
A BILL FOR AN ACT

RELATING TO THE HAWAII HEALTH SYSTEMS CORPORATION.

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

PART I

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SECTION 1. The legislature finds that the State's community hospital system, the Hawaii health systems corporation, provides essential hospital and long-term care services, in addition to physician and other health care services throughout the State. Hawaii health systems corporation facilities are often the only hospitals and emergency care providers in many rural communities. Due to rapid changes taking place in the health care industry, the legislature acknowledges that the governing structure of our public hospital system must provide the appropriate flexibility and autonomy needed to compete and remain viable and to respond to the needs of the specific communities served, by furthering the development of centers of excellence in health care.

The purpose of this part is to centralize personnel, purchasing, and other administrative functions wherever feasible within the Hawaii health systems corporation and remove unnecessary operational limitations to achieve greater



1 efficiency, effectiveness, and meaningful financial
2 accountability.

3 SECTION 2. Chapter 323F, Hawaii Revised Statutes, is
4 amended by adding a new section to part II to be appropriately
5 designated and to read as follows:

6 "§323F- Financial and management audits. The auditor
7 shall conduct a financial and management audit of the Hawaii
8 health systems corporation every five years."

9 SECTION 3. Section 323F-7, Hawaii Revised Statutes, is
10 amended by amending subsections (c) and (d) to read as follows:

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

- 14 (1) Developing corporation-wide policies, procedures, and
15 rules necessary or appropriate to plan, operate,
16 manage, and control the system of public health
17 facilities and services without regard to chapter 91;
18 provided that each regional system board shall be
19 responsible for its own policies, procedures, and
20 rules necessary or appropriate to plan, operate,
21 manage, and control the public health facilities



1 within its own regional system consistent with
2 corporation policies;

3 (2) Evaluating the need for additional health facilities
4 and services; provided that each regional system board
5 shall be responsible for the evaluation within its own
6 regional system;

7 (3) Entering into and performing any contracts, leases,
8 cooperative agreements, partnerships, or other
9 transactions whatsoever that may be necessary or
10 appropriate in the performance of its purposes and
11 responsibilities, and on terms the corporation, or
12 regional system boards, may deem appropriate, with
13 either:

14 (A) Any agency or instrumentality of the United
15 States, or with any state, territory, or
16 possession, or with any subdivision thereof; or

17 (B) Any person, firm, association, partnership, or
18 corporation, whether operated on a for-profit or
19 not-for-profit basis;

20 provided that the transaction furthers the public
21 interest; and provided further that if any dispute



1 arises between any contract, lease, cooperative
2 agreement, partnership, or other transaction entered
3 into by the corporation and a regional system board
4 with regard to matters solely within that regional
5 system, after July 1, 2007, the contract, lease,
6 cooperative agreement, partnership, or other
7 transaction entered into by the regional system board
8 shall prevail; and provided further that such
9 agreements are consistent with corporation policies;

10 (4) Conducting activities and entering into business
11 relationships as the corporation board, or any
12 regional system board, deems necessary or appropriate,
13 including but not limited to:

14 (A) Creating nonprofit corporations, including but
15 not limited to charitable fund-raising
16 foundations, to be controlled wholly by the
17 corporation, any regional system board, or
18 jointly with others;

19 (B) Establishing, subscribing to, and owning stock in
20 business corporations individually or jointly
21 with others; and



1 (C) Entering into partnerships and other joint
2 venture arrangements, or participating in
3 alliances, purchasing consortia, health insurance
4 pools, or other cooperative arrangements, with
5 any public or private entity; provided that any
6 corporation, venture, or relationship entered
7 into under this section furthers the public
8 interest; provided further that this paragraph
9 shall not be construed to authorize the
10 corporation or a regional system board to
11 abrogate any responsibility or obligation under
12 paragraph (15);

13 provided that each regional system board shall be
14 responsible for conducting the activities under this
15 paragraph in its own regional system consistent with
16 policies established by the corporation board;

