SB1312

TESTIMONY

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEES ON HEALTH, COMMERCE AND CONSUMER PROTECTION AND JUDICIARY AND LABOR
ON
SENATE BILL NO. 1312

February 13, 2013

RELATING TO THE HAWAII HEALTH SYSTEMS CORPORATION

Senate Bill No. 1312 makes the following amendments to Chapter 325F, HRS, which governs the Hawaii Health Systems Corporation (HHSC): establishes a new personnel system and retirement system; creates new collective bargaining units; reduces the governance structure from five to two regional systems; authorizes the Governor to appoint six additional community members to the corporation board; changes the regional chief executive officers from voting to nonvoting members; and clarifies powers of the HHSC board and regional boards.

The Department of Budget and Finance opposes this measure for the following reasons:

1. The measure establishes a new retirement system separate from the State Employee's Retirement Systems without providing specific details with regards to vesting periods, retirement benefits, and contributions for this new retirement system, nor does the bill provide details on how this new retirement system will be funded which may hold the State responsible for significant retirement benefits liabilities because there are no limitations contained in the bill. HHSC is not self-sufficient and receives significant State general fund subsidies. A new retirement system whereby the State is not responsible for the long-term liability of the system would be a more favorable consideration.

2. HHSC is already recognized as a separate public employer jurisdiction pursuant to Section 89-2, HRS. As such, HHSC already has the authority to negotiate supplemental agreements to existing collective bargaining agreements under Section 89-6(e), HRS. HHSC has been operating under a revenue shortfall and collective bargaining agreements for HHSC employees have been funded by the State general fund. As long as the State and the General Fund remains responsible for covering HHSC's collective bargaining costs, the Governor should have an equal and significant voice in collective bargaining negotiations.
3. Presently, HHSC is exempted from the provisions of Chapter 37D, HRS, if a financing agreement is less than $5,000,000 and the aggregate in any fiscal year does not exceed $25,000,000. Senate Bill No. 1312 removes these dollar limits; thus, enabling HHSC to enter into financing agreements without any financial oversight from the State. Considering that the State continues to be responsible for a number of long-standing liabilities of the System, any revision that removes State oversight, but leaves State liability is not tenable.

Senate Committee on Health
Senator Josh Green, M.D., Chair
Senator Rosalyn H. Baker, Vice Chair

Senate Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair
Senator Brickwood Galuteria, Vice Chair

Senate Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S. L. Shimabukuro, Vice Chair

Wednesday, February 13, 2013, 1:15 p.m.
Conference Room 229
Hawaii State Capitol

Testimony on Senate Bill 1312, Relating to the Hawaii Health Systems Corporation. Amends Hawaii health systems corporation statutes, Chapter 323F, HRS, to appoint the regional chief executive officers as nonvoting members of the Hawaii health systems corporation board. Authorizes the governor to appoint six additional community members. Clarifies the powers of the Hawaii health systems corporation board and the regional boards. Creates new collective bargaining units and retirement system.

Bruce S. Anderson, Ph.D.
President and Chief Executive Officer
Hawaii Health Systems Corporation

Hawaii Health Systems Corporation (HHSC) strongly supports SB 1312 to restructure HHSC after the Maui and Big Island regions move out of the system. This bill is essential in order to clarify the powers of the HHSC and regional system boards and improve the current governance structure. Specifically, the bill does the following:
1. Removes E. Hawaii, W. Hawaii and Maui regions. This is based on the assumption that those regions will transition into a new entity.
2. Changes corporate board structure. Regional Chief Executive Officers (RCEOs) become nonvoting members. Each Regional System Board (RSB) will appoint 2 members, and the governor will appoint 2 members from each of the two regions (Oahu

