
A BILL FOR AN ACT

RELATING TO THE HAWAII HEALTH SYSTEMS CORPORATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the State's
2 community hospital system, Hawaii health systems corporation,
3 provides essential safety-net hospital and long-term care
4 services throughout the State and are often the only hospitals
5 in many rural communities. Due to rapid changes taking place in
6 the health care industry, the legislature acknowledges that the
7 governing structure of our public hospital system must provide
8 the appropriate flexibility and autonomy needed to compete and
9 remain viable and respond to the needs of the specific
10 communities served by furthering the development of centers of
11 excellence in health care.

12 The legislature acknowledges that the current
13 administrative arrangement places the public hospital system in
14 a single statewide public agency, the Hawaii health systems
15 corporation, which operates with some autonomy from the
16 executive branch. This arrangement is the result of landmark
17 legislation, Act 262, Session Laws of Hawaii 1996, which was
18 passed after years of study. Act 262 was largely the result of



1 the work of a task force established pursuant to Act 266,
2 Session Laws of Hawaii 1994, charged with studying the
3 establishment of an agency for community hospitals, then a
4 division of the department of health. On December 20, 1994, the
5 task force issued its report to the governor and the legislature
6 entitled, "The Preliminary Report of the Governor's Task Force
7 on the Establishment of an Agency for Community Hospitals".
8 Many of the recommendations of the task force were adopted by
9 the legislature, resulting in passage of Act 262, and the
10 creation of the Hawaii health systems corporation in 1996.

11 One significant recommendation of the task force included
12 the establishment of regional system boards of directors, along
13 with the system-wide board. This was accomplished by Act 290,
14 Session Laws of Hawaii 2007, which established a two-tiered
15 board system, giving the regional boards custodial control over
16 the operations, facilities, and personnel, to be exercised
17 within corporate policy.

18 In 2009, the legislature determined through Act 182,
19 Session Laws of Hawaii 2009, that it was in the State's best
20 interest to limit the authority of the corporation by
21 prohibiting the corporation from granting mortgages on
22 corporation real property in order to secure loans and revenue



1 bonds. However, the legislature finds that the economic
2 downturn coupled with the inability to leverage its biggest
3 asset of real property by pledging it as collateral has hindered
4 the ability of the system to obtain outside financing and
5 refinance loans for more favorable terms.

6 In addition, Act 182 (2009) put a dollar cap on the
7 facilities' authority to enter into municipal leases. The
8 language is ambiguous because it is not clear if the aggregate
9 limit is on the entire corporation as a whole, or each region.
10 Again, this restriction is a hindrance on the ability of the
11 system to obtain outside financing.

12 The purpose of this Act is to advance the State's
13 commitment to provide quality health care for the people of
14 Hawaii by lifting the prohibition on mortgages of Hawaii health
15 systems corporation real property in order to give the
16 corporation the ability to fully utilize the asset for the
17 benefit of the community and by clarifying that the \$25,000,000
18 limit on municipal leases is per region, annually.

19 SECTION 2. Section 323F-7, Hawaii Revised Statutes, is
20 amended by amending subsections (c) and (d) to read as follows:



1 "(c) Notwithstanding any other law to the contrary, the
2 corporation and any of the regional system boards shall exercise
3 the following duties and powers:

4 (1) Developing corporation-wide policies, procedures, and
5 rules necessary or appropriate to plan, operate,
6 manage, and control the system of public health
7 facilities and services without regard to chapter 91;
8 provided that each regional system board shall be
9 responsible for its own policies, procedures, and
10 rules necessary or appropriate to plan, operate,
11 manage, and control the public health facilities
12 within its own regional system consistent with
13 corporation policies;

14 (2) Evaluating the need for additional health facilities
15 and services; provided that each regional system board
16 shall be responsible for the evaluation within its own
17 regional system;

18 (3) Entering into and performing any contracts, leases,
19 cooperative agreements, partnerships, or other
20 transactions whatsoever that may be necessary or
21 appropriate in the performance of its purposes and
22 responsibilities, and on terms the corporation, or



1 regional system boards, may deem appropriate, with
2 either:

3 (A) Any agency or instrumentality of the United
4 States, or with any state, territory, or
5 possession, or with any subdivision thereof; or

6 (B) Any person, firm, association, partnership, or
7 corporation, whether operated on a for-profit or
8 not-for-profit basis;

