



March 16, 2021

3:00 p.m.

VIA VIDEOCONFERENCE

Conference Room 016

**To: Senate Committee on Government Operations**

**Senator Sharon Y. Moriwaki, Chair**

**Senator Donovan M. Dela Cruz, Vice Chair**

**From: Grassroot Institute of Hawaii**

**Joe Kent, Executive Vice President**

RE: SCR4 & SR4 — REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY OF THE NECESSITY FOR THE CERTIFICATE OF NEED PROCESS

***Comments Only***

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on SCR4 and SR4, which would request a reevaluation of the state’s “certificate of need” process, with specific attention to whether certain facilities and services should be exempt from the CON process and what modifications to the CON process would be beneficial to implement in Hawaii.

This resolution represents an important step toward addressing Hawaii’s ongoing difficulties with health care affordability and access. As noted in the text of the resolution, recent studies suggest that CON laws have the counterproductive effect of limiting health care quality and access in our state. It is time that Hawaii joined those states that have improved health care in their states by reforming the CON process.

According to a 2020 [study](#) from the Mercatus Center, Hawaii has the highest number of certificate-of-need restrictions in the country. The result of those restrictions is to make health care more expensive, limit access to care and lower the overall quality of care.

By [comparing costs and outcomes](#) in states with restrictive certificate-of-need laws and those without, the Mercatus Center determined that CON laws increase annual per capita health care

spending in Hawaii by \$219 and reduce the number of health care facilities in the state by about 14.

The center also estimates that without certificate-of-need laws, deaths from post-surgery complications would decrease by about 5% and the proportion of patients who would rate their hospital highly (at least 9 out of 10) would increase by 4.7%.

A further consideration is that by imposing limitations on the construction of health care facilities, certificates of need have the effect of limiting treatment options for Hawaii residents. The lack of alternatives and options has an effect on everything from care for the homeless to an effective criminal justice response for victims of drug abuse.

Due to certificate-of-need laws, many of Hawaii's problems with health care access and affordability are self-inflicted. By removing these restrictions, we could go a long way toward improving health care in Hawaii.

Thank you for the opportunity to submit our comments.

Sincerely,

Joe Kent  
Executive Vice President,  
Grassroot Institute of Hawaii

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## Written Comments

### SCR4

## REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY OF THE NECESSITY FOR THE CERTIFICATE OF NEED PROCESS UNDER CHAPTER 323D, HAWAII REVISED STATUTES

Charlotte A. Carter-Yamauchi, Director  
Legislative Reference Bureau

Presented to the Senate Committee on Government Operations

Tuesday, March 16, 2021, 3:00 p.m.  
Conference Room 016

Chair Moriwaki and Members of the Committee:

Good afternoon Chair Moriwaki and members of the Committee, my name is Charlotte Carter-Yamauchi, and I am the Director of the Legislative Reference Bureau. Thank you for providing the opportunity to submit written **comments** on S.C.R. No. 4, Requesting the Legislative Reference Bureau to Conduct a Study of the Necessity for the Certificate of Need Process under Chapter 323D, Hawaii Revised Statutes.

The purpose of this measure is to request the Legislative Reference Bureau to conduct a study of the necessity for the certificate of need process under chapter 323D, Hawaii Revised Statutes, with respect to:

- (1) The role of the certificate of need program;
- (2) Whether certain facilities, types of facilities, or services should be exempt from the certificate of need process; and
- (3) Whether modifications made to the certificate of need process in other states may be beneficial to implement in Hawaii.

The measure also requests that the Bureau make appropriate recommendations to eliminate or modify the certificate of need process.

The measure further requests the Bureau to submit a report of its findings and recommendations to the Legislature regarding the certificate of need process, including any proposed legislation, no later than twenty days prior to the convening of the Regular Session of 2022.

The Bureau takes no position on the merits of this measure but submits the following comments for your consideration.

With regard to the study required of the Bureau, we note that the Bureau has no specific expertise regarding healthcare, hospitals, or the certificate of need process, and would therefore not be able to provide the Legislature a definitive report on whether any particular services or facilities should be exempt from the certificate of need process. Accordingly, if the requested study is to include recommendations regarding whether certain facilities, types of facilities, or services should be exempt from the certificate of need process, or whether the State should modify or eliminate the certificate of need process altogether, then the Department of Health, the Statewide Health Coordinating Council, the Subarea Health Planning Councils, and the Review Panel, which all have responsibilities with respect to the certificate of need process, would need to provide necessary information for the purposes of the study, and the Bureau would likely need to contract the services of an entity that specializes in analyzing such information. To this point, we note that the Bureau's current budget does not contain any funding for contracted services.

