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STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
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LATE

March 17, 2019

TO: The Honorable Senator Russell E. Ruderman, Chair
Senate Committee on Human Services

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 747 HD 1 – RELATING TO DISABLED PERSONS**

Hearing: Monday, March 18, 2019, 3:00 p.m.
Conference Room 016, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of this measure and provides comments in regard to Section 2 of the bill. As a state agency, DHS is an equal opportunity agency and supports the employment of individuals with disabilities in integrated settings.

PURPOSE: The purpose of the bill establishes employment first as a state policy with respect to disabled persons. The bill requires state and county agencies to implement this policy in hiring in all programs and services administered or funded by the State or counties. It applies employment first principles to Medicaid home- and community-based (HCBS) waiver programs.

The bill would amend Chapter 78, Hawaii Revised Statutes (HRS), by adding a new section that establishes three new definitions covering "employment first," "integrated setting," and "competitive employment," as well as mandating that state and county agencies ensure that employment first is effectively implemented in hiring and in all programs and services that they administer or fund, including programs and services that help disabled persons obtain employment. The bill would also amend section 346D-4, HRS, by specifying that employment first principles be practiced by waiver program personnel

and in the hiring of staff by contracted agency providers that provide services under HCBS waiver programs.

Section 2 of the bill could be read that the new Section 346D-4(c) would mandate:

1. Either that DHS use employment first principles in the hiring of state employees that work on HCBS waiver programs, and that DHS place requirements in its contracts with providers so that the providers' hire staff in accordance with employment first principles; and/or
2. that state employees and DHS contractors that work on HCBS waiver programs apply employment first principles in the provision of employment services to Medicaid beneficiaries.

DHS notes that additional funding may be needed to carry out the requirements of Section 2 regardless of the reading. To effectuate the proposed section, further planning, resources, and training may be needed to support contractors in implementing employment first principles in working to provide services to Medicaid beneficiaries.

DHS supports the intent of the bill to expand employment opportunities for people with disabilities in competitive integrated employment, and is willing to work with Department of Health, Department of Human Resources Development, Department of Labor and Industrial Relations, the Legislature, and other stakeholders to achieve employment first policies for the state.

Thank you for the opportunity to provide comments on this measure.

HB-747-HD-1

Submitted on: 3/15/2019 5:45:22 PM

Testimony for HMS on 3/18/2019 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Testifying for Hawaii Disability Rights Center	Support	Yes

Comments:

This bill reflects an excellent policy that should be adopted and incorporated into the law. There are a lot of preconceived notions about individuals with disabilities and so people often assume they are less capable than they are. Not so long ago people thought they could not live outside of institutions and now they do, very successfully here in Hawaii. Employment is the next frontier of community integration and if we can overcome the old assumptions, more and more people will be integrated into the work environment, just as they are now integrated in their housing. Employing people with disabilities at a competitive wage is a high national and local priority.

We would be remiss if we failed to point out the lack of appropriate services available in Hawaii. The agencies that are supposed to assist them with employment do not always do so. For example, at the Division of Vocational Rehabilitation no new people are getting services. They recently entered into an Order of Selection so right now nobody is getting VR services unless they have an existing IPE. We also have a DD system that has been getting increasingly restrictive in its eligibility criteria as people who should be receiving DD services are being told they are too high functioning. In theory those who are higher functioning should be good candidates for employment but without VR services or supported employment services it makes it much harder.

In sum, while we wholeheartedly believe this bill represents an excellent policy for the state, if the legislature truly wants to encourage the competitive employment of people with disabilities we believe it should provide more resources to the Division of Vocational Rehabilitation and the Developmental Disabilities Division so that they will serve individuals with disabilities in the manner they were intended to.



STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
1010 RICHARDS STREET, Room 122
HONOLULU, HAWAII 96813
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543
March 18, 2019

The Honorable Senator Russell E. Ruderman, Chair
Senate Committee on Human Services
Twenty-Ninth Legislature
State Capitol
State of Hawai'i
Honolulu, Hawai'i 96813

Dear Senator Ruderman and Members of the Committee:

SUBJECT: HB 747 HD1 - Relating to Disabled Persons

The State Council on Developmental Disabilities **supports the intent of HB 747 HD1**. The bill establishes employment first as a state policy with respect to disabled persons. Requires state and county agencies to implement this policy in hiring and all programs and services administered or funded by the State or counties. It applies employment first principles to Medicaid home-and community-based (HCBS) waiver programs.

The Council belongs to a workgroup of agencies involved with Employment First/Workforce Solutions which consist of representatives from;

- DHS/Division of Vocational Rehabilitation
- Hawaii Disability Rights Center
- DOH/Adult Mental Health Division
- DOH/Developmental Disabilities Division
- DLIR/Work Force Development Division
- UH/Center on Disability Studies
- Office of the Governor
- Department of Community Services | City and County of Honolulu
- U.S. Dept. of Labor –Office of Federal Contract Compliance Programs

We support the intent of the bill to expand employment opportunities for people with disabilities in competitive integrated employment. However, we do not support adding the new Section 346D-4(c). This goes beyond the definition of “employment first” and specifically targets waiver program personnel and in the hiring of staff by contracted agency providers that provide services under HCBS waiver programs. In order to become an Employment First State, we must keep the definition broad to include all individuals with disabilities.

