

FEB 17 2011

SENATE RESOLUTION

ESTABLISHING A SENATE SPECIAL 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

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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

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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
32 government agencies, shall be conducted as openly as possible;
33 and



1 WHEREAS, Hawaii's Sunshine Law declares the Legislature's
2 intent that provisions requiring open meetings be liberally
3 construed and the provisions providing exceptions to open
4 meeting requirements be strictly construed against closed
5 meetings requiring that, minus certain exceptions, all
6 discussions, deliberations, decisions, and actions of a board or
7 commission relating to official business must be conducted as
8 part of a public meeting; and
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10 WHEREAS, the State Office of Information Practices has
11 opined that the SHPDA Administrator has violated the Sunshine
12 Law on numerous occasions; and
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14 WHEREAS, after being informed of such violations, the SHPDA
15 Administrator failed to take any action to remedy the
16 violations; and
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18 WHEREAS, the SHPDA Administrator chaired a recent public
19 hearing during which the Administrator was ineffective in
20 preventing an attorney from repeatedly and vocally objecting to
21 a State Representative's public testimony being presented to the
22 Committee; and
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24 WHEREAS, SHPDA has not published the State's Annual Health
25 Care Utilization Report since 2007, the same year the SHPDA
26 Administrator took office, and this Report's data is crucial to
27 health care planners and professionals statewide in planning for
28 the provision of health services; and
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30 WHEREAS, the SHPDA Administrator has allowed several of the
31 State's neighbor island Subarea Health Planning Councils (SACs)
32 to lose membership to less than a handful of members; and
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34 WHEREAS, the SACs, by statute, are required to review, seek
35 public input, and make recommendations relating to health
36 planning for the geographical subareas they serve; and
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38 WHEREAS, under the SHPDA Administrator's direction, many of
39 the SACs have not met in almost a year, which has resulted in an
40 inability for SHPDA to fulfill its duties related to neighbor
41 island health care planning functions; and
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1 WHEREAS, the SHPDA Administrator violated statutory law by
2 allowing a health care provider to serve as chairperson of a
3 SAC; and
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5 WHEREAS, Hawaii's health care is a public utility that is
6 too precious for it to be developed and regulated in a manner
7 that is inconsistent with the Hawaii Revised Statutes and the
8 Hawaii Administrative Rules; and
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10 WHEREAS, section 21-3, Hawaii Revised Statutes, authorizes
11 the establishment of a legislative investigating committee by
12 resolution, and Rule 13 of the 2011-2012 Rules of the Senate
13 allows for the establishment of special committees; now,
14 therefore,
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16 BE IT RESOLVED by the Senate of the Twenty-sixth
17 Legislature of the State of Hawaii, Regular Session of 2011,
18 that a Senate Special Committee on Accountability is established
19 pursuant to chapter 21, Hawaii Revised Statutes, to investigate
20 the Administrator of the State Health Planning and Development
21 Agency for any inconsistent adherence to the Hawaii State
22 Constitution's oath of office, the Hawaii Revised Statutes, and
23 the Hawaii Administrative Rules; and
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25 BE IT FURTHER RESOLVED that the President of the Senate is
26 requested to appoint the Senate's Special Committee on
27 Accountability, pursuant to Rule 20 of the 2011-2012 Rules of
28 the Senate, to investigate the above-mentioned issues; and
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30 BE IT FURTHER RESOLVED that the subject matter and scope of
31 the Special Committee on Accountability shall be to investigate
32 the SHPDA Administrator on matters consistent with this
33 Resolution by holding public meetings and hearings, receiving
34 all relevant information, and submitting a final report to the
35 Legislature; and
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37 BE IT FURTHER RESOLVED that the Special Committee on
38 Accountability to investigate the SHPDA Administrator shall have
39 every power and function allowed to an investigating committee
40 pursuant to chapter 21, Hawaii Revised Statutes, including
41 without limitation the power to:
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43 (1) Adopt rules for the conduct of its proceedings;
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- (2) Issue subpoenas requiring the attendance and testimony of witnesses and subpoenas duces tecum requiring the production of books, documents, records, papers, or other evidence in any matter pending before the committee;
- (3) Hold hearings appropriate for the performance of its duties, at such times and places as the committee determines;
- (4) Administer oaths and affirmations to witnesses at hearings of the committee;
- (5) Report or certify instances of contempt as provided in section 21-14, Hawaii Revised Statutes;
- (6) Determine the means by which a record shall be made of its proceedings in which testimony or other evidence is demanded or adduced;
- (7) Provide for the submission, by a witness's own counsel and counsel for another individual or entity about whom the witness has devoted substantial or important portions of the witness's testimony, of written questions to be asked of the witness by the chair; and
- (8) Exercise all other powers specified under chapter 21, Hawaii Revised Statutes, with respect to investigative committees; and

BE IT FURTHER RESOLVED that the Senate President may, from time to time, refer to the Special Committee on Accountability specific matters that fall within the scope of the committee's jurisdiction, and the committee shall work in cooperation with the Senate President for the purposes stated in this Resolution; and

BE IT FURTHER RESOLVED that the Special Committee on Accountability shall submit its written findings and recommendations to the Legislature no later than twenty days prior to the convening of the Regular Session of 2012; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Governor, President of the



S.R. NO. 12

1 Senate, Director of Health, Attorney General, State Ethics
2 Commissioner, and the Auditor.
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