

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Consumer Protection & Commerce

From: Cheryl Kakazu Park, Director

Date: February 10, 2022, 2:00 p.m.
State Capitol, Conference Room 415 and Via Videoconference

Re: Testimony on H.B. No. 1579, H.D. 1
Relating to the Department of Health

Thank you for the opportunity to submit testimony on this bill, which would extend the deadline for transfer of the Oahu Regional Health Care System to the Department of Health. The Office of Information Practices (OIP) takes no position on the substance of this bill, but **offers comments and a technical amendment regarding the exemption of the Oahu Regional Health Care Transition Working Group from chapter 92, part I of which is the Sunshine Law.**

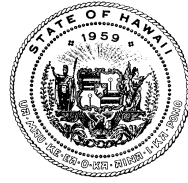
The Oahu Regional Health Care Transition Working Group is an existing group that has not previously been exempted from the Sunshine Law, part I of chapter 92, HRS. The group is charged with developing a plan and framework for a transition that is of general interest to Oahu residents, and the proposed exemption would cut off access to this policymaking process for the public interested in how the transition is being managed. The bill as introduced was vague about why the exemption was proposed, but the H.D. 1 version of the bill was amended to add a reason: “[t]o protect patient privacy and ensure a fair procurement process by maintaining the confidentiality of prospective bidders[.]” However, **OIP notes**

that the goals of protecting patient privacy and maintaining confidentiality for prospective bidders can be achieved by allowing the group to discuss those matters in an executive session, without the drastic step of fully exempting the group from the Sunshine Law. OIP also notes that the Sunshine Law is only part I of chapter 92, and the rest of the chapter includes provisions addressing an assortment of topics including quorum, authorized copy charges for government records, and neighborhood boards, so as a technical matter, an exemption from the Sunshine Law should be an exemption from part I of chapter 92 rather than from chapter 92 as a whole.

To allow the group to maintain confidentiality for patient information and information about prospective bidders, **OIP recommends that proposed subsection (h) at bill page 19, lines 14-17, be replaced with the following:**

“(h) The working group may hold an executive session following the procedures set out in section 92-4, HRS, to discuss individually identifiable information that could affect patient privacy or information that could identify prospective bidders.”

Thank you for considering OIP’s testimony and suggested amendment.



STATE OF HAWAII
DEPARTMENT OF HEALTH
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Testimony COMMENTING on H.B. 1579 H.D. 1
RELATING TO THE DEPARTMENT OF HEALTH

REPRESENTATIVE AARON LING JOHANSON, CHAIR
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Hearing Date: 2/10/2022

Hearing Time: 2:00 p.m.

1 **Department Position:** The Department of Health (“Department”) agrees in concept with this
2 measure and offers the following comments.

3 **Department Testimony:** As specified in Act 212, SLH 2021, the Department commenced the
4 transition of the Oahu Regional Health Care System, a part of the Hawaii Health Systems
5 Corporation, to the Department. The transition includes the transition of the Oahu Region’s
6 property, including the Leahi Hospital and Maluhia facilities, employees, funding and all other
7 things necessary to the operation of the Oahu Region. This report was submitted to the
8 Legislature on December 30, 2021.

9 The report identifies the transition plans and associated costs of incorporating the Oahu
10 Region into the Department. It also includes the 5-year operating budget pro-forma and the
11 10-year Capital Improvement Plan.

12 The report details the complexity of the transition, the associated cost and estimated
13 timeline. The transition would cost an estimated \$10.3 million with an annual post-transition
14 cost of \$5 million. At best, the timeframe would take us to 12/31/2024 for completion. Thus,
15 we would request the committee to extend the transition date to 12/31/2025.

16 The report also identifies an alternative structure that would enable the Oahu Region to
17 maintain a quasi-association with the Department, much as HHSC currently has with the

1 Department. It could likely be implemented by the date listed in H.B. 1579 and would cost
2 approximately \$1.7 million for transition with an annual post-transition cost of \$1.36 million
3 while achieving the same goal.