and Kauai). The governor appoints 2 at large, and the Director of Health remains an ex-officio voting member; RCEOs become ex-officio, nonvoting members.
3. Corporate board powers are altered to give the corporate board additional power to amend, reject, or approve regional and facility budgets, to give money to wholly or partially owned private entities, and the corporate board and regional boards together hire and fire RCEOs. The power to mortgage real property owned by HHSC is added back in and restrictions on lease financing lifted.
4. Clarifies that HHSC is the sole employer with collective bargaining negotiating authority.
5. Regional board powers are separated out of the statute from the corporate board powers in order to clarify exactly what each type of board has control over. All RSB powers must be exercised consistent with corporate policies and procedures, as in the current law. Regions have day to day operational responsibilities and decision making authority. The RSBs remain the governing body for medical staff matters. Custodial control over facilities, property, and employees remains with the RSBs. The RSBs also retain decision making authority over moving money around their facilities within their respective regions and can lend or give money to other regions with corporate board approval.
6. Language was added allowing HHSC to set up a separate retirement system for all new employees. Existing employees have the option of switching over. The EUTF is not affected.
7. The bill sets up separate bargaining units for HHSC employees, with the governor and HHSC having equal votes for those units. Amendment of several laws and new sections of 323F were needed to effectuate this change.
8. Obsolete provisions, like the Management Advisory Committees (MACs.), were deleted.

HHSC submits that these changes are needed in order to promote a more cohesive system of hospitals. As stated in the purpose clause, a system with clear lines of authority is needed in order to compete in the current health care environment and be ready for all of the changes to come. There has been a great deal of confusion as to the power of the regional boards and the corporate board under the existing law, with HHSC being the sole legal entity but the RSBs having the power to make major policy decisions and set their own budgets. It is very difficult to make major decisions under the current structure.

In addition, the Regional CEOs have the nearly impossible task of trying to ignore what is best for their region alone while sitting as a system board member. The duty of loyalty is owed to the whole system, not just one region. Both the Kauai and Oahu regional CEOs agree that they should not be voting board members. Restructuring the governance structure to allow the governor to appoint more board members will also add more talent and resources to our overtaxed corporate board.

Separate bargaining units will allow HHSC to negotiate for contracts covering its employees, in order to provide for the unique circumstances of running hospitals, which is very different from running other government operations.

All of the changes are needed in order to promote systemness and efficiency in running the state hospital system. Thank you for the opportunity to speak in strong support of this measure.

February 12, 2013

COMMITTEE ON HEALTH
Senator Josh Green, Chair
Senator Rosalyn H. Baker, Vice Chair
Committee Members

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator Brickwood Galuteria, Vice Chair
Committee Members

COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair
Senator Maile S. L. Shimabukuro, Vice Chair
Committee Members

Wednesday, February 13, 2013, 1:15 pm
Conference Room 229, State Capitol

Testimony regarding **SB1312** – Relating to Hawaii Health Systems Corporation

Dear Chair Green, Chair Baker, Chair Hee and Committee Members:

The purpose of this bill is to amend Hawaii Health Systems Corporation (HHSC) statutes, Chapter 323F, HRS, to appoint the regional chief executive officers as nonvoting members of HHSC. Authorizes the governor to appoint six additional community members. Clarifies the powers of the HHSC board and the regional boards. Creates new collective bargaining units and retirement system.

This bill currently applies to the Oahu and Kauai Regions only. As such, I am not taking a position in support or opposition to this measure but would like to offer comments.

I respectfully urge the Committees to exclude the Maui Region from inclusion in any form of this bill that would dilute Regional control or authority.

The Maui Region feels strongly that the changes effectuated on HHSC through Act 290 (SLH 2007) were done so in response to community outcry for decision making and control closer to the patient bedside. To return the Maui Region to a corporate centered system will be taking steps backward. Act 182 (SLH 2009) further provided Regions with the ability to transition into new entities, removing themselves from HHSC completely.

Including Maui in any measure that will transfer existing authority to HHSC will hinder strides Maui is making toward achieving goals the Regional System Board has identified as priorities.

Thank you for this opportunity to testify in support of this important measure.

Respectfully submitted.

