TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013

ON THE FOLLOWING MEASURE:
H.B. NO. 401, H.D. 1, RELATING TO SOCIAL SERVICES.

BEFORE THE:
HOUSE COMMITTEE ON FINANCE

DATE: Thursday, February 21, 2013 **TIME:** 11:00 a.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): David M. Louie, Attorney General, or
Blair Goto, Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill.

The purpose of the bill is to make thirty-eight general fund appropriations of unspecified amounts as special appropriations to fund specific programs and as grants to fund specific organizations pursuant to chapter 42F, Hawaii Revised Statutes (HRS). These appropriations are for fiscal years 2013-2014 and 2014-2015 and include various expending agencies.

We provide comments on three areas of legal concern with this bill: (1) a limited liability company is not an eligible recipient of a chapter 42F grant, (2) the appropriation in section 21 appears to duplicate (with one minor change) the appropriation made in section 20, and (3) the full legal names of the chapter 42F grant recipient organizations should be used in four sections to help ensure the legal expenditure of funds.

First, section 8 of the bill on page 4, lines 5-13, makes a chapter 42F, HRS, grant to The Institute for Family Enrichment, LLC. Article VII, section 4, of the Hawaii Constitution provides in pertinent part: "No grant of public money . . . shall be made except pursuant to standards provided by law." Chapter 42F, HRS, provides the legal standards for grants and subsidies that are required by article VII, section 4, of the Constitution. Section 42F-103(b), HRS, allows a grant or subsidy to be made to an organization "only if the organization . . . [i]s incorporated under the laws of the State." Although it is registered with the DCCA as a domestic limited liability company, The Institute for Family Enrichment, LLC (TIFFE), is not "incorporated" under the laws of Hawaii. Under Hawaii law, limited liability companies (LLCs) are "organized" by the filing "articles of organization" with the Director of the Department of

Commerce and Consumer Affairs. HRS § 428-202 (2004) (Uniform Limited Liability Company Act). The use of the terms "organized" and "articles of organization" throughout chapter 428, HRS, is in marked contrast with the use of the terms "incorporated" and "articles of incorporation" throughout chapters 414 (Hawaii Business Corporation Act) and 414D (Hawaii Nonprofit Corporation Act). See, e.g., HRS §§ 414-3, 414-33, 414D-14, and 414D-33, (2004) respectively.

Moreover, the National Conference of Commissioners on Uniform State Laws (also known as the Uniform Law Commission), has described limited liability companies as follows:

> Limited liability companies (LLCs) are a relatively new form of unincorporated business organization providing corporate-style limited liability to its owners; LLCs began to be widely used after Revenue Ruling 88-76 upheld their taxation as partnerships. Every state has enacted some sort of LLC legislation and LLC filings approach and in many states outnumber the number of new corporate filings on an annual basis. The existing state LLC statutes, however, are far from uniform and many have been amended on a patchwork basis and have not kept up with the LLC cases and other legal developments.

Why States Should Adopt Revised Uniform Limited Liability Company Act (Uniform Law Commission website, http://uniformlaws.org/Narrative.aspx?title=Why%20States%20Should%20Adopt%20RULLCA) (Emphasis added).

Based on the use of the terms "organized" and "articles of organization," the Uniform Law Commission description, and the Internal Revenue Service treatment of LLCs for tax purposes as partnerships instead of corporations, we conclude that LLCs are not "incorporated under the laws of the State" within the meaning of section 42F-103(b), HRS. Because TIFFE, the recipient of this grant, is an organization that is not incorporated under the laws of the State, it does not meet the qualifying standards provided by law. As a result, the appropriation to TIFFE that is made in section 8 of the bill violates the State Constitution and may not legally be expended. Accordingly, we recommend that the section 8 appropriation to TIFFE be deleted and the sections of the bill be renumbered.

Second, we note that section 21 of the bill on page 9, lines 6-14, appears to be a duplicate (without the okina) of the chapter 42F appropriation to the Girl Scouts of Hawai'i that is made in section 20 of the bill. Both appropriations are made to support "teen pregnancy prevention and positive youth development." We recommend that the duplicate appropriation in section 21 of the bill be deleted and the sections of the bill be renumbered accordingly.

Last, we recommend that the full and correct legal names of the organizations that are to receive 42F grant appropriations should be used in section 1, line 6 and section 2, line 15 on page 1: "IHS, the Institute for Human Services, Inc."; section 25, page 11, line 3: "Kokua Kalihi Valley (Comprehensive Family Services)"; and section 36, page 15, line 15: "Women in Need (WIN)". We have included the full legal names of the organizations in quotation marks above. Use of the full legal names of the organizations that will receive chapter 42F grant appropriations will help to ensure that the funds may be legally expended.