17 (5) Participating in and developing prepaid health care
18 service and insurance programs and other alternative
19 health care delivery programs, including programs
20 involving the acceptance of capitated payments or
21 premiums that include the assumption of financial and



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

6 (6) Executing, in accordance with all applicable bylaws,
7 rules, and laws, all instruments necessary or
8 appropriate in the exercise of any powers of the
9 corporation or regional system boards;

10 (7) Preparing and executing all corporation-wide budgets,
11 policies, and procedures or any regional system
12 budgets, policies, and procedures; provided that the
13 regional system boards shall submit their regional and
14 facility budgets to the corporation [~~to be~~
15 ~~consolidated into a corporation wide budget for~~
16 ~~purposes of corporation wide planning and~~
17 ~~appropriation requests. Regional system and facility~~
18 ~~budgets shall be received by the corporation and shall~~
19 ~~be included in the corporation wide budget upon~~
20 ~~submittal to the corporation;~~] for approval,
21 amendment, or rejection;



- 1 (8) Setting rates and charges for all services provided by
2 the corporation without regard to chapter 91; provided
3 that the duty and power of the corporation board shall
4 be limited to approving the rates and charges
5 developed by the regional system boards for the
6 regional system's facilities and services. Rates and
7 charges may vary among regional systems and facilities
8 and may be consolidated with the rates of other
9 regional systems into one charge master. Third-party
10 payer contracts may be negotiated at the corporation-
11 wide level with input from the regional systems,
12 taking into consideration the rates set by the
13 regional system boards. For purposes of securing
14 revenue bonds, the corporation or regional system
15 board may covenant to set, and if necessary increase,
16 rates and charges as needed to pay debt service and
17 related obligations plus a coverage factor;
- 18 (9) Developing a corporation-wide hospital system that is
19 subject to chapters 76 and 89; provided that
20 employment of regional system and facility personnel
21 shall be the responsibility of the regional system



1 boards pursuant to corporation-wide policies and
2 procedures, applicable laws, rules, regulations, and
3 collective bargaining agreements;

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

16 (11) Suing and being sued; provided that only the
17 corporation may sue or be sued; and provided further
18 that the corporation and regional system boards shall
19 enjoy the same sovereign immunity available to the
20 State;



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



1 that regional system; provided further that a regional
2 system board shall exercise this power consistent with
3 corporation-wide policies; and provided further that
4 contracts or agreements executed by a regional system
5 board shall encumber only the regional subaccounts of
6 that regional system board;

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

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

12 (B) The corporation and any regional system board
13 shall have the power to issue revenue bonds in
14 any amount without regard to any limitation in
15 chapter 39; and

16 (C) The corporation shall have the power to incur
17 debt, including the issuance of revenue bonds in
18 any amount, and the regional system boards shall
19 have the power to issue revenue bonds in any
20 amount upon approval by the corporation board;



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



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

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

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



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

10 (20) Purchasing insurance and creating captive insurers in
11 any arrangement deemed in the best interest of the
12 corporation, including but not limited to funding and
13 payment of deductibles and purchase of reinsurance;
14 provided that only the corporation shall have the
15 power to create captive insurers to benefit public
16 health facilities and operations in all regional
17 systems; and provided further that a regional system
18 board may purchase insurance for its regional system
19 in collaboration with the other regional systems and
20 the corporation until captive coverage is provided by
21 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



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

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

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



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

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



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



1 the regional system consistent with corporation-
2 wide policies; and

3 (B) Notwithstanding subparagraph (A), contracting
4 with the holders of any of its notes or bonds as
5 to the custody, collection, securing, investment,
6 and payment of any moneys of the corporation or
7 regional system board and of any moneys held in
8 trust or otherwise for the payment of notes or
9 bonds and carrying out the contract. Moneys held
10 in trust or otherwise for the payment of notes or
11 bonds or in any way to secure notes or bonds, and
12 deposits of such moneys, may be secured in the
13 same manner as moneys of the corporation or
14 regional system board, and all banks and trust
15 companies are authorized to give security for the
16 deposits;