9 provided that the transaction furthers the public
10 interest; and provided further that if any dispute
11 arises between any contract, lease, cooperative
12 agreement, partnership, or other transaction entered
13 into by the corporation and a regional system board
14 with regard to matters solely within that regional
15 system, after July 1, 2007, the contract, lease,
16 cooperative agreement, partnership, or other
17 transaction entered into by the regional system board
18 shall prevail; and provided further that such
19 agreements are consistent with corporation policies;

20 (4) Conducting activities and entering into business
21 relationships as the corporation board, or any



1 regional system board, deems necessary or appropriate,
2 including but not limited to:

3 (A) Creating nonprofit corporations, including but
4 not limited to charitable fund-raising
5 foundations, to be controlled wholly by the
6 corporation, any regional system board, or
7 jointly with others;

8 (B) Establishing, subscribing to, and owning stock in
9 business corporations individually or jointly
10 with others; and

11 (C) Entering into partnerships and other joint
12 venture arrangements, or participating in
13 alliances, purchasing consortia, health insurance
14 pools, or other cooperative arrangements, with
15 any public or private entity; provided that any
16 corporation, venture, or relationship entered
17 into under this section furthers the public
18 interest; provided further that this paragraph
19 shall not be construed to authorize the
20 corporation or a regional system board to
21 abrogate any responsibility or obligation under
22 paragraph (15);



1 provided that each regional system board shall be
2 responsible for conducting the activities under this
3 paragraph in its own regional system consistent with
4 policies established by the corporation board;

- 5 (5) Participating in and developing prepaid health care
6 service and insurance programs and other alternative
7 health care delivery programs, including programs
8 involving the acceptance of capitated payments or
9 premiums that include the assumption of financial and
10 actuarial risk; provided that each regional system
11 board shall be responsible for conducting the
12 activities under this paragraph in its own regional
13 system consistent with policies established by the
14 corporation board;

- 15 (6) Executing, in accordance with all applicable bylaws,
16 rules, and laws, all instruments necessary or
17 appropriate in the exercise of any powers of the
18 corporation or regional system boards;

- 19 (7) Preparing and executing all corporation-wide budgets,
20 policies, and procedures or any regional system
21 budgets, policies, and procedures; provided that the
22 regional system boards shall submit their regional and



1 facility budgets to the corporation to be consolidated
2 into a corporation-wide budget for purposes of
3 corporation-wide planning and appropriation requests.
4 Regional system and facility budgets shall be received
5 by the corporation and shall be included in the
6 corporation-wide budget upon submittal to the
7 corporation;

- 8 (8) Setting rates and charges for all services provided by
9 the corporation without regard to chapter 91; provided
10 that the duty and power of the corporation board shall
11 be limited to approving the rates and charges
12 developed by the regional system boards for the
13 regional system's facilities and services. Rates and
14 charges may vary among regional systems and facilities
15 and may be consolidated with the rates of other
16 regional systems into one charge master. Third-party
17 payer contracts may be negotiated at the corporation-
18 wide level with input from the regional systems,
19 taking into consideration the rates set by the
20 regional system boards. For purposes of securing
21 revenue bonds, the corporation or regional system
22 board may covenant to set, and if necessary increase,



1 rates and charges as needed to pay debt service and
2 related obligations plus a coverage factor;

3 (9) Developing a corporation-wide hospital system that is
4 subject to chapters 76 and 89; provided that
5 employment of regional system and facility personnel
6 shall be the responsibility of the regional system
7 boards pursuant to corporation-wide policies and
8 procedures, applicable laws, rules, regulations, and
9 collective bargaining agreements;

10 (10) Developing the corporation's corporation-wide capital
11 and strategic plans or any regional system board's
12 capital and strategic plans; provided that each
13 regional system board shall be responsible for
14 development of capital and strategic plans in its own
15 regional system that shall be consistent with, and
16 incorporated into, the overall corporation-wide plans;
17 and provided further that the corporation and each
18 regional system board shall be entitled to undertake
19 the acquisition, construction, and improvement of
20 property, facilities, and equipment to carry out these
21 capital and strategic plans;



