ensure the pragmatic
16 health planning of the State by providing a permanent vehicle
17 for citizen input into the health planning process, so that the
18 total health services plan of the State will be based on
19 informed decision-making"; and
20

21 WHEREAS, in establishing health planning as a function of
22 the State, the Legislature directed SHPDA to conduct health
23 planning services and to implement the State Health Services and
24 Facilities Plan; and
25

26 WHEREAS, section 323D-15, Hawaii Revised Statutes, states
27 that the State Health Services and Facilities Plan shall address
28 the health care needs of the State, including inpatient care,
29 health care facilities, and special needs; and
30

31 WHEREAS, section 323D-15, Hawaii Revised Statutes, also
32 requires that the State Health Services and Facilities Plan
33 provide for the reduction or elimination of underutilized,
34 redundant, or inappropriate health care facilities and health
35 care services; and
36

37 WHEREAS, the Certificate of Need regulatory process is a
38 tool for implementing the State Health Services and Facilities
39 Plan by regulating what health care services and facilities are
40 allowed to operate in the State based on certain criteria,
41 including the need, costs, quality, accessibility, availability,
42 and acceptability of the services and facilities; and
43



1 WHEREAS, the "Council Members Orientation Manual"
2 distributed by SHPDA to its members states that the State Health
3 Services and Facilities Plan is the "foundation of SHPDA"; and
4

5 WHEREAS, section 91-1, Hawaii Revised Statutes, states that
6 a "rule" is an agency's statement of general or particular
7 applicability and future effect that implements, interprets, or
8 prescribes laws or policy, or describes the organization,
9 procedure, or practice requirements of the agency, the term does
10 not include regulations concerning only the internal management
11 of an agency and not affecting private rights of or procedures
12 available to the public, nor does the term include declaratory
13 rulings issued pursuant to section 91-8, Hawaii Revised
14 Statutes, nor intra-agency memorandums; and
15

16 WHEREAS, the State Health Services and Facilities Plan
17 clearly meets the definition of a "rule" under chapter 91,
18 Hawaii Revised Statutes, as it does not address internal
19 management and focuses externally on the State's health care
20 system by determining what services and facilities are regulated
21 and by which standards of regulation; and
22

23 WHEREAS, chapter 92, Hawaii Revised Statutes, Hawaii's
24 Sunshine Law, expressly declares that it is the policy of the
25 State that the formation and conduct of public policy, including
26 the discussions, deliberations, decisions, and actions of
27 government agencies, shall be conducted as openly as possible;
28 and
29

30 WHEREAS, Hawaii's Sunshine Law declares the Legislature's
31 intent that provisions requiring open meetings be liberally
32 construed and the provisions providing exceptions to open
33 meeting requirements be strictly construed against closed
34 meetings requiring that, minus certain exceptions, all
35 discussions, deliberations, decisions, and actions of a board or
36 commission relating to official business must be conducted as
37 part of a public meeting; and
38

39 WHEREAS, the State Health Services and Facilities Plan
40 articulates the State's public policy on the health care needs
41 of the State, including inpatient care, health care facilities,
42 and special needs, and depicts the most economical and efficient
43 system of care commensurate with adequate quality of care, and
44 standards for the utilization of health care facilities and



1 major medical equipment while providing for the reduction or
2 elimination of underutilized, redundant, or inappropriate health
3 care facilities and health care services; and

4
5 WHEREAS, section 323D-17, Hawaii Revised Statutes, requires
6 that in preparation of the State Health Services and Facilities
7 Plan or amendments to the plan, public hearings be held in
8 compliance with chapters 91 and 92, Hawaii Revised Statutes;
9 now, therefore,

10
11 BE IT RESOLVED by the Senate of the Twenty-sixth
12 Legislature of the State of Hawaii, Regular Session of 2011, the
13 House of Representatives concurring, that the Legislature hereby
14 affirms that:

15
16 (1) The State Health Planning and Development Agency is
17 subject to Hawaii's Sunshine Law, chapter 92, Hawaii
18 Revised Statutes; and

19
20 (2) The State Health Services and Facilities Plan is an
21 agency rule that is subject to chapter 91, Hawaii
22 Revised Statutes, and the preparation of the State
23 Health Services and Facilities Plan or any amendments
24 thereto is required to go through the public hearing
25 process in conformance with the requirements of
26 chapters 91 and 92, Hawaii Revised Statutes; and

27
28 BE IT FURTHER RESOLVED that certified copies of this
29 Concurrent Resolution be transmitted to the Governor, President
30 of the Senate, Speaker of the House of Representatives, Director
31 of Health, Administrator of the State Health Planning and
32 Development Agency, Chairperson of the Statewide Health
33 Coordinating Council, Chairpersons of the Subarea Health
34 Planning Councils, Chairperson of the Plan Development
35 Committee, and Mayor of each county.

36
37
38

OFFERED BY: 
