

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

**AMENDED TESTIMONY OF THE UNITED PUBLIC WORKERS,  
AFSCME, LOCAL 646, AFL-CIO ON S.B. 44, S.D. 2  
RELATING TO 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. In behalf of approximately 500 blue collar non-supervisory employees of bargaining unit 1 and 1,000 institutional and health workers from bargaining unit 10 who are currently employed by the Hawaii Health System Corporation (HHSC) the UPW opposes Senate Bill No. 44, S.D. 2 to the extent that it undermines the intent of the initial enabling legislation which created HHSC in 1996 as an independent "agency" of the State of Hawaii, without adversely affecting the "seniority, prior service credit, and other employee benefits or privileges."

As you know, HHSC was established following an extensive study by a task force created by the legislature in 1994 to examine the operations of the community hospital

division of the Department of Health. See 1994 Hawaii Session Laws Act 266, p. 827. Based on a report by the governor's task force which recommended the creation of "an independent agency of the State" the legislature in 1996 created HHSC "to provide better health care for all the people of the State . . . by freeing the facilities from unwarranted bureaucratic oversight." See 1996 Hawaii Session Laws Act 262, p. 595. It was expressly understood that the new corporate entity would serve as an agency of the State which maintained a corporate-wide hospital personnel system that is subject to chapters 76, 77, and 89 (See 1996 Hawaii Session Laws Act 262, § 2 ("Sec. - 7 (9)"), at 599, and that no employee of the State having tenure with the State would suffer any loss of "seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges as a consequence" of the enactment. 1996 Hawaii Session Laws, Act 262, § 20, at 612.

Furthermore, in exchange for the power to set "rates and charges for all services provided by the corporation without regard to chapter 91" (See 1996 Hawaii Session Laws Act 262, § 2 ("Sec. 7 (8)"), at 599, HHSC was to assume and honor the responsibilities and obligations of the division of community hospitals, and neither the Department of Health nor HHSC were to abrogate their obligations under existing state law (including payment for retirement contributions). Section 22 (d) of Act states:

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 what revenues they generate from patients and others who use public health facilities.

In light of the foregoing requirements of Act 262 it is disconcerting to find out that both entities have been unable to resolve a 20 million dollar "liability" accrued by the community hospital division prior to July 1, 2006, and a projected 30 and 39 million dollar claims for employee retirement system "contributions" by HHSC for fiscal year 2010 and 2011, respectively. We believe these outstanding "claims" which relate to the cost of retirement benefits for HHSC employees is one reason why HHSC has supported a number of legislative measures this session to reorganize itself so it will no longer be an "agency of the State."<sup>1</sup> The bill before you is one of a series of steps being proposed by HHSC to avoid the cost of "obligations" for payment of retirement contributions contrary to the original intent of Act 262 (1996).

Therefore, we disagree with the proponents of this measure who seek to amend Section 88-125, HRS, as a method of clarifying who owes what in the form of retirement contributions. Section 88-125 (c), HRS, establishes an adequate procedure for a quarterly determination by the department of budget and finance of the amount of contributions due and owing by all departments and agencies of the State which are

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<sup>1</sup> The other reason is HHSC's inability to generate adequate annual revenues from its rates, fees, and other charges to meet operating expenses.

"authorized by law to fix, regulate and collect rent, rates, fees, or charges of any nature" as indicated in Section 88-125 (b), HRS. If HHSC has concerns about its future retirement liability and it disagrees with the quarterly assessment by the department of budget and finance it should exhaust the existing statutory procedures with Budget and Finance, and seek judicial review if necessary. (See Section 323F-7 (c) (11), HRS, which empowers HHSC to sue). In the alternative, the legislature should consider reducing the amount of HHSC reimbursement of retirement contributions to the State under Section 88-125, HRS, because of its inability to generate sufficient revenues from its "rates, fees and charges." HHSC should, however, remain an agency of the State and not seek to avoid past obligations or future responsibilities to paying for a part of the retirement benefits afforded to state employees. For the foregoing reasons we ask you not to adopt Senate Bill No. 44, Senate Draft 2.