

MAR 16 2011

SENATE 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
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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
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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
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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
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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
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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
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31 WHEREAS, in Act 152, the Legislature recognizes that health
32 planning for the State is a complex area that requires the input



1 of persons of various interests and representing various
2 geographical areas; and

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

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

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

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

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

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

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

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42 WHEREAS, the "Council Members Orientation Manual"
43 distributed by SHPDA to its members states that the State Health
44 Services and Facilities Plan is the "foundation of SHPDA"; and



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2 WHEREAS, section 91-1, Hawaii Revised Statutes, states that
3 a "rule" is an agency's statement of general or particular
4 applicability and future effect that implements, interprets, or
5 prescribes laws or policy, or describes the organization,
6 procedure, or practice requirements of the agency, the term does
7 not include regulations concerning only the internal management
8 of an agency and not affecting private rights of or procedures
9 available to the public, nor does the term include declaratory
10 rulings issued pursuant to section 91-8, Hawaii Revised
11 Statutes, nor intra-agency memorandums; and
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13 WHEREAS, the State Health Services and Facilities Plan
14 clearly meets the definition of a "rule" under chapter 91,
15 Hawaii Revised Statutes, as it does not address internal
16 management and focuses externally on the State's health care
17 system by determining what services and facilities are regulated
18 and by which standards of regulation; and
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20 WHEREAS, chapter 92, Hawaii Revised Statutes, Hawaii's
21 Sunshine Law, expressly declares that it is the policy of the
22 State that the formation and conduct of public policy, including
23 the discussions, deliberations, decisions, and actions of
24 government agencies, shall be conducted as openly as possible;
25 and
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27 WHEREAS, Hawaii's Sunshine Law declares the Legislature's
28 intent that provisions requiring open meetings be liberally
29 construed and the provisions providing exceptions to open
30 meeting requirements be strictly construed against closed
31 meetings requiring that, minus certain exceptions, all
32 discussions, deliberations, decisions, and actions of a board or
33 commission relating to official business must be conducted as
34 part of a public meeting; and
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36 WHEREAS, the State Health Services and Facilities Plan
37 articulates the State's public policy on the health care needs
38 of the State, including inpatient care, health care facilities,
39 and special needs, and depicts the most economical and efficient
40 system of care commensurate with adequate quality of care, and
41 standards for the utilization of health care facilities and
42 major medical equipment while providing for the reduction or
43 elimination of underutilized, redundant, or inappropriate health
44 care facilities and health care services; and



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

BE IT RESOLVED by the Senate of the Twenty-sixth Legislature of the State of Hawaii, Regular Session of 2011, that the Legislature hereby affirms that:

- (1) The State Health Planning and Development Agency is subject to Hawaii's Sunshine Law, chapter 92, Hawaii Revised Statutes; and
- (2) The State Health Services and Facilities Plan is an agency rule that is subject to chapter 91, Hawaii Revised Statutes, and the preparation of the State Health Services and Facilities Plan or any amendments thereto is required to go through the public hearing process in conformance with the requirements of chapters 91 and 92, Hawaii Revised Statutes; and

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

OFFERED BY: 