For this reason, we respectfully request SECTION TWO (2) be removed; which is found on page 3, line 3 onward to page 4 line 15.

Thank you for the opportunity to provide recommendations to **support HB 747 HD1**.

Sincerely,

Daintry Bartoldus
Executive Administrator

March 17, 2019

To: Committee on Human Services
Senator Russell Ruderman – Chair
Senator Karl Rhoads – Vice Chair

Date: March 17, 2019

Time: 3:00 p.m.

Place: Conference Room 016

Subj: HB747, HD1 – Relating to Disabled Persons

SUPPORT

Good afternoon Senator's Ruderman and Rhoads and members of the Committee on Human Services and I'm here today as the Legislative Committee Chair, of Hawaii's State Rehabilitation Council to offer this testimony in support of HB747, HD1 which would if passed, establish "employment first" as a state policy with respect to disabled persons. It would also require state and county agencies to implement this policy in hiring and all programs and services administered or funded by the State or counties.

Section 504 of the Rehabilitation Act of 1973, as amended in 2014, by title IV of the Workforce Innovation and Opportunity Act (or *WIOA* for short). What WIOA does is bring together, in strategic coordination, the core programs of Federal investment in skill development:

- Employment and training services for adults, dislocated workers, and youth and Wagner-Peyser employment services administered by the Department of Labor (DOL) through formula grants to states; and
- Adult education and literacy programs and Vocational Rehabilitation state grant programs that assist individuals with disabilities in obtaining employment administered by the Department of Education (DoED).

WIOA also authorizes programs for specific vulnerable populations, including the Job Corps, YouthBuild, Indian and Native Americans, and Migrant and Seasonal Farmworker programs as well as evaluation and multistate projects administered by DOL. In addition, WIOA authorizes other programs administered by DoED and the Department of Health and Human Services.

If administered properly it should provide more resources to both the Division of Vocational Rehabilitation and the Developmental Disabilities Division. Presently individuals with disabilities are under-represented in Hawaii's workforce. Slightly over 18% of our workforce have some type of qualified disability. If you look at just the Developmentally Disabled just less the 2% are employed.

Let's end this imbalance in the employment of disabled individuals. I know we can do better. Thank you for the opportunity to offer testimony on this important measure.

Yours,



George S. Massengale
Legislative Committee Chair
State Rehabilitation Council

Democratic Party of Hawaii, Oahu County Committee
Affirmative Action Committee

Testimony in Support of
HB747 HD1, Relating to Disabled Persons

Committee on Human Services
Senator Russell E. Ruderman, Chair
Senator Karl Rhoads, Vice Chair
Hearing: March 18, 3:00 p.m., Conf Rm 016

Aloha, Chair Ruderman, Vice Chair Rhoads, and Members of the Committee:

Mahalo for bringing this bill to a hearing. This bill helps advance the spirit of equal opportunity employment in settings where we still struggle to give equal opportunities to workers with disabilities.

Hawaii has long been an Employment First state, according to gubernatorial proclamations, including those which relate to Disability Employment Awareness Month. Without implementing legislation, however, this proclamation is primarily aspirational. HB 747 will take steps to implement Hawaii's status as an Employment First state by creating policy to support it.

Hawaii already receives millions of federal dollars through the Disability Employment Initiative (DEI). To help make that money more effective, it would help to have a state Employment First policy that state agencies and programs will follow.

Workers with disabilities, just like anybody else, deserve the opportunity to participate in normal work settings which are integrated in the community. The days of institutionalization should be put as far behind us as possible.

Even when those of us who do not have disabilities may question why they would care about this, if they are asking for this equal treatment for themselves, we should give it to them. It is only right.

If any amendment should be made, please let this bill take effect upon its approval.

Mahalo,

LEIMOMI KHAN
Chair, OCC Affirmative Action Committee

TESTIMONY BEFORE THE SENATE COMMITTEE ON
HUMAN SERVICES

RE: HB 747, HD1 - RELATING TO DISABLED PERSONS

MONDAY, MARCH 18, 2019

LATE

MITZIE HIGA, LEGISLATIVE CHAIR
DEMOCRATIC PARTY OF HAWAII LABOR CAUCUS

Chair Ruderman, and Members of the Committee:

The Democratic Party of Hawaii Labor Caucus **supports HB 747, HD1**, relating to disabled persons.

HB 747, HD1 establishes employment first as a state policy with respect to disabled persons. It requires state and county agencies to implement this policy in hiring and all programs and services administered or funded by the State or counties. It also applies employment first principles to Medicaid home- and community-based waiver program.

While H.B. 747, H.D.1 doesn't repeal the archaic subminimum wage language, it does help build support to finally end subminimum wages in Hawaii and across the country. The Democratic Party of Hawaii Labor Caucus strongly supports the elimination of subminimum wages paid to workers with disabilities.

