

FEB 17 2011

SENATE CONCURRENT RESOLUTION

ESTABLISHING A JOINT LEGISLATIVE COMMITTEE TO INVESTIGATE THE
ADMINISTRATOR OF THE STATE HEALTH PLANNING AND DEVELOPMENT
AGENCY'S COMPLIANCE WITH STATE LAWS IN THE MANAGEMENT OF
THE AGENCY AND HAWAII'S CERTIFICATE OF NEED PROGRAM.

1 WHEREAS, the Constitution of the State of Hawaii requires
2 all public officers to take an oath of office to swear or affirm
3 that they will support and defend the Constitution of the United
4 States, and the Constitution of the State of Hawaii, and
5 faithfully discharge their duties to the best of their ability;
6 and

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8 WHEREAS, chapter 323D, Hawaii Revised Statutes, states that
9 the State Health Planning and Development Agency (SHPDA) shall
10 be headed by an Administrator to be appointed by the Governor
11 pursuant to section 26-34, Hawaii Revised Statutes; and

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13 WHEREAS, under chapter 323D, Hawaii Revised Statutes, SHPDA
14 is responsible for promoting accessibility for all the people of
15 the State to quality health care services at reasonable cost and
16 for conducting studies and investigations as to the causes of
17 health care costs; and

18
19 WHEREAS, the SHPDA Administrator is responsible for the
20 health planning activities of the State and the Certificate of
21 Need Program, which regulates certain aspects of health care
22 facilities and health care services; and

23
24 WHEREAS, in performing the Administrator's job duties, the
25 SHPDA Administrator is required to follow all laws and rules
26 related to SHPDA's functions; and

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28 WHEREAS, chapter 92, Hawaii Revised Statutes, Hawaii's
29 Sunshine Law, expressly declares that it is the policy of the
30 State that the formation and conduct of public policy, including
31 the discussions, deliberations, decisions, and actions of



1 government agencies, shall be conducted as openly as possible;
2 and

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4 WHEREAS, Hawaii's Sunshine Law declares the Legislature's
5 intent that provisions requiring open meetings be liberally
6 construed and the provisions providing exceptions to open
7 meeting requirements be strictly construed against closed
8 meetings requiring that, minus certain exceptions, all
9 discussions, deliberations, decisions, and actions of a board or
10 commission relating to official business must be conducted as
11 part of a public meeting; and

12
13 WHEREAS, the State Office of Information Practices has
14 opined that the SHPDA Administrator has violated the Sunshine
15 Law on numerous occasions; and

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17 WHEREAS, after being informed of such violations, the SHPDA
18 Administrator failed to take any action to remedy the
19 violations; and

20
21 WHEREAS, the SHPDA Administrator chaired a recent public
22 hearing during which the Administrator was ineffective in
23 preventing an attorney from repeatedly and vocally objecting to
24 a State Representative's public testimony being presented to the
25 Committee; and

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27 WHEREAS, SHPDA has not published the State's Annual Health
28 Care Utilization Report since 2007, the same year the SHPDA
29 Administrator took office, and this Report's data is crucial to
30 health care planners and professionals statewide in planning for
31 the provision of health services; and

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33 WHEREAS, the SHPDA Administrator has allowed several of the
34 State's neighbor island Subarea Health Planning Councils (SACs)
35 to lose membership to less than a handful of members; and

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37 WHEREAS, the SACs, by statute, are required to review, seek
38 public input, and make recommendations relating to health
39 planning for the geographical subareas they serve; and

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41 WHEREAS, under the SHPDA Administrator's direction, many of
42 the SACs have not met in almost a year, which has resulted in an
43 inability for SHPDA to fulfill its duties related to neighbor
44 island health care planning functions; and



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2 WHEREAS, the SHPDA Administrator violated statutory law by
3 allowing a health care provider to serve as chairperson of a
4 SAC; and
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6 WHEREAS, Hawaii's health care is a public utility that is
7 too precious to be developed and regulated in a manner that is
8 inconsistent with the Hawaii Revised Statutes and the Hawaii
9 Administrative Rules; and
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11 WHEREAS, section 21-3, Hawaii Revised Statutes, authorizes
12 the establishment of a legislative investigating committee by
13 resolution, and Rule 13 of the 2011-2012 Rules of the Senate
14 allows for the establishment of special committees; now,
15 therefore,
16