17 (27) Entering into any agreement with the State, including
18 but not limited to contracts for the provision of
19 goods, services, and facilities in support of the
20 corporation's programs or the regional system boards'
21 programs, and contracting for the provision of



1 services to or on behalf of the State; provided that
2 the regional system boards shall be responsible for
3 entering into agreements to provide goods, services,
4 and facilities in support of programs in their
5 respective regional systems consistent with
6 corporation-wide policies;

7 (28) Having a seal and altering the same at pleasure;

8 (29) Waiving, by means that the corporation or regional
9 system board deems appropriate, the exemption from
10 federal income taxation of interest on the
11 corporation's or regional system boards' bonds, notes,
12 or other obligations provided by the Internal Revenue
13 Code of 1986, as amended, or any other federal statute
14 providing a similar exemption;

15 (30) Developing internal policies and procedures for the
16 procurement of goods and services, consistent with the
17 goals of public accountability and public procurement
18 practices, and subject to management and financial
19 legislative audits; provided that the regional system
20 boards shall be responsible for developing internal
21 policies and procedures for each of their regional



1 systems consistent with the corporation's policies and
2 procedures; and further provided that:

3 (A) The regional system boards and the corporation
4 board shall enjoy the exemption under section
5 103-53(e);

6 (B) The regional system boards shall enjoy the
7 exemption under chapter 103D; and

8 (C) The corporation shall be subject to chapter 103D;

9 (31) Authorizing and establishing positions; provided that
10 regional system boards shall be responsible for hiring
11 and firing regional and facility personnel consistent
12 with corporation policies, except a regional chief
13 executive officer shall only be hired or dismissed
14 upon the approval of the regional system board as
15 further set forth in section 323F-8.5;

16 (32) Having and exercising all rights and powers necessary
17 or incidental to or implied from the specific powers
18 granted in this chapter, which specific powers shall
19 not be considered as a limitation upon any power
20 necessary or appropriate to carry out the purposes and
21 intent of this chapter; provided that the regional



1 system boards shall be responsible for having and
2 exercising all powers and rights with respect to
3 matters in their regional systems consistent with the
4 law; and

5 (33) Each regional system, through its regional system
6 board, shall:

7 (A) Develop policies and procedures necessary or
8 appropriate to plan, operate, manage, and control
9 the day-to-day operations of facilities within
10 the regional system that are consistent with
11 corporation-wide policies;

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

15 (C) Expend funds within its approved regional system
16 budget and expend additional funds in excess of
17 its approved regional system budget upon approval
18 of the corporation board.

19 (d) Each regional system board shall not be subject to
20 chapters 36 to 38, 40, 41D, and 103D as well as part I of
21 chapter 92 and shall enjoy the exemptions contained in sections



1 102-2 and 103-53(e), except as otherwise provided in this
2 chapter. The corporation shall not be subject to chapters 36 to
3 38, 40, and 41D, as well as part I of chapter 92, and shall
4 enjoy the exemptions contained in sections 102-2 and 103-53(e);
5 provided that the exemption provided under this subsection to
6 chapter 37D shall only apply to financing agreements of
7 \$5,000,000 or less; provided further that the aggregate value of
8 financing agreements per fiscal year shall not exceed
9 \$25,000,000[~~-~~] per region."

10 SECTION 4. Section 323F-21, Hawaii Revised Statutes, is
11 amended as follows:

12 1. By amending subsection (b) to read:

13 "(b) The corporation board and regional system boards
14 shall collaboratively develop budgetary guidelines and annual
15 operating and capital budgets for each facility, taking into
16 account anticipated surpluses from or subsidies to the
17 facilities pursuant to the annual guidelines described in this
18 section, accumulated corporation and regional reserves and
19 accounts, subsidies, if any, that are determined to be needed
20 from the general fund, and other sources of corporation-wide and
21 regional income as may be identified. Two-year budgets will be



1 ~~[approved for]~~ recommended for approval by regional system
2 boards, in alignment with State of Hawaii biennium budgeting.
3 The corporate board shall ~~[not alter]~~ approve the two-year
4 budget of [a] the regional system ~~[except:~~
5 ~~(1) Where state general funding is reduced,~~
6 ~~(2) An emergency exists; or~~
7 ~~(3) There is a renegotiated budget approved by a regional~~
8 ~~system board]~~.

