

House of Representatives  
The Twenty-Fifth Legislature  
Regular Session of 2009

Committee on Health

Rep. Ryan I. Yamane, Chair  
Rep. Scott Y. Nishimoto, Vice Chair

DATE: Friday, March 20, 2009  
TIME: 9:00 a.m.  
PLACE: Conference Room 329  
State Capitol  
415 South Beretania Street

**TESTIMONY OF THE UNITED PUBLIC WORKERS,  
AFSCME, LOCAL 646, AFL-CIO ON S.B. 1673, S.D. 2  
RELATING TO THE HAWAII HEALTH SYSTEMS CORPORATION**

My name is Dayton M. Nakanelua and I am the state director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). In behalf of approximately 500 blue collar, non-supervisory employees from bargaining unit 1 and 1,000 institutional and health workers from bargaining unit 10 who are currently employed by the Hawaii Health Systems Corporation (HHSC), the UPW opposes Senate Bill No. 1673, S.D. 2, which in relevant portions amends the provisions for maintenance of services under Section 323F-31, HRS (in Part I, Section 2), seeks to resolve disputes between the department of health and HHSC over past and future liabilities for retirement reimbursements on contributions to the State retirement system (in Part II, Sections 3 through 6), authorizes HHSC to alter existing or new collective bargaining agreements under chapter

89 (in Part IV, Section 11), allows for the formation of a new transitional entity (not a state agency) with authority to transfer public lands and assets (in Part V, Section 15), and broadly grants contracting out authority with "for profit or not for profit entities" (in Part V, Section 17).

First, the UPW opposes the proposed amendment to Section 323F-31, HRS (in Part I, Section 2), because it eliminates legislative oversight regarding the need to maintain direct patient care services throughout the state. When HHSC was created in 1996 its object was "to provide better health care for all the people in the State of Hawaii, including those were served by small rural facilities." See 1996 Hawaii Session Laws Act 262, § 1, at 595. Health care is a basic human right and the existing statute ensures that our elected lawmakers retain the ultimate authority (and responsibility) over any decision which substantially reduces or eliminates direct patient care services at a facility. We request you to retain this provision while our nation engages in a comprehensive review of our health care systems and Congress reforms health care coverage and benefits at the initiation of the Obama administration. Delegating this important legislative function to the HHSC corporate board or the regional boards is inappropriate because neither has been able to formulate a plan to generate additional income to maintain patient care services, and the adverse impacts on patients in need of basic health care are foreseeable (if the provision is adopted). Since the power of the purse rests with the legislative branch that is precisely where the decision to eliminate or reduce patient care should ultimately reside.

Second, we oppose Part II, Sections 3 through 6 of this measure because it undermines the original intent of the Act which created HHSC in 1996. When Act 262 was enacted it was expressly understood that HHSC would serve as "an independent

agency of the State" and would maintain a corporate-wide hospital personnel system subject to chapters 76, 77, and 89. (See 1996 Hawaii Session Laws Act 262, § 2 ("Sec. -7 (9))" at 599). Furthermore, a commitment was made that no employee of the State would suffer any loss of "seniority, prior service credit, vacation, sick leave or other employee benefits or privileges." 1996 Hawaii Session Laws, Act 262, § 20, at 612. To make this possible HHSC assumed the power to set "rates and charges for all services" (See 1996 Hawaii Session Laws Act 262, § 2 ("Sec. 7 (8))", at 559) and to honor the obligations of the division of community hospitals without abrogating the duty of either entity under existing statutes. Section 22 (d) of the enactment stated:

Upon the Transfer date, the corporation shall assume and honor all responsibilities and obligations transferred to it from the division of community hospitals regarding the imposition of rates, rents, fees, and charges for the use of public health facilities pursuant to section 323-70, Hawaii Revised Statutes. In no way shall this Act be construed as allowing either the corporation or the division to abrogate these responsibilities and obligations.  
(Emphasis added).