4 The Department seeks further clarification from the Legislature regarding the preferred
5 structure.

6 **Offered Amendments:** We respectfully request the Legislature extend the transition date of
7 the Oahu Regional Health Care System to 12/31/2025.

8 Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

GLORIA CHANG
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
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ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
ON
HOUSE BILL NO. 1579, H.D. 1

February 10, 2022
2:00 p.m.
Room 329 and Videoconference

RELATING TO THE DEPARTMENT OF HEALTH

The Department of Budget and Finance (B&F) offers comments on this bill.

House Bill No. 1579, H.D. 1, amends Act 212, SLH 2021, by extending the deadline by which the transfer of the O'ahu Regional Health Care System (O'ahu Region) from the Hawai'i Health Systems Corporation (HHSC) to the Department of Health (DOH) shall take place; clarifies that during the transition period, O'ahu Region's operational budget requests shall be submitted with HHSC's budget requests and any appropriations for O'ahu Region shall be designated under program ID HTH 215; requires the transition working group to submit an additional report to the Legislature no later than 20 days prior to the regular session of 2023; exempts the working group for the transition of O'ahu Region from Chapter 92, HRS; and appropriates an undetermined sum of general funds for FY 23 for the creation of a comprehensive business plan and transfer framework.

B&F defers to DOH, HHSC, and O'ahu Region on the potential operational impacts of this measure to their respective agencies. The measure requires that the transition of O'ahu Region into DOH be completed by December 31, 2023. B&F notes,

however, that the December 31st deadline takes place in the middle of a fiscal year and recommends that the completion date be amended to coincide with the change of the fiscal year to allow for appropriate budget adjustments to effectuate the transfer of O'ahu Region from HHSC to DOH.

Finally, B&F further notes that, with respect to the general fund appropriation in this bill, the federal Coronavirus Response and Relief Supplemental Appropriations Act requires that states receiving Elementary and Secondary School Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

Further, the federal American Rescue Plan (ARP) Act requires that states receiving ARP ESSER funds must maintain state support for:

- Elementary and secondary education in FY 22 and FY 23 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 and FY 23 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

The U.S. Department of Education has issued rules governing how these maintenance of effort (MOE) requirements are to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with these ESSER MOE requirements.

Thank you for your consideration of our comments.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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House Committee on Consumer Protection & Commerce
Honorable Aaron Ling Johanson, Chair
Honorable Lisa Kitagawa, Vice Chair

RE: Testimony Commenting on H.B. 1579 H.D. 1,
Relating to the Department of Health
Hearing: February 10, 2022 at 2:00 p.m.

Dear Chair and Members of the Committee:

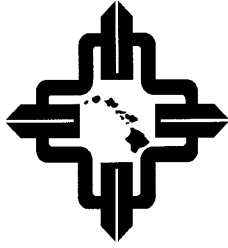
My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote governmental transparency. Thank you for the opportunity to submit testimony **commenting on the Sunshine Law exemption in H.B. 1579 H.D. 1.**

The bill proposes to add a Sunshine Law exemption for the working group previously created to transition the Oahu regional health care system into the Department of Health. The stated purpose of the exemption is “[t]o protect patient privacy and ensure a fair procurement process by maintaining the confidentiality of prospective bidders.”

For those stated purposes, **the Sunshine Law exemption is unnecessary.** The Sunshine Law already provides an exception to its open meeting provisions for discussions that require “the consideration of information that must be kept confidential pursuant to a state or federal law.” HRS § 92-5(a)(8). In addition to numerous Hawai`i Supreme Court cases that recognize the privacy protections for medical records under the Hawai`i State Constitution, patient records maintained by health care providers such as the Oahu regional health care system are confidential under the federal Health Insurance Portability and Accountability Act (HIPAA). And as it concerns procurement, HRS Chapter 103D provides for confidentiality of procurement information when necessary to ensure a fair process.

