



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 16, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: Senate Bill No. 1673 SD2 HD2 CD1

On July 15, 2009, Senate Bill No. 1673, entitled "A Bill for an Act Relating to the Hawaii Health Systems Corporation" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this omnibus bill is to make changes to the laws that affect the operations of the Hawaii Health Systems Corporation (HHSC), the regional system boards, and their facilities. The legislation attempts to begin the reforms necessary to strengthen the network of thirteen public hospitals in our state. However, I am concerned that this bill is unclear in several important respects which will make implementation difficult.

One important reform made by this bill is that it would allow individual facilities to transition into various other legal entities, including non-profit, for-profit, or public benefit corporations. The bill states that upon its transition, "all liabilities of the regional system or facility related to collective bargaining contracts negotiated by the State, shall become the responsibility of the State[.]"

This provision is unclear because it does not define which liabilities are being addressed. It could be interpreted that only pending collective bargaining disputes, grievances, or issues become the responsibility of the State once the facility has transitioned into a new legal entity. However, it could also be argued that this provision means that the State must continue to pay the wages for the State workers after the facility has transitioned to a private entity. This lack of clarity could cause significant problems. In addition, this provision could create a sizeable financial burden for the State since there are no limitations contained in the bill. I believe this section must be clarified before any transitions occur.

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Second, it appears that the “transition” language in the bill would authorize a HHSC facility to become a private entity. However, the bill as currently written does not specifically state that this new entity would be exempt from chapters 76 and 89, Hawaii Revised Statutes, the civil service laws and collective bargaining laws, respectively.

In 1997 the Hawaii Supreme Court held that the government could not privatize one of its operations without express statutory authority. In 2004, the Hawaii Supreme Court further held that the privatization of another government operation was legal because there was a statute that mandated the privatization. This bill does not mandate privatization of HHSC facilities, but by implication allows for it.

Because there is no direct precedent, it is difficult to predict whether the Hawaii appellate courts would find this to be sufficient language to permit HHSC facilities to become private entities and abolish their civil service positions. This uncertainty could cause lengthy and costly litigation that should be avoided by clearer drafting of the law.

Additionally, we remain concerned that this bill transfers to the Department of Health liabilities and debts that the HHSC hospitals accrued prior to June 30, 1996. It is unclear how this transfer will occur under generally accepted accounting principles, since the receivables are not properly reflected on the books of the corporation.

While certain provisions in this bill make small steps towards reforms needed to improve the viability of our public hospital system, such as allowing criminal background checks, I had hoped for more aggressive and comprehensive efforts to address the fiscal problems of the public hospitals. My Administration has outlined a vision for reform, which was presented to the Legislature by the State’s Director of Health, Dr. Chiyome Fukino, that deserves serious consideration.

It will be necessary to amend this law in the next legislative session to resolve the ambiguities in the bill.

For the foregoing reasons, I allowed Senate Bill No. 1673 to become law as Act 182, effective July 15, 2009, without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Lingle", with a stylized flourish at the end.

LINDA LINGLE