- 1 (11) Suing and being sued; provided that only the
2 corporation may sue or be sued; and provided further
3 that the corporation and regional system boards shall
4 enjoy the same sovereign immunity available to the
5 State;
- 6 (12) Making and altering corporation board and regional
7 system board bylaws for its organization and
8 management without regard to chapter 91 and consistent
9 with this chapter; provided that each regional system
10 board shall be responsible for the final approval of
11 its regional system board bylaws;
- 12 (13) Adopting rules without regard to chapter 91 governing
13 the exercise of the corporation's or regional system
14 boards' powers and the fulfillment of its purpose
15 under this chapter;
- 16 (14) Entering into any contract or agreement whatsoever,
17 not inconsistent with this chapter or the laws of this
18 State, and authorizing the corporation, regional
19 system boards, and chief executive officers to enter
20 into all contracts, execute all instruments, and do
21 all things necessary or appropriate in the exercise of
22 the powers granted in this chapter, including securing



1 the payment of bonds; provided that the corporation
2 board shall delegate to a regional system board its
3 authority to enter into and execute contracts or
4 agreements relating to matters exclusively affecting
5 that regional system; provided further that a regional
6 system board shall exercise this power consistent with
7 corporation-wide policies; and provided further that
8 contracts or agreements executed by a regional system
9 board shall encumber only the regional subaccounts of
10 that regional system board;

11 (15) Issuing revenue bonds up to \$100,000,000 subject to
12 the approval of the governor or the director of
13 finance; provided that:

14 (A) All revenue bonds shall be issued pursuant to
15 part III, chapter 39;

16 (B) The corporation and any regional system board
17 shall have the power to issue revenue bonds in
18 any amount without regard to any limitation in
19 chapter 39; and

20 (C) The corporation shall have the power to incur
21 debt, including the issuance of revenue bonds in
22 any amount, and the regional system boards shall



1 have the power to issue revenue bonds in any
2 amount upon approval by the corporation board;

3 (16) Reimbursing the state general fund for debt service on
4 general obligation bonds or reimbursable general
5 obligation bonds issued by the State for the purposes
6 of the corporation or any regional system board;

7 (17) Pledging or assigning all or any part of the receipts,
8 revenues, and other financial assets of the
9 corporation or the regional system boards for purposes
10 of meeting or securing bond or health systems
11 liabilities; provided that each regional system board
12 shall be responsible for conducting the activities
13 under this paragraph in its own regional system. Any
14 pledge or assignment by the corporation or any
15 regional system board to secure revenue bonds or
16 health system liabilities shall be valid and binding
17 in accordance with its terms against the pledgor,
18 creditors, and all others asserting rights thereto
19 from the time the pledge or assignment is made,
20 without the need of physical delivery, recordation,
21 filing, or further act. The corporation shall not
22 take or omit to take any act that would interfere



1 with, impair, or adversely affect any pledge or
2 assignment by a regional system board pursuant to this
3 chapter. In connection with issuing revenue bonds or
4 related obligations, consistent with corporation
5 policies and procedures, any regional system board may
6 make such other covenants, binding on the regional
7 system board and the corporation, that the regional
8 system board determines to be necessary or appropriate
9 to establish and maintain security for the revenue
10 bonds or related obligations;

11 (18) Owning, purchasing, leasing, exchanging, or otherwise
12 acquiring property, whether real, personal, or mixed,
13 tangible or intangible, and of any interest therein,
14 in the name of the corporation, which property is not
15 owned or controlled by the State but is owned or
16 controlled by the corporation; provided that:

17 (A) Regional system boards shall have custodial
18 control over facilities and physical assets in
19 their respective regional systems. A regional
20 system board may own, purchase, lease, exchange,
21 or otherwise acquire property, whether real,
22 personal, or mixed, tangible or intangible, and



1 of any interest therein, other than property
2 owned or controlled by the corporation, in the
3 name of the regional system board; provided
4 further that a regional system board shall be
5 subject to section 323F-3.5; and

6 (B) Each regional system board shall be responsible
7 for conducting the activities under this
8 paragraph in its own regional system;

9 (19) Maintaining, improving, pledging, mortgaging, selling,
10 or otherwise holding or disposing of property, whether
11 real, personal, or mixed, tangible or intangible, and
12 of any interest therein, at any time and manner, in
13 furtherance of the purposes and mission of the
14 corporation or any regional system board; provided
15 that the corporation or any regional system board
16 legally holds or controls the property in its own
17 name; provided further that other than to secure
18 revenue bonds and related obligations and agents, and
19 to transition into a new entity, the corporation or
20 any regional system board shall not sell, assign,
21 lease, hypothecate, mortgage, pledge, give, or dispose
22 of all or substantially all of its property; and