Even if the exemption for the working group were necessary, **the Sunshine Law is overly broad for its stated purpose.** The working group is doing far more than reviewing patient files and contractor bids. The Legislature tasked the working group with preparing plans and budgets, drafting proposed legislation, identifying assets and liabilities, and developing policies and procedures. There is no reason that such work cannot be conducted under the Sunshine Law with limited closed sessions when necessary to discuss patient privacy or confidential procurement information.

Thank you again for the opportunity to testify to provide comments on the Sunshine Law exemption in H.B. 1579 H.D. 1.



**OAHU REGION
HAWAII HEALTH SYSTEMS CORPORATION**

**Committee on Consumer Protection and Commerce
Representative Aaron Ling Johanson, Chair
Representative Lisa Kitagawa, Vice-Chair**

February 10, 2022, 2:00 P.M.
(Via Video Conference)
Conference Room 329
Hawaii State Capitol

Sean Sanada
Oahu Region Chief Administrative Officer
Hawaii Health Systems Corporation
Re: Testimony in Support of Intent and Comments

HB 1579, HD 1, Relating to the Department of Health

Chair Johanson, Vice-Chair Kitagawa, and Members of the Committee on Consumer Protection and Commerce:

Aloha! We begin by thanking you, your colleagues, and your predecessors on this Committee for your support and guidance as we have tried our best to navigate the many challenges posed by COVID-19 while, at the same time, developing important plans for the future of our facilities. Needless to say, we have placed a high value on the input provided regarding our current operations and strategic projects including the transition of our facilities into the Department of Health (“DOH”).

HB 1579 extends the date of the transfer of the Oahu Regional Health Care System to the Department of Health by one (1) year. For the reasons stated below, the Oahu Region supports the extension but respectfully requests that the new completion date be extended until December 31, 2025. We also offer comments in regard to the transition.

As previously expressed in our testimony in support of Act 212, SLH 2021, we maintain that the Oahu Region is distinctly different from the other regions within the Hawaii Health System Corporation (HHSC). While the facilities in these regions generally serve as the primary acute care providers for their respective communities, the Oahu Region’s facilities differ in that they almost exclusively provide safety-net, long-term care and adult-day health services to patients who are unable to find much-needed care in a private setting. Most of the patients admitted to Leahi Hospital and Maluhia are destitute and rely on Medicaid to fund their care. Private facilities will not admit them since their care tends to require a significant amount of resources and have low corresponding Medicaid reimbursement rates. That being said, we believe that the Oahu Region could operate more independently and efficiently if our facilities are separated

from HHSC and are no longer required to contend with the differently situated acute care facilities in the other regions for much needed resources.

Although HHSC and the regions were originally established and designed to be run like a corporate health care venture, the Oahu Region operates more as a necessary social service than a health care business. We have little opportunity to increase revenues, yet our services are vital to the community. This will be especially true in the very near future given recent projections by the State of Hawaii, Department of Business, Economic Development and Tourism that the island of Oahu will require an additional 1,100 long-term care beds in the next 5-10 years alone. Likewise, our facilities are anticipated to take on even more importance as we work to expand our capacity for mental health and substance use treatment.

In accordance with Act 212, SLH 2021, the Oahu Region and DOH duly began the process of transitioning the Oahu Region into the DOH upon its passage. This process commenced with the procurement of a transition consultant by the DOH and the establishment of the statutory "working group." As you are aware, the working group was comprised of directors, supervisors, and staff from all jurisdictions and departments that would be impacted by the transition. Collectively and individually, working group members assessed the steps necessary in their subject matter areas (e.g., HR, procurement, IT, etc.), including timelines, to effectuate and maintain the transition. They also identified the corresponding resources required and reported them to our consultant to assist in the preparation of the 5-year pro forma operating and budget plan mandated by Act 212, SLH 2021.