9 The corporation and regional system boards shall collaboratively
10 develop budgetary guidelines and negotiate with each facility
11 reasonable corporation administrative costs, including funds
12 determined by the corporation or any regional system board to be
13 needed from or provided to each facility to:

14 (1) Repay corporation or regional system board debts;
15 (2) Provide subsidies to any facility determined to be
16 unable to fund from within that facility's programs
17 and services deemed essential to community needs; and
18 (3) Maintain appropriate reserves."

19 2. By amending subsection (d) to read:
20 "(d) Beginning with the first of the legislative biennium
21 budget years following the establishment of a regional system



1 board, and for each biennium period thereafter, the corporation
2 shall call together all the regional systems through
3 representatives selected by each regional system board, and the
4 chairs of the facility management advisory committees, if any,
5 to determine which services and functions should be provided by
6 the corporation for the next biennium budget period, consistent
7 with this chapter. As part of the biennium budgeting process,
8 the corporation board and the representatives of each regional
9 system, working through the corporation board regional
10 representatives, shall agree upon an allocation methodology for
11 funding the agreed upon and statutorily created corporate
12 services and functions. When allocation decisions cannot be
13 reached by agreement of the regional and corporate boards, the
14 corporate board shall decide the allocation for that service or
15 function for that biennium period."

16 **PART II**

17 SECTION 5. The legislature finds that under current law,
18 employees of the Hawaii health systems corporation are included
19 in seven bargaining units that also include employees of other
20 public employers. While this arrangement is not unique to the
21 Hawaii health systems corporation, the corporation's status as



1 one of the nation's largest public health care organizations
2 providing acute and long term health care services makes its
3 workforce needs wholly different from other government agencies
4 in the State.

5 Other health care workers are employed by the State. The
6 ability to negotiate comprehensive master collective bargaining
7 agreements that address the wages, hours, and working conditions
8 of its employees will allow the Hawaii health systems
9 corporation to expeditiously respond to and address the unique
10 issues inherent in its hospital operations, including census,
11 acuity, process improvement, and most importantly, quality
12 patient care.

13 The purpose of this part is to provide for negotiation of
14 master collective bargaining agreements by the Hawaii health
15 systems corporation for its employees.

16 SECTION 6. Section 89-8.5, Hawaii Revised Statutes, is
17 amended to read as follows:

18 **"[+]§89-8.5[+] Negotiating authority; Hawaii health**
19 **systems corporation.** Notwithstanding any law to the contrary,
20 including section 89-6(d), the Hawaii health systems corporation
21 or any of the regional boards, as a sole employer negotiator,



1 may negotiate with the exclusive representative of any
2 appropriate bargaining unit and execute [~~memorandums of~~
3 ~~understanding~~] its own collective bargaining agreement that is a
4 mandatory subject of collective bargaining for employees under
5 its control [~~to alter any existing or new collective bargaining~~
6 ~~agreement on any item or items subject to section 89-9~~]."

7 **PART III**

8 SECTION 7. In Act 182, Session Laws of Hawaii 2009, the
9 legislature authorized any of the regional systems or individual
10 facilities of the Hawaii health systems corporation to
11 transition into a new legal entity in any form recognized under
12 the laws of the State. With the approval and support of its
13 regional system board, at least one regional system has actively
14 explored the possibilities of a public-private partnership
15 allowed under section 323F-7.6, Hawaii Revised Statutes,
16 including undertaking three formal solicitation efforts to gauge
17 the interest of potential private partners locally and
18 nationally. In the course of the regional system's exploration
19 of possible ventures with private partners, that regional system
20 has contacted over twenty companies that operate in Hawaii and
21 elsewhere in the United States. In 2012, that regional system



1 submitted confidential information memoranda, describing the
2 operational and financial landscape of its facilities, to twelve
3 different companies and contacted an additional eight entities
4 to explore their interest in a possible partnership. Over the
5 course of these explorations, that regional system has
6 undertaken serious and robust discussions with at least six
7 preliminarily interested parties.