Hawai'i residents face the highest housing costs in the nation, at more than twice the national average. Minimum wage workers in the islands must complete 116 hours of work per week to afford a modest one-bedroom apartment at fair market value and 139 hours per week to afford a two-bedroom, which amounts to working 20 hours a day with no days off all year. That's impossible for anyone, especially for individuals with disabilities.

It is unacceptable, then, that we allow disabled individuals to be paid a subminimum wage, and happy to support this bill that doesn't allow this program to pay subminimum wages to those workers who are disabled. Many of these individuals were once special education students, who were guaranteed a free and appropriate education under the Individuals with Disabilities Education Act and promised a life filled with opportunities to realize their full potential. Yet, written in 1938, the Fair Labor Standards Act (FLSA) discriminates against people with disabilities by permitting employers to pay disabled workers less than the federal minimum wage. This provision is echoed in HRS §387-9, but is based on the mistaken idea that disabled employees are less productive than their able-bodied colleagues. Many employment programs have come about since the mid-20th Century to assist people with disabilities in acquiring and using essential job skills.

As a result, this bill recognizes equal pay for workers who are disabled, thus the Democratic Party Labor Caucus strongly **supports HB 747, HD1**.

HB-747-HD-1

Submitted on: 3/15/2019 9:04:07 PM

Testimony for HMS on 3/18/2019 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Cory Harden	Individual	Support	No

Comments:

Aloha legislators,

My adult daughter with disabilities is eager to work, but is having great trouble finding a job. This is after losing the job she had for years, when funding for her job coach was stopped. If she could get out of her day program and into a job, she'd stop using taxes and start paying taxes.

mahalo,

Cory Harden

COMMITTEE ON HUMAN SERVICES

Senator Russell E. Ruderman, Chair

Senator Karl Rhoads, Vice Chair

DATE: Monday, March 18, 2019
TIME: 3:00PM
PLACE: Conference Room 016
State Capitol
415 South Beretania Street

SUPPORT FOR HOUSE BILL 747, HOUSE DRAFT 1

Chair Ruderman, Vice Chair Rhoads, and Members of the Committee:

I support HB 747, HD 1. This bill is excellent. It is so excellent that I respectfully request that you amend it to take effect upon approval, basically restoring it to its initial form upon introduction.

This bill is basically implementing legislation, since our state has already been declared, by Governor's proclamation, an Employment First state. We have been receiving millions of federal dollars from the US Department of Labor for the Disability Employment Initiative, which is supposed to help us realize the goals of being an Employment First state. In the past few years, every time the Governor has issued his proclamations about Disability Employment Awareness Month, he has reaffirmed our status as an Employment First state. Without implementing legislation, though, this proclamation and reaffirmation holds no water.

I have personally worked in subminimum-wage sheltered workshops, which are the opposite of the type of employment that Employment First policies promote. To help illustrate what Employment First means, I want to tell you how my own experiences have been the opposite. It is our kuleana to ensure that the keiki with disabilities in the DOE right now do not suffer through the kinds of experiences which I have had in the subminimum-wage sheltered workshops.

When I worked at Lanakila Pacific in the custodial services program, I stripped and waxed floors for \$1.06 per hour. It was backbreaking work, and I did it for 6 hours per day, 5 days per week. I also swept and mopped, vacuumed, and did anything else that a janitor would do. If I did not have a disability, they would not have been allowed to pay me like that, but they did. Part of why these workshops are so dehumanizing is that the bottom-level jobs are specifically set aside for workers with disabilities, and our supervisors were always people without disabilities. As I would be slaving away to strip and wax the floors, the able-bodied person overseeing me had a more comfortable experience. It is not too different from the days when white men holding whips stood over the black slaves in the cotton fields, pushing them to work harder all the time.

This was not competitive employment because my position was specifically for a worker with a disability, and it paid me on a pay schedule that was not eligible for a worker without a disability. It was not integrated because my equals were other workers with disabilities, and our superiors were members of the privileged majority, able-bodied people. Even if we went into a public business to do the custodial work, which some would call “community integration,” our interaction with everyday people was only an illusion of integration.

Employment First principles, to which our Governor has already committed and re-committed our state, already say that we should be in competitive jobs in integrated settings, where able-bodied people act as our equals, not only our overseers. We need to have the opportunity to be promoted to supervisory roles, too, because we will never be equal if we do not have equal opportunities.

Some people may oppose this bill by saying “We are already an Equal Opportunity Employer.” If that is true, then this bill will not affect them at all. If it is not true, however, this bill make them give us equal opportunities.

This bill talks about the Medicaid waiver programs, which basically makes it clear that these principles apply there, too. As someone with a developmental disability myself, I think it is critical that we apply the Employment First principles to those programs, too. If we are not careful, those programs can functionally incarcerate a person and keep them from really achieving their potential. To be clear, we used to have DD folks put in prison-like institutions, and then we said after Olmstead that we would move people into community-based settings, but these are often just smaller replicas of those institutions scattered throughout the community. Just because my neighbors may not have disabilities does not mean that I am truly free to participate in the community.

Mahalo for your time.

Michael Tada