1 provided further that each regional system board shall
2 be responsible for conducting the activities under
3 this paragraph in its own regional system, and control
4 over such property shall be delegated to each regional
5 system board; [~~provided further that this paragraph~~
6 ~~shall not be construed to authorize the sale, pledge,~~
7 ~~or mortgage of real property under the control of the~~
8 ~~corporation or a regional system board;~~]

9 (20) Purchasing insurance and creating captive insurers in
10 any arrangement deemed in the best interest of the
11 corporation, including but not limited to funding and
12 payment of deductibles and purchase of reinsurance;
13 provided that only the corporation shall have the
14 power to create captive insurers to benefit public
15 health facilities and operations in all regional
16 systems; and provided further that a regional system
17 board may purchase insurance for its regional system
18 in collaboration with the other regional systems and
19 the corporation until captive coverage is provided by
20 the corporation;



- 1 (21) Acquiring by condemnation, pursuant to chapter 101,
2 any real property required by the corporation to carry
3 out the powers granted by this chapter;
- 4 (22) Depositing any moneys of the corporation or any
5 regional system board in any banking institution
6 within or without the State, and appointing, for the
7 purpose of making deposits, one or more persons to act
8 as custodians of the moneys of the corporation or any
9 regional system board; provided that regional system
10 boards may deposit moneys in banking institutions
11 pursuant to corporation-wide guidelines established by
12 the corporation board;
- 13 (23) Contracting for and accepting any gifts, grants, and
14 loans of funds, property, or any other aid in any form
15 from the federal government, the State, any state
16 agency, or any other source, or any combination
17 thereof, and complying, subject to this chapter, with
18 the terms and conditions thereof; provided that the
19 regional system boards shall be responsible for
20 contracting for and accepting any gifts, grants,
21 loans, property, or other aid if intended to benefit
22 the public health facilities and operations



1 exclusively in their respective regional systems; and
2 provided further that all contracting for or
3 acceptance of gifts, grants, loans, property, or other
4 aid shall be consistent with corporation-wide policies
5 established by the corporation board;

6 (24) Providing health and medical services for the public
7 directly or by agreement or lease with any person,
8 firm, or private or public corporation, partnership,
9 or association through or in the health facilities of
10 the corporation or regional system boards or
11 otherwise; provided that the regional system boards
12 shall be responsible for conducting the activities
13 under this paragraph in their respective regional
14 systems;

15 (25) Approving medical staff bylaws, rules, and medical
16 staff appointments and reappointments for all public
17 health facilities of the corporation or any regional
18 system board, including but not limited to determining
19 the conditions under which a health professional may
20 be extended the privilege of practicing within a
21 health facility, as determined by the respective
22 regional system board and consistent with corporation-



1 wide policies, and adopting and implementing
2 reasonable rules, without regard to chapter 91, for
3 the credentialing and peer review of all persons and
4 health professionals within the facility; provided
5 that regional system boards shall be the governing
6 body responsible for all medical staff organization,
7 peer review, and credentialing activities to the
8 extent allowed by law;

9 (26) (A) Investing any funds not required for immediate
10 disbursement in property or in securities that
11 meet the standard for investments established in
12 chapter 88 as provided by the corporation board
13 or any regional system board; provided that
14 proceeds of bonds and moneys pledged to secure
15 bonds may be invested in obligations permitted by
16 any document that authorizes the issuance or
17 securing of bonds; and provided further that the
18 investment assists the corporation or any
19 regional system board in carrying out its public
20 purposes; selling from time to time securities
21 thus purchased and held, and depositing any
22 securities in any bank or financial institution



1 within or without the State. Any funds deposited
2 in a banking institution or in any depository
3 authorized in this section shall be secured in a
4 manner and subject to terms and conditions as the
5 corporation board or a regional system board may
6 determine, with or without payment of any
7 interest on the deposit, including without
8 limitation time deposits evidenced by
9 certificates of deposit. Any bank or financial
10 institution incorporated under the laws of this
11 State may act as depository of any funds of the
12 corporation or a regional system board and may
13 issue indemnity bonds or may pledge securities as
14 may be required by the corporation or regional
15 system board; provided that regional system
16 boards may exercise the powers under this
17 subsection with respect to financial assets of
18 the regional system consistent with corporation-
19 wide policies; and

20 (B) Notwithstanding subparagraph (A), contracting
21 with the holders of any of its notes or bonds as
22 to the custody, collection, securing, investment,