8 During the course of these efforts, the Hawaii health
9 systems corporation has determined that the majority of
10 potential partners are hesitant to evaluate partnership
11 opportunities without enabling legislation that addresses
12 certain structural issues related to such a transaction. In
13 recent years, the only private entity outside Hawaii that was
14 willing to invest resources to evaluate a partnership
15 opportunity concurrently with the pursuit of enabling
16 legislation eventually withdrew its interest when such
17 legislation was not adopted. The regional system in that case
18 has since engaged in discussion with other private entities,
19 including one private entity that has indicated willingness to
20 continue discussions concurrently with pursuit of enabling
21 legislation.



1 The purpose of this part is to ensure that the people of
2 the State have continued access to health care services areas
3 served by regional systems of the Hawaii health care
4 corporation. Accordingly, this part authorizes a regional
5 system of the Hawaii health systems corporation, in
6 collaboration with a private entity, to transition any one or
7 more of its facilities, to management and operation by a new
8 nonprofit management entity.

9 SECTION 8. Chapter 323F, Hawaii Revised Statutes, is
10 amended by adding a new part to be appropriately designated and
11 to read as follows:

12 **"PART . PUBLIC-PRIVATE COLLABORATION AND TRANSITION**
13 **OF A REGIONAL SYSTEM FACILITY TO A NEW ENTITY**

14 **§323F-A Definitions.** As used in this part:

15 "Nonprofit management entity" means a nonprofit
16 organization duly established under the laws of the State, the
17 sole shareholder or member of which is the private entity, and
18 the principal purpose of which is to manage and operate a
19 transitioned facility.

20 "Pre-transition facility" means a facility of a regional
21 system prior to its transition into a transitioned facility.



1 "Private entity" means a business organization duly
2 established under the laws of the State that operates medical
3 care facilities and with which, directly or through a wholly-
4 owned nonprofit management entity, a regional system or the
5 State, as applicable, is authorized to enter into lease
6 agreements and any other agreements contemplated or necessary
7 under this part for the purpose of transferring business
8 ownership interests of a pre-transition facility to a nonprofit
9 management entity.

10 "Transitioned facility" means a medical facility of a
11 regional system:

- 12 (1) For which the ongoing right to conduct business is
13 exclusively transferred to a nonprofit management
14 entity, subject to the limitations of this part;
- 15 (2) The management and operations of which become the sole
16 responsibility of the nonprofit management entity; and
- 17 (3) The real property assets of which remain owned by the
18 corporation or the State and shall be subject to a
19 fixed-term lease agreement between a regional system
20 or the State, as applicable, and the nonprofit
21 management entity, pursuant to section 323F-D.



1 **§323F-B Transition of a facility of a regional system to**
2 **management and operation by a nonprofit management entity.**

3 Notwithstanding any other law to the contrary, including but not
4 limited to section 27-1, section 76-16(b) and other sections of
5 chapter 76, chapters 78, 89, 89A, 89C, and 171, part V of
6 chapter 323D and all other parts of 323D, and section 323F-7.6,
7 a regional system may negotiate an agreement with a private
8 entity to transfer the exclusive right to conduct ongoing
9 business at one or more of its facilities to a nonprofit
10 management entity wholly-owned by the private entity.

11 **§323F-C Approvals required.** Transition under this part
12 shall occur only upon approval of the operating lease described
13 in section 323F-D and section 323F-E by the governor and the
14 relevant regional system board. Any documents associated with
15 the transition shall be subject to review by the attorney
16 general and the director of finance in their capacity to advise
17 the governor.