Under the 5-year operating budget pro forma – which was completed and presented to the legislature in December 2021 – the department heads and supervisors in both jurisdictions have determined that an additional 2 1/2 – 3 years are reasonably required to successfully complete the Oahu Region's transition out of HHSC and into the DOH. Arguably, this timeline may need to be further extended with the proposed transition (pursuant to HB 1893) of the Daniel K. Akaka State Veterans Home into the Oahu Region and then to the DOH. It is for these reasons that we are requesting an extension of the transition deadline to December 31, 2025.

Alternate Option to Transition

Another item that must be highlighted from the 5-year operating budget pro forma is the cost of the transition. Briefly stated, based on information discerned during the working group's interactions/discussions, it was determined that the DOH and supporting executive branch departments will need roughly fifty-one (51) additional FTEs in order to effectuate the transition and thereafter maintain the Oahu Region's operations. Combined with the costs of administrative expenses and supplies, our consultants concluded that the total amount necessary to complete the transition is approximately \$4.1 million and the estimated costs to sustain the Oahu Region under the DOH is an additional \$6.6 million per year.

Having recognized the extensive additional costs necessary to transition the Oahu Region out of HHSC and into the DOH, our consultants revisited the original intent of the transition to explore whether there was another viable alternative available for us to realize the same goals.

From the beginning, the DOH and Oahu Region sought this transition with mutually beneficial aims. The DOH was in great need of new infrastructure and resources that could be fabricated

to house and treat lower acuity patients from the Hawaii State Hospital. This would grant the Hawaii State Hospital and other DOH facilities more space for higher acuity admissions. For the Oahu Region, separating from HHSC would make our facilities more independent and efficient by freeing us from having to contend with the distinctly different acute facilities in the other regions for much needed resources. Additionally, we believed that, as part of the DOH, it would be easier for us to utilize DOH funding sources to expand our capacity for mental health and substance use treatment.

With the foregoing in mind, our consultants concluded that another option existed whereby the DOH and Oahu Region could very likely obtain the same goals at both a significantly reduced cost and in a shorter time frame. Specifically, it was recommended that the Oahu Region separate from HHSC and reestablish itself as the Oahu Regional Long-Term Care Health System. Under this framework – which could be accomplished statutorily – the Oahu Region would operate autonomously from HHSC but, like HHSC, be administratively attached strictly for budgetary purposes to the DOH.

As a new attached/quasi agency, the Oahu Region would maintain all of the rights and benefits it currently enjoys – including, but not limited to, its own Board of Directors, procurement exemptions, classification system, and ability to set up and run separate business/non-profit entities (including mental health and substance use ventures). Moreover, if the Oahu Region and HHSC agree to contract for continued IT and vendor management services (as opposed to hiring numerous FTEs for similar support under the DOH), the Oahu Region could keep administrative costs low and still avoid the challenges it has faced being part of a corporation designed more appropriately for acute facilities.

In terms of costs, the consultants tabulated the total amount necessary to complete this alternate transition to be approximately \$1.7 million and the estimated annual maintenance to be roughly \$1.35 million.

While we anticipate that more edits may become necessary to address unforeseen legal and logistical issues as HB 1579 moves forward, we will continue to support the intent of this measure and greatly appreciate the opportunity to provide comments in regard to the transition.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Thirty-First Legislature, State of Hawaii
House of Representatives
Committee on Consumer Protection & Commerce

Testimony by
Hawaii Government Employees Association

February 10, 2022

H.B. 1579, H.D. 1 – RELATING TO THE DEPARTMENT OF HEALTH

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the intent of H.B. 1579, H.D. 1 which extends the deadline for the transfer of the Oahu Regional Health Care System from the Hawaii Health Systems Corporation to the Department of Health.