Moreover, the measure's request for the Bureau to make recommendations for beneficial modifications to the certificate of need process is outside of the Bureau's scope of expertise and would be best undertaken by either another agency or a contracted entity with specific expertise in the subject matter and the requisite professional services to perform an analysis to determine what, if any, changes to the certificate of need process would be appropriate.

If the scope of the requested study is narrowed to focus solely on:

- (1) Surveying modifications made to the certificate of need process in other states; and
- (2) Comparing existing Hawaii certificate of need law with similar laws of other states;

then the Bureau believes that such a study would be manageable, provided that the Bureau's interim workload is not adversely impacted by too many other studies or additional responsibilities, such as conducting, writing, or finalizing other reports, drafting legislation, or

both, for other state agencies, task forces, or working groups that may be requested or required under other legislative measures.

Thank you again for the opportunity to submit written comments.

**LATE**

**COMMITTEE ON GOVERNMENT OPERATIONS**

March 16, 2021  
3:00 P.M.  
Conference Room 016

**TESTIMONY ON S.C.R.4 AND S.R.4  
REQUESTING THE LRB TO CONDUCT A STUDY OF THE NECESSITY FOR  
THE CERTIFICATE OF NEED PROCESS**

**By**

**Patrick Boland**

Good afternoon Chair Moriwaki and members of the Government Operations Committee. I am testifying in opposition to these resolutions and ask that they be held.

I am Patrick Boland. Twenty years ago I retired from the State Health Planning and Development Agency (SHPDA) after 32 years of service with that Agency and other programs in the State Department of Health. Most of that time I managed the Certificate of Need (CON) program.

The purpose of SHPDA is “to promote accessibility for all the people of the State to quality health care services at reasonable cost. (HRS323D-1). CON is an important tool in the pursuit of this purpose. As the resolutions point out, 38 states maintain some sort of CON program.

CON is frequently criticized by those who believe various providers of health care are businesses like any other and should be free to operate without any government restraints. The resolutions cite the criticism that CON hampers “the efficient performance of health care markets.” Health care is not a market like any other. There is a large body of literature to refute this position. Indeed, the Legislative Auditor did a major study of the Agency some years ago, recommending only minor changes. Further studies are redundant.

The language of the resolutions is not objective. It states several “criticisms” in such way as to suggest that these criticisms are facts, not opinions. It asks the LRB for “recommendations to eliminate or modify the CON process,” as if the conclusion to eliminate or modify has already been made.

I urge you to hold these resolutions..

Thank you for the opportunity to submit testimony.

**LATE**

TESTIMONY:

**SCR4**

Requesting the Legislative Reference Bureaus to  
Conduct a Study of the Necessity for the Certificate of Need Process  
Under Chapter 323D, Hawaii Revised Statutes

Good afternoon Chair Moriwaki, Vice Chair Dela Cruz and Members of the Senate Committee on Government Operations. My name is Marilyn A. Matsunaga and I served as the SHPDA Administrator from 1995 to 2003. The Certificate of Need (CON) program resides within this state agency.

I respectfully ask that you hold this resolution in Committee.

The Certificate of Need program in Hawaii has a very different history than the rest of the nation. While it is true that there was a federal mandate, Hawaii's program also is the outgrowth of an immense priority put on state planning in all sectors in the 1970's.

More notably, the same year SHPDA and its Certificate of Need program were established, the state also established the Prepaid Health Care Act which made Hawaii the one and only state in the nation to have employer mandated healthcare coverage. This is notable because it impacts the ability of the buyer or demand-side of healthcare.

Taken together, the Prepaid Health Care Act and Certificate of Need balance each other. One regulates health payors and other regulates health providers. This unique dynamic we have in Hawaii makes it impossible to compare its healthcare Certificate of Need program to others in the United States.

Please note, the Certificate of Need program is not only about major construction and capital expenditures. This vital program regulates the healthcare industry to ensure the public is protected and that even underserved areas and groups have access to health services. The Certificate of Need program reviews an applicant's ability to work with the healthcare system, that the applicant will provide access to all persons regardless of ability to pay, that the applicant has the financial and human resources available to provide good quality care (and are not carpetbaggers seeking to make a quick profit though lacking the resources to sustain patient care).

The Certificate of Need program ensures that plans for one of Hawaii's largest industries is done as a "system" and not in disassociative fragments. The Certificate program gives SHPDA's planning functions a real-world tool for serving the public's interests. Its list of regulated services and facilities are the result of very careful and specialized healthcare expertise and knowledge.

Over the years, studies ad nauseum have been made about the Certificate of Need program in Hawaii. No more are needed. If there are improvements to be made, then SHPDA already has the ability to do so within its existing duties.

Thank you for this opportunity to provide testimony.