18 **§323F-D Real property; terms and conditions.** (a) As a
19 precondition to transfer of the exclusive right to conduct
20 ongoing business at a facility under section 323F-B, the
21 corporation or the relevant regional system board, or both, as



1 applicable, shall enter into a fixed-term operating lease of no
2 less than twenty-five years with the nonprofit management entity
3 for the purpose of leasing the facility's real property,
4 including improvements and physical structures, and for
5 operating the facility as set out in section 323F-E.

6 (b) The operating lease shall include the following terms
7 and conditions:

8 (1) Rent for the operating lease shall be a nominal \$1.00
9 per year payable in advance and in full for the term
10 of the lease;

11 (2) The operating lease shall not be terminated other than
12 for good cause and upon a minimum of three hundred
13 sixty-five days prior notice to ensure that the
14 delivery of health care to the community served will
15 not be disrupted;

16 (3) The nonprofit management entity shall have exclusive
17 control of all matters related to the management and
18 operation of the leased facilities, except as
19 otherwise set forth in the operating lease;

20 (4) The responsibility to oversee the performance of the
21 terms of the lease by the nonprofit management entity



1 shall rest with the relevant regional system board or
2 the corporation, as applicable; and

3 (5) The corporation shall retain ownership of all leased
4 property throughout the term of the operating lease.

5 **§323F-E Management terms and other business assets.** The
6 operating lease shall include terms and conditions for transfer
7 of ownership or assignment of business operations at the
8 transitioned facility, equipment and furnishings including any
9 leases for same, accounts receivable, medicare and other
10 provider agreements, business and commercial licenses and
11 registrations, intellectual property and goodwill, and any other
12 current assets. The operating lease shall also include a ten-
13 year business plan for the facility after completion of its
14 transition into a transitioned facility, and the nonprofit
15 management entity shall agree to make reasonable best efforts to
16 achieve the performance goals described in the business plan.

17 **§323F-F Liabilities.** (a) The State, the relevant
18 regional system board, the corporation, or one or more of these,
19 shall assume current liabilities associated with accounts
20 payable, accrued paid time off, debt, capital leases,
21 malpractice liabilities, and other liabilities as of the



1 effective date of the operating lease described in section
2 323F-D. Any and all liabilities of the pre-transition facility
3 that were transferred to the corporation upon its creation by
4 Act 262, Session Laws of Hawaii 1996, all liabilities of the
5 pre-transition facility related to collective bargaining
6 contracts negotiated by the State, and the liability for all
7 current outstanding post-employment benefits, shall remain the
8 responsibility of the State.

9 (b) All future liabilities arising out of a transitioned
10 facility's management and operation shall be the responsibility
11 of the nonprofit management entity for that transitioned
12 facility.

13 **§323F-G Employment, wages, and benefits.** (a) The
14 corporation and the unions representing employees of the
15 corporation shall meet to discuss the impact of the transition
16 of a pre-transition facility on its employees.

17 (b) The employees working at a transitioned facility shall
18 be subject to laws and regulations that apply to private sector
19 employees. The employees of a nonprofit management entity shall
20 not be governed by state laws that apply to public officers and
21 employees of the State including, but not limited to, section



1 76-16(b) and all other sections of chapter 76, chapters 89 and
2 89A, and any other laws and regulations that govern public or
3 government employment in the State.

4 (c) Employees of a pre-transition facility shall be
5 transitioned to employment at a transitioned facility under the
6 terms and conditions of employment established by the nonprofit
7 management entity for that transitioned facility.

8 (d) The nonprofit management entity shall offer all
9 medical and nonmedical employees of the pre-transition facility,
10 who satisfy the job qualifications for comparable positions and
11 the employment requirements of the private entity, continued
12 employment for an initial period established by the nonprofit
13 management entity for newly hired employees, subject to any
14 rules or policies applicable to employees of the nonprofit
15 management entity. The nonprofit management entity may, at its
16 discretion, continue to employ any or all medical and nonmedical
17 employees at the transitioned facility after the initial period.