1996 Hawaii Session Laws Act 262, (Sec. 22 (d)) at 612-63. The reference to "rates, rents, fees, and charges" pertain to the obligation of the Department of Health and HHSC under Section 88-125 (a), HRS, to reimburse the State of Hawaii for monthly retirement contributions made for all state employees under Section 88-124, HRS, from the revenues they generate through the use of public facilities. We believe there are available procedures under Section 88-125(c), HRS, or other alternatives to resolve any dispute over reimbursement of pension contributions to the State. See our testimony on Senate Bill No. 44, S.D. 2 (which is set for hearing later this morning).

Third, we are opposed to Part IV (Section 11) of this bill which allows HHSC "to alter any existing or new collective bargaining agreement" under chapter 89. Historically, after HHSC was established in 1996 the collective bargaining statute was amended to include the board of directors of HHSC with a full vote under Section 89-6 (d), HRS, in the multi-employer bargaining process. In addition, HHSC was granted authority to negotiate supplemental agreements separately with the exclusive bargaining representatives under Section 89-6 (e), HRS. The involvement of HHSC in the multi-employer bargaining process to negotiate the master agreement has been highly productive because it includes HHSC in a broader inter-governmental context. At the same time the right to negotiate supplemental agreements affords HHSC the required flexibility needed to meet its special needs. We have worked cooperatively with HHSC over the past 12 years recognizing the value of both uniformity and flexibility. No party to the multi-employer bargaining process should have a right to veto what has been negotiated (and agreed to earlier) under Section 89-6 (d), HRS, or to have a second opportunity to negotiate over any term or condition previously entered. Part IV of this measure (if adopted) would give a veto right and a second chance to negotiate a master agreement after it has been entered. It establishes a dangerous and unwarranted precedent which will seriously undermine the collective bargaining process for all employers and employees as intended by chapter 89.

Fourth, we oppose Part V which authorizes the formation of a new entity which transforms HHSC into a "non-profit corporation," "a for profit corporation," a "municipal facility," or a "public benefit corporation" with new powers to sell and transfer state assets (in Section 15), and which grants broad authority to contract out services to any "profit or non-

profit" entity (in Section 17). Section 15 undermines the original intent when HHSC was created because it was expressly understood that it would serve as "an independent agency of the State" (1996 Hawaii Session Laws Act 262, § 1, at 595), and its employees would remain employees of the State of Hawaii without loss of "salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges as a consequence of this Act." 1996 Hawaii Session Laws Act 262, § 20 at 612. Section 15 would alter that basic commitment, and allow HHSC, inter alia, to avoid its obligations to reimburse the State for pension contributions under Section 88-125, HRS. As you know, the power to dispose of state lands currently resides with the board of land and natural resources under Section 171-13, HRS, and may only be set aside by the governor for valid public purposes under Section 171-1, HRS. HHSC has failed to establish any credible record as a fiduciary.

HHSC executives come to the legislature each year to ask for more money. They have an estimated shortfall of \$40 million for fiscal year 2008-2009, and have a projected deficit for fiscal year 2009-2010 of \$62 million. Meanwhile, the top executives of HHSC receive compensation which exceeds three (3) times what is paid to the heads of state departments and executive agencies, and are given long term contracts with lucrative severance and housing allowances and exclusive incentive payments. See The Legislative Auditor's Report No. 08-08 (April 2008), at pp. 36-37 (attached). The union submits that granting further authority and autonomy to HHSC and its regional system board, and allowing them to transfer State lands, facilities and assets will not work. It is time to hold top managers of HHSC accountable for the budget deficits and fiscal crisis, and to give serious consideration to restoring our

community hospital system (under the State of Hawaii) which existed prior to 1996.

Finally, in Section 17 the proponents of this measure seek to authorize HHSC to enter contracts with "any person, firm, association, partnership or corporation, whether operated on a for-profit or non-for-profit basis" to carry out its "purposes and responsibilities." We construe such a provision as authority for "contracting out" to the private sector the services which have historically been performed by civil servants. We oppose privatization and urge you to reject any attempt to violate constitutional merit principles. See Konno v. County of Hawaii, 85 Hawai'i 61, 937 P.2d 397 (1997) (services which have been historically and customarily been performed by civil servants cannot be privatized). For all of the foregoing reasons we oppose this measure and request you not to pass it out.