Patrick Saka
Chief Administrative Officer
Maui Region, Hawaii Health Systems Corporation
221 Mahalani Street, Wailuku, HI 96793
(808) 244-9056

February 12, 2013

COMMITTEE ON HEALTH
Senator Josh Green, Chair
Senator Rosalyn H. Baker, Vice Chair
And Committee Members

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator Brickwood Galuteria, Vice Chair
And Committee Members

COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair
Senator Maile S. L. Shimabukuro, Vice Chair
And Committee Members

Wednesday, February 13, 2013, 1:15 pm
Conference Room 229, State Capitol
415 South Beretania St.

RE: SB 1312 - Relating to the Hawaii Health Systems Corporation

Dear Chair Green, Chair Baker, Chair Hee and Committee Members:

Thank you for the opportunity to submit testimony **regarding SB 1312.** The purpose of this bill is to amend Hawaii Health Systems Corporation (HHSC) statutes, Chapter 323F, HRS, to appoint the regional chief executive officers as nonvoting members of HHSC. Authorizes the governor to appoint six additional community members. Clarifies the powers of the HHSC board and the regional boards. Creates new collective bargaining units and retirement system.

This bill currently applies to the Oahu and Kauai Regions only. As such, we are not taking a position in support or opposition to this measure but would like to offer comments.

We respectfully urge the Committees to exclude the Maui Region from inclusion in any form of this bill that would dilute Regional control or authority.

The Maui Region feels strongly that the changes effectuated on HHSC through Act 290 (SLH 2007) were done so in response to community outcry for decision making and control closer to the patient bedside. To return the Maui Region to a corporate centered system will be taking steps backward.

Including Maui in any measure that will transfer existing authority to HHSC will hinder strides Maui is making toward achieving goals the Regional System Board has identified as priorities.

Your consideration of this request would be greatly appreciated. Thank you for the opportunity to submit testimony.

Respectfully submitted,

Wesley Lo
Regional Chief Executive Officer
(808) 442-5100

THE HAWAII STATE HOUSE OF REPRESENTATIVES
The Twenty-Seventh Legislature
Regular Session of 2013

COMMITTEE ON HEALTH
The Honorable Sen. Josh Green, Chair
The Honorable Sen. Rosalyn Baker, Vice Chair

COMMITTEE ON COMMERCE & CONSUMER PROTECTION
The Honorable Sen. Rosalyn Baker, Chair
The Honorable Sen. Brickwood Galuteria, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR
The Honorable Sen. Clayton Hee, Chair
The Honorable Sen. Maile Shimabukuro, Vice Chair

DATE OF HEARING: Wednesday, February 13, 2013
TIME OF HEARING: 1:15 p.m.
PLACE OF HEARING: Conference Room 229

TESTIMONY ON SB1312 RELATING TO THE HAWAII HEALTH SYSTEMS CORPORATION

By DAYTON M. NAKANELUA,
State Director of the United Public Workers,
AFSCME Local 646, AFL-CIO ("UPW")

My name is Dayton M. Nakanelua and I am the State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive representative for approximately 14,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

The UPW strongly opposes SB1312 relating to the Hawaii Health Systems Corporation because it (1) undermines prior commitments made to public employees, (2) eliminates the merit principle, and (3) nullifies the right to engage in collective bargaining.

Historically, 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.

Long before HHSC was created in 1996 health care services in state and county hospitals were provided by civil servants employed by the community hospital division of the State of Hawaii. The employees were hired and retained in accordance with the merit principle through a statewide merit system. Under the merit principle employees were afforded reasonable job security and when layoffs occurred senior employees retained the right to bump junior employees not just within the health care facilities affected, but in any other governmental entities within the system. To ensure that this right continued with the creation of HHSC the legislature provided in 2006 Haw. Sess. L. Act 262, see § 2 (“Sec.-7”), at 599 that HHSC “develop a corporate wide hospital personnel system that is subject to chapters 76, 77, and 89.” This measure undermines the commitment made in 1996 to public employees.