18 (e) No employee of the corporation who is separated from
19 service as a result of implementation of an agreement and
20 transition under this part shall suffer any loss of retirement



1 allowance earned as provided in section 88-74 or any loss of
2 vacation leave earned and accumulated.

3 (f) Subject to subsection (d), the nonprofit management
4 entity shall take all reasonable steps necessary to provide for
5 a smooth transition of employees from state employment to
6 private employment by the nonprofit management entity at a
7 transitioned facility.

8 **§323F-H Operating support.** (a) Without regard to chapter
9 42F, a nonprofit management entity or the relevant regional
10 system may seek funds from the State for its operating costs of
11 a transitioned facility by preparing a budgetary request, as
12 those terms are defined in section 37-62, in accordance with
13 procedures and criteria established by the director of finance.
14 In no event shall the amount requested exceed the amount
15 appropriated for the operating costs of the relevant regional
16 system for the 2014 fiscal year. The director of finance shall
17 review the request and may include some or all of the amount
18 requested in the executive budget of the department of health.
19 Any appropriation made in response to the request shall be
20 subject to the allotment system generally applicable to all
21 appropriations made by the legislature. The department of



1 health shall be responsible for transferring the funds allotted
2 to the nonprofit management entity or the relevant regional
3 system for expenditure.

4 (b) To qualify to request funds from the State under this
5 section, a nonprofit management entity or the relevant regional
6 system must satisfy the following standards and conditions:

- 7 (1) Be incorporated under the laws of the State, and
8 determined and designated to be a nonprofit
9 organization by the Internal Revenue Service, or, in
10 the case of a regional system, continue to be
11 designated as a regional system pursuant to section
12 323F-2 (b);
- 13 (2) Be licensed and accredited, in accordance with
14 federal, state, or county statutes, rules, or
15 ordinances, to conduct the activities for which
16 funding is sought;
- 17 (3) Have a governing board whose members have no material
18 conflict of interest and serve without compensation;
- 19 (4) Have bylaws or policies that describe the manner in
20 which business is conducted, prohibit nepotism, and



1 provide for the management of potential conflicts of
2 interest situations;

3 (5) Be in compliance with all of the requirements of
4 chapter 323D with respect to the transitioned facility
5 and any other health care facility it operates;

6 (6) Submit tax clearances from the director of taxation
7 and the Internal Revenue Service to the effect that
8 all tax returns due have been filed, and all taxes,
9 interest, and penalties levied or accrued against have
10 been paid, or, in the case of a regional system, as
11 appropriate with respect to the corporation;

12 (7) Submit to an annual audit, disclose revenue
13 projections, and prepare an annual internal
14 performance audit and itemized financial statements,
15 including reimbursement rates, with respect to a
16 transitioned facility, in the same manner as described
17 in section 323F-22; and

18 (8) Submit its annual budget with respect to a
19 transitioned facility to the legislature for review at
20 least twenty days prior to the convening of the
21 regular legislative session.



1 **§323F-I Capital project support.** (a) Without regard to
2 chapter 42F, a nonprofit management entity or the relevant
3 regional system may seek funds from the State for capital
4 expenditures, as that term is defined in section 37-62, for a
5 transitioned facility for each or all of the first ten years of
6 the operating lease required by section 323F-D, using the ten-
7 year business plan described in section 323F-E for guideline
8 purposes. Each year's request for funds shall be submitted to
9 the director of finance in accordance with procedures and
10 criteria established by the director, and reviewed by the
11 director and comptroller with pertinent capital planning and
12 expenditure documents, and the capital planning procedures
13 supplied by the nonprofit management entity or the relevant
14 regional system. The director of finance may include some or
15 all of the funds requested in the executive budget of the
16 department of health. Any appropriation made in response to a
17 request shall be subject to the allotment system generally
18 applicable to all appropriations made by the legislature. The
19 department of health shall be responsible for transferring the
20 funds allotted to the nonprofit management entity or the
21 relevant regional system for expenditure.