17 BE IT RESOLVED by the Senate of the Twenty-sixth
18 Legislature of the State of Hawaii, Regular Session of 2011, the
19 House of Representatives concurring, that a Joint Legislative
20 Committee is established pursuant to chapter 21, Hawaii Revised
21 Statutes, to investigate the Administrator of the State Health
22 Planning and Development Agency for any inconsistent adherence
23 to the Hawaii State Constitution's oath of office, the Hawaii
24 Revised Statutes, and the Hawaii Administrative Rules; and
25

26 BE IT FURTHER RESOLVED that the President of the Senate is
27 requested to appoint the Senate Special Committee on
28 Accountability, pursuant to Rule 20 of the 2011-2012 Rules of
29 the Senate, to investigate the above-mentioned issue; and
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31 BE IT FURTHER RESOLVED that the Speaker of the House of
32 Representatives is requested to appoint, as the Speaker deems
33 appropriate, a House investigative committee with membership
34 similar to the Senate Special Committee on Accountability, to
35 investigate the above-mentioned issue; and
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37 BE IT FURTHER RESOLVED that the Senate Special Committee on
38 Accountability and the House investigative committee as
39 established by the Speaker of the House, are requested to
40 convene a Joint Legislative Committee to investigate the
41 Administrator of the State Health Planning and Development
42 Agency on matters consistent with this Concurrent Resolution by
43 holding public meetings and hearings, receiving all relevant



1 information, and submitting a final report to the Legislature;
2 and

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4 BE IT FURTHER RESOLVED that the Joint Legislative Committee
5 to investigate the SHPDA Administrator shall have every power
6 and function allowed to an investigating committee pursuant to
7 chapter 21, Hawaii Revised Statutes, including without
8 limitation the power to:

- 9
- 10 (1) Adopt rules for the conduct of its proceedings;
 - 11
 - 12 (2) Issue subpoenas requiring the attendance and testimony
13 of witnesses and subpoenas duces tecum requiring the
14 production of books, documents, records, papers, or
15 other evidence in any matter pending before the
16 committee;
 - 17
 - 18 (3) Hold hearings appropriate for the performance of its
19 duties, at such times and places as the committee
20 determines;
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 - 22 (4) Administer oaths and affirmations to witnesses at
23 hearings of the committee;
 - 24
 - 25 (5) Report or certify instances of contempt as provided in
26 section 21-14, Hawaii Revised Statutes;
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 - 28 (6) Determine the means by which a record shall be made of
29 its proceedings in which testimony or other evidence
30 is demanded or adduced;
 - 31
 - 32 (7) Provide for the submission, by a witness's own counsel
33 and counsel for another individual or entity about
34 whom the witness has devoted substantial or important
35 portions of the witness's testimony, of written
36 questions to be asked of the witness by the chair; and
37
 - 38 (8) Exercise all other powers specified under chapter 21,
39 Hawaii Revised Statutes, with respect to investigative
40 committees; and
 - 41

42 BE IT FURTHER RESOLVED that the Senate President and the
43 Speaker of the House of Representatives may, from time to time,
44 instruct the Senate Special Committee on Accountability and the



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1 House Investigative Committee to convene a Joint Legislative
 2 Committee to investigate specific matters that fall within the
 3 scope and jurisdiction of the Joint Legislative Committee, and
 4 the Joint Legislative Committee shall work in cooperation with
 5 the Senate President and the Speaker of the House of
 6 Representatives for the purposes stated in this Concurrent
 7 Resolution; and

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 9 BE IT FURTHER RESOLVED that the Joint Legislative Committee
 10 shall submit its written findings and recommendations to the
 11 Legislature no later than twenty days prior to the convening of
 12 the Regular Session of 2012; and

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 14 BE IT FURTHER RESOLVED that certified copies of this
 15 Concurrent Resolution be transmitted to the Governor, President
 16 of the Senate, Speaker of the House of Representatives, Director
 17 of Health, Attorney General, State Ethics Commissioner, and the
 18 Auditor.

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