We respectfully ask the Committee to make the recommended amendments before passing this bill.

NEIL ABERCROMBIE
GOVERNOR

PATRICIA McMANAMAN
DIRECTOR

BARBARA A. YAMASHITA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 21, 2013

MEMORANDUM

TO: The Honorable Sylvia Luke, Chair
House Committee on Finance

FROM: Patricia McManaman, Director

SUBJECT: **H.B. 401, H.D. 1 - RELATING TO SOCIAL SERVICES**

Hearing: Thursday, February 21, 2013; 11:00 a.m.
Conference Room 308, State Capitol

PURPOSE: The purpose of H.B. 401, H.D. 1, is to appropriate general funds for the social services programs formerly funded under the Temporary Assistance for Needy Families (TANF) Program.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of this bill, but we are concerned about the cost implications and the adverse impacts on the priorities in the Executive Biennium Budget.

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

HAWAII YOUTH SERVICES NETWORK

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February 19, 2013

To: Representative Sylvia Luke, Chair,
And members of the Committee on Finance

Testimony in Support of HB 401 HD1 Relating to Social Services

Hawaii Youth Services Network (HYSN), a statewide coalition of youth-serving organizations, supports HB 401 HD1 Relating to Social Services.

Communities benefit when young people and their families have the resources needed to be safe, healthy, and ready to succeed. The youth development, teen pregnancy prevention, and family strengthening programs that were formerly funded with Temporary Assistance to Needy Families (TANF) monies provided positive resources and opportunities that prevent problems such as substance abuse, child abuse and neglect, unplanned pregnancy, and juvenile crime.

These programs were meeting their goals and demonstrating positive outcomes for the participating children, adolescents, and families. Funding was lost solely due to the serious economic challenges faced by the State of Hawaii in 2009.

This is the time to restore effective prevention and early intervention services and enable Hawaii's families to grow and thrive together.

Thank you for this opportunity to testify.

Sincerely,

Judith F. Clark

Judith F. Clark, MPH
Executive Director
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Moloka'i Community Service Council

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February 20, 2013

COMMITTEE ON FINANCE
Representative Sylvia Luke, Chair
Rep. Scott Y. Nishimoto, Vice Chair
Rep. Aaron Ling Johanson, Vice Chair

State Capitol
415 S. Beretania St.
Honolulu, Hawai'i 96813

Re: Testimony in Support of HB 401

Aloha Chair Luke,

This letter is submitted in support of House Bill 401, which would provide supplementary funding for a broad variety of critical human service programs throughout Hawai'i.

Our organization, the Moloka'i Community Service Council, runs the island's only domestic violence shelter, and the island's only Judiciary-funded anger management program. HB 401 would provide supplemental funding for these services.

During the recession, our shelter and anger management programs suffered budget cuts of almost 50%. We maintained these critical services by cutting operational costs, freezing staff vacancies, and cutting salaries. HB 401 would provide badly-needed help to insure the survival of domestic violence programs for our island, and throughout the state.

Please pass HB 401.

Mahalo,

Karen M. Holt

Karen M. Holt
Executive Director

MOLOKA'I COMMUNITY SERVICE COUNCIL • kukui hele po •

hale `opio kaua'i,

February 19, 2013

TO: Committee on Finance
Representative Sylvia Luke, Chair
Representative Scott Y. Nishimoto, Vice Chair

FROM: LaVerne Bishop, Executive Director
Hale `Opio Kaua'i, Inc.

RE: HB401 Relating to Social Services

HEARING: DATE: February 21, 2013
TIME: 11:00 AM
CONFERENCE ROOM: 308

I urge you to re-direct TANF funds to their broader purpose as prevention tools that reduce the need for direct assistance to needy families.

It is imperative we as a community address the conditions that keep or propel our citizens in poverty. Teen pregnancy, illiteracy, and lack of family cohesion are three areas that can be positively impacted through reinstating funding to programs that have the skills and abilities to change behaviors from dependent to self-sufficient.

By balancing the appropriation of TANF funds across the four purpose areas, we prevent and divert families from needing or relying on direct assistance. Young people learn that they can make healthier lifestyle choices and do have a future beyond that of their family, so the cycle of academic failure, pregnancy and unemployment can be interrupted with the opportunities provided through TANF funding.

Thank you for your consideration.

Sincerely,

LaVerne Bishop

LaVerne Bishop
Executive Director

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