1 (b) After the first ten years of the operating lease, the
2 nonprofit management entity and the private entity shall be
3 responsible for funding all capital expenditures of the
4 transitioned facility.

5 (c) To qualify to request funds from the State under this
6 section, a nonprofit management entity or a regional system
7 shall satisfy all of the standards and conditions set out in
8 section 323F-H(b). In addition, the transitioned facility shall
9 demonstrate that the capital projects constructed, operated, and
10 maintained with the requested funds will be in compliance with
11 all federal, state, and county health care planning laws and
12 rules, land use and zoning laws and rules, environmental laws
13 and rules, and building and health codes, rules, and
14 regulations.

15 **§323F-J Strategic commitment during term of lease.** (a)
16 The private entity shall be committed to supporting the
17 nonprofit management entity and any transitioned facility to
18 achieve excellence and improve access to services in the region
19 of its location.

20 (b) The private entity and the nonprofit management entity
21 shall establish a governance and management structure for a



1 transitioned entity that seeks to improve its performance. The
2 private entity and the nonprofit management entity shall apply
3 efficiencies of scale, consolidation of shared services, and
4 administrative and technological expertise to improve the health
5 care performance of a transitioned facility.

6 (c) The private entity and the nonprofit management entity
7 shall support a transitioned facility in:

- 8 (1) Expanding primary care access throughout the relevant
9 region;
- 10 (2) Recruiting and rotating specialists to fill current
11 service gaps;
- 12 (3) Extending the private entity's service line
13 coordination to the relevant region, including but not
14 limited to cancer, cardiology, orthopedics,
15 pediatrics, and women's health services;
- 16 (4) Coordinating long-term care patients and reducing wait
17 lists;
- 18 (5) Upgrading facilities and equipment as needed to
19 provide high quality care and to enhance patient
20 experience; and



1 (6) Incorporating the region into the private entity's
2 value-based contracting initiatives to better align
3 quality and cost initiatives."

4 **PART IV**

5 SECTION 9. There is appropriated out of the general
6 revenues of the State of Hawaii the sum of \$ or so
7 much thereof as may be necessary for fiscal year 2015-2016 for
8 the establishment of full-time equivalent (FTE)
9 permanent positions in the department of budget and finance to
10 coordinate the review of documents and examine the fiscal
11 implications posed by a transition of any Hawaii health systems
12 corporation facility to management and operation by a nonprofit
13 management entity.

14 The sum appropriated shall be expended by the department of
15 budget and finance for the purposes of this part.

16 **PART V**

17 SECTION 10. This Act does not affect rights and duties
18 that matured, penalties that were incurred, and proceedings that
19 were begun before its effective date.

20 SECTION 11. In codifying the new sections added by section
21 8 of this Act, the revisor of statutes shall substitute



1 appropriate section numbers for the letters used in designating
2 the new sections in this Act.

3 SECTION 12. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 13. This Act shall take effect on January 7, 2059;
6 provided that part II of this Act shall apply to collective
7 bargaining agreements negotiated after July 1, 2015; provided
8 further that part IV shall take effect on July 1, 2015.

9



Report Title:

Hawaii Health Systems Corporation; Audit; Collective Bargaining; Transition; Appropriation

Description:

Repeals certain limits on operational authority. Requires the auditor to conduct a financial and management audit of HHSC every five years. Authorizes HHSC to negotiate master collective bargaining agreements for its employees. Authorizes a regional system of the Hawaii health systems corporation, in collaboration with a private entity, to transition any one or more of its facilities to management and operation by a new nonprofit management entity. Appropriates an unspecified amount to the department of budget and finance for an unspecified number of positions to coordinate the review of documents and examine the fiscal implications posed by a transition of any Hawaii health systems corporation facility to management and operation by a nonprofit management entity. Effective 1/7/2059. (SD2)

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