1 and payment of any moneys of the corporation or
2 regional system board and of any moneys held in
3 trust or otherwise for the payment of notes or
4 bonds and carrying out the contract. Moneys held
5 in trust or otherwise for the payment of notes or
6 bonds or in any way to secure notes or bonds, and
7 deposits of such moneys, may be secured in the
8 same manner as moneys of the corporation or
9 regional system board, and all banks and trust
10 companies are authorized to give security for the
11 deposits;

12 (27) Entering into any agreement with the State, including
13 but not limited to contracts for the provision of
14 goods, services, and facilities in support of the
15 corporation's programs or the regional system boards'
16 programs, and contracting for the provision of
17 services to or on behalf of the State; provided that
18 the regional system boards shall be responsible for
19 entering into agreements to provide goods, services,
20 and facilities in support of programs in their
21 respective regional systems consistent with
22 corporation-wide policies;



- 1 (28) Having a seal and altering the same at pleasure;
- 2 (29) Waiving, by means that the corporation or regional
3 system board deems appropriate, the exemption from
4 federal income taxation of interest on the
5 corporation's or regional system boards' bonds, notes,
6 or other obligations provided by the Internal Revenue
7 Code of 1986, as amended, or any other federal statute
8 providing a similar exemption;
- 9 (30) Developing internal policies and procedures for the
10 procurement of goods and services, consistent with the
11 goals of public accountability and public procurement
12 practices, and subject to management and financial
13 legislative audits; provided that the regional system
14 boards shall be responsible for developing internal
15 policies and procedures for each of their regional
16 systems consistent with the corporation's policies and
17 procedures; and further provided that:
- 18 (A) The regional system boards and the corporation
19 board shall enjoy the exemption under section
20 103-53(e);
- 21 (B) The regional system boards shall enjoy the
22 exemption under chapter 103D; and



1 (C) The corporation shall be subject to chapter 103D;
2 (31) Authorizing and establishing positions; provided that
3 regional system boards shall be responsible for hiring
4 and firing regional and facility personnel consistent
5 with corporation policies, except a regional chief
6 executive officer shall only be hired or dismissed
7 upon the approval of the regional system board as
8 further set forth in section 323F-8.5;

9 (32) Having and exercising all rights and powers necessary
10 or incidental to or implied from the specific powers
11 granted in this chapter, which specific powers shall
12 not be considered as a limitation upon any power
13 necessary or appropriate to carry out the purposes and
14 intent of this chapter; provided that the regional
15 system boards shall be responsible for having and
16 exercising all powers and rights with respect to
17 matters in their regional systems consistent with the
18 law; and

19 (33) Each regional system, through its regional system
20 board, shall:

21 (A) Develop policies and procedures necessary or
22 appropriate to plan, operate, manage, and control



1 the day-to-day operations of facilities within
2 the regional system that are consistent with
3 corporation-wide policies;

4 (B) Exercise custodial control over and use of all
5 assets of the corporation that are located in the
6 regional system pursuant to this chapter; and

7 (C) Expend funds within its approved regional system
8 budget and expend additional funds in excess of
9 its approved regional system budget upon approval
10 of the corporation board.

11 (d) Each regional system board shall not be subject to
12 chapters 36 to 38, 40, 41D, and 103D as well as part I of
13 chapter 92 and shall enjoy the exemptions contained in sections
14 102-2 and 103-53(e), except as otherwise provided in this
15 chapter. The corporation shall not be subject to chapters 36 to
16 38, 40, and 41D, as well as part I of chapter 92, and shall
17 enjoy the exemptions contained in sections 102-2 and 103-53(e);
18 provided that the exemption provided under this subsection to
19 chapter 37D shall only apply to financing agreements of
20 \$5,000,000 or less; provided further that the aggregate value of
21 financing agreements per fiscal year shall not exceed
22 \$25,000,000 [-] per regional system."



1 SECTION 3. All acts passed prior to or during the regular
2 session of 2011, whether enacted before or after passage of this
3 Act shall be interpreted to conform to this Act, unless the acts
4 specifically provide that this Act is being amended. In so far
5 as this Act is inconsistent with any other law, this Act shall
6 control.

7 SECTION 4. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 5. This Act shall take effect on July 1, 2050.

10

11



Report Title:

Hawaii Health Systems Corporation; Real Property; Mortgage

Description:

Authorizes the Hawaii health systems corporation to mortgage its real property and clarifies that the dollar cap on municipal leasing authority applies to each regional system. Effective 7/1/2050. (SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