We continue to support the transition of the Oahu Regional Health Care System to the Department of Health as the best path forward and appreciate the opportunity to participate on the working group on behalf of our members. With the understanding that more time and additional resources are needed to ensure a smooth and successful transition of the Oahu Region facilities and its employees to the Department of Health, we support a reasonable transition extension.

Thank you for the opportunity to provide testimony on this matter.

Respectfully submitted,

Randy Perreira
Executive Director



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Quality Healthcare For All"

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Representative Aaron Johanson, Chair
Representative Lisa Kitagawa, Vice Chair

February 10, 2021
2:00 pm
Hawaii State Capitol
Via Videoconference

Testimony Providing Comments on H.B. 1579, H.D.1
RELATING TO THE DEPARTMENT OF HEALTH

Extends the deadline by which the transfer of the Oahu regional health care system from the Hawaii Health Systems Corporation to the Department of Health shall take place. Sets the manner by which the Oahu Regional Health Care System should request operational funding during the transitional period. Requires a report to the legislature prior to the regular session of 2023. Exempts the working group from Chapter 92, HRS. Appropriates moneys.
Effective 7/1/2060.

Linda Rosen, M.D., M.P.H.
President & Chief Executive Officer
Hawaii Health Systems Corporation

On behalf of the Hawaii Health Systems Corporation (HHSC) Corporate Board of Directors, thank you for the opportunity to present **comments** on **H.B. 1579, HD1**.

Per section §323F-7, HRS, each regional system board of HHSC is responsible for developing its own budget without interference from the corporation. While historically the Legislature has combined the appropriations for all of HHSC regions under HTH 212, the other HHSC regions have no objections to the establishment of a new organizational code, HTH 215, for the Oahu Region alone.

Thank you for the opportunity to provide testimony on this matter.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Consumer Protection & Commerce
February 10, 2022 at 2:00 p.m.

by
Kalbert K. Young
Vice President for Budget and Finance/Chief Financial Officer
University of Hawai'i System

HB 1579 HD1 – RELATING TO THE DEPARTMENT OF HEALTH

Chair Johanson, Vice Chair Kitagawa, and members of the committee:

Thank you for the opportunity to present testimony today. The University of Hawai'i (UH) supports House Bill (HB) No. 1579 HD1, Relating to the Department of Health (DOH). This bill extends the provision of time for the DOH to implement the transition of operations and assets for the O'ahu-based functions of Hawai'i Health Systems Corporation (HHSC) into the DOH. As with the bill towards the eventual Act 212, Session Laws of Hawai'i (SLH) 2021, the UH does not have any objections to the concept proposed in the bill. UH recognizes that such a transition must entail many issues to resolve whereby affording the department more time would be extremely valuable.

I will re-state UH's position from last year for the record. The UH has a number of academic programs throughout its various campuses of relevance to the health care industry. The background of the approach proposed in the bill has considered that UH could partner and participate with the DOH on repositioning services offered by HHSC and/or redevelopment opportunities at Lē'ahi in advancing possible health services on the site. The UH does not object with this concept and believes we can be a very good partner in those regards.

The UH is the recorded landowner of the parcel where Lē'ahi Hospital is located. The UH also owns other parcels adjacent or near to Lē'ahi Hospital and Kapi'olani Community College. Under the current arrangement, UH has leased the Lē'ahi parcel to HHSC at no cost for decades. While the UH would not intend to displace HHSC from the Lē'ahi Hospital property, if HHSC were to no longer use the property, the UH would expect that any new use would be consistent and compatible with our nearby campus and properties. Additionally, the UH's strategic objective for real estate expects that non-UH use of real property will be to increase lease revenue, increase utility of the property for the UH, and/or increase broader academic opportunities. At this point, we are content that Act 212, SLH 2021, adequately recognizes and sufficiently accounts for UH's interest in these regards. The UH would welcome the opportunity to work with the DOH on their transition of O'ahu-based health functions of HHSC.

Thank you for this opportunity to testify.