While we recognize the complexity of the situation, we strongly believe that this measure is a move in the wrong direction. Turning our back on the most vulnerable in our communities – particularly those who live on the neighbor islands – by compromising this safety net is unacceptable.

We ask that the Committees hold this measure.

Thank you for the opportunity to testify.

HAWAII STATE
AFL-CIO

HAWAII STATE AFL-CIO

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President

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The Twenty-Seventh Legislature, State of Hawaii
The Senate
Committee on Health
Committee on Commerce and Consumer Protection
Committee on Judiciary and Labor

Testimony by
Hawaii State AFL-CIO
February 13, 2013

S.B. 1312 – RELATING TO THE HAWAII HEALTH SYSTEMS CORPORATION

The Hawaii State AFL-CIO strongly opposes S.B. 1312 which would amend the Hawaii Health Systems Corporation statutes, Chapter 323F, HRS, and would appoint the regional chief executive officers as nonvoting members of the Hawaii Health Systems Corporation Board and authorizes the governor to appoint six additional community members. It would also clarify the powers of the Hawaii Health Systems Corporation board and the regional boards and create new collective bargaining units and retirement system.

The Hawaii State AFL-CIO is deeply concerned the legislature is considering the thought of privatizing the regional systems of the Hawaii Health Systems Corporation and their health facilities. Corporations are in business for one reason and one reason only – to make money and more money each and every year. Profits are put above everything else. This means profits above employees, profits above customers, and profits above the community. Current and future employees would be put in jeopardy and services the community and customers rely on may vanish. This is all very unfortunate and a very serious reality should this bill pass.

Banner Health, a mainland health system will put their interests first above the people of Hawaii. As a result, the Hawaii State AFL-CIO respectfully requests S.B. 1312 to be deferred.

Thank you for the opportunity to testify.

Respectfully submitted,

Randy Perreira
President

TESTIMONY BY WESLEY K. MACHIDA
ADMINISTRATOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII
TO THE SENATE COMMITTEE ON HEALTH,
THE SENATE COMMITTEE ON COMMERCE AND COMSUMER PROTECTION,
AND
THE SENANTE COMMITTEE ON JUDICIARY AND LABOR
ON
HOUSE BILL NO. 1312

FEBRAURY 13, 2013

RELATING TO THE HAWAII HEALTH SYSTEMS CORPORATION

Chair Green, Chair Baker, Chair Hee and Members of the Committees:

S.B. 1312 allows the Hawaii Health Systems Corporation (HHSC) to establish a separate benefit structure, including a new retirement system, for new HHSC employees and to allow current employees who are currently members of the Employees' Retirement System (ERS) to opt into membership with the Hawaii health systems corporation retirement system.

The ERS Board of Trustees opposes this bill as it would jeopardize the tax qualification of the ERS.

The ERS is a tax-qualified retirement plan under section 401(a) of the Internal Revenue Code of 1986, as amended (Code). Section 414(h)(2) of the Code provides for favorable tax treatment for employee contributions "picked up" (made by the employer on behalf of the employee) to a tax-qualified retirement plan established by the state or county. Should the ERS lose its tax-exempt status, the federal tax consequences would be extremely harmful to its members. Contributions received from employee members would no longer have favorable pre-tax treatment; instead, employees' contributions to the ERS would be entirely subject to federal tax at the time of contribution. In addition, all members would be taxed on the value of their total accrued retirement benefits at the time they vest rather than when they receive their retirement benefits.

Any legislation that permits a current Contributory or Hybrid member to "opt out" of the ERS (and receive a distribution of accumulated contributions while still employed) creates a tax-qualification issue. This bill violates the rule in Revenue

Ruling 2006-43 that prohibits 401(k)-type elections in government pick-up plans. In addition, if in service distributions are permitted, this legislation also violates the long-standing rule that prohibits such distributions from defined benefit pension plans like the ERS.

The ERS Board is committed to preserving the tax-qualified status of the ERS, and therefore strongly opposes the passage of this bill.

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