



**GOV. MSG. NO. 1076**

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

July 11, 2007

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

Dear Madam President and Members of the Senate:

Re: Senate Bill No. 1676 SD2 HD1 CD1

On July 10, 2007, Senate Bill No. 1676, 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 stated purpose of this bill is to require the Hawaii Health Systems Corporation (HHSC) to submit a feasibility report to the Legislature on establishing a domestic captive insurance company to provide medical malpractice and hospital professional and general liability coverage for the corporation, establishes a captive insurance board and appropriates \$20,000,000 to capitalize the formation of a captive entity.

Although my Administration supports creation of captive insurance companies to lessen health care costs, the bill is problematic because it sets up a governance system for the captive entity that runs contrary to established practices, is ill-timed, and will complicate implementation of new regional boards for HHSC.

The bill contains explicit language that precludes the HHSC management and the HHSC board from managing or overseeing the captive entity. This governance structure runs counter to established practices that ensure a parent company has a seat on its captive entity's board and oversees its captive insurance entity.

In light of the enactment of SB No. 1792 today, which will create five new regional boards within HHSC, it would be prudent to wait until the anticipated changes in HHSC occur and the regional board members are seated who could then provide input and expertise as to the creation of a captive entity that would best serve the needs of HHSC.

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Further, this bill proposes to use \$13,279,000 from the Hawaii Health Systems Corporation Special Fund that is necessary to operate the State's regional 13-facility hospital network and provide basic health care services to our residents.

For the foregoing reasons, I allowed Senate Bill No. 1676 to become law as Act 278, effective July 10, 2007, without my signature.

Sincerely,



LINDA LINGLE

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## 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 cost of medical  
2 malpractice and hospital professional and general liability  
3 coverage continues to rise and that stability in risk financing  
4 is needed for the Hawaii health systems corporation and the  
5 physicians serving this entity. The escalating costs of  
6 premiums, lack of insurers providing coverage in Hawaii,  
7 decreased limits of available coverage, and coverage  
8 restrictions, make it important to establish a captive insurance  
9 company to insure and control exposure to the liability risks of  
10 the corporation.

11           The purpose of this Act is to:

12           (1) Provide that if the Hawaii health systems corporation  
13           establishes a domestic captive insurance company to  
14           provide medical malpractice and hospital professional  
15           and general liability coverage for the corporation and  
16           its facilities and the physicians serving therein, it  
17           must submit a feasibility report to the legislature, a



1 formalized financial plan to the director of finance  
2 for approval, and a business plan to the insurance  
3 commissioner; and

4 (2) Ensure that the composition of the captive insurance  
5 board includes members with the appropriate knowledge  
6 and experience to oversee the establishment and  
7 operation of a captive insurance company.

8 SECTION 2. Chapter 323F, Hawaii Revised Statutes, is  
9 amended by adding a new section to be appropriately designated  
10 and to read as follows:

11 "§323F- Captive insurance board. (a) There is  
12 established a ten-member captive insurance board that shall  
13 carry out the corporation's duties and responsibilities relating  
14 to the establishment of any captive insurance company pursuant  
15 to section 323F-7(a)(20) and the operation thereof.

16 (b) Eight members of the captive insurance board shall be  
17 appointed by the governor as follows:

18 (1) Three members from a list of five persons submitted by  
19 the president of the senate; provided that at least  
20 one of these members shall have experience in the  
21 insurance industry and financial matters;



1       (2) Three members from a list of five persons submitted by  
2       the speaker of the house of representatives; provided  
3       that at least one of these members shall have  
4       experience in the insurance industry and financial  
5       matters; and

6       (3) Two members, one of whom shall be the chief executive  
7       officer or chief financial officer of an insurer  
8       licensed to do business in the State and shall serve  
9       as a nonvoting member.

10       The director of health or the director's designee and the  
11       insurance commissioner or the commissioner's designee shall  
12       serve as ex officio, nonvoting members.

13       Any vacancy shall be filled in the same manner provided for  
14       the original appointments. The captive insurance board shall  
15       elect its own chair from among its members.

16       (c) The selection, appointment, and confirmation of any  
17       appointed nominee shall be based on ensuring that captive  
18       insurance board members have diverse and beneficial perspectives  
19       and experiences and that they include, to the extent possible,  
20       representatives of the insurance and/or finance sectors.

21       Members of the captive insurance board shall serve without  
22       compensation but may be reimbursed for actual expenses,



1 including travel expenses incurred in the performance of their  
2 duties.

3 (d) Any appointed member of the captive insurance board  
4 may be removed for cause by the governor or for cause by vote of  
5 a two-thirds majority of the captive insurance board members  
6 then in office. For purposes of this section, cause shall  
7 include without limitation:

- 8 (1) Malfeasance in office;
- 9 (2) Failure to attend regularly called meetings;
- 10 (3) Sentencing for conviction of a felony, to the extent  
11 allowed by section 831-2; or
- 12 (4) Any other cause that may render a member incapable or  
13 unfit to discharge the duties required under this  
14 chapter.

15 Filing nomination papers for elective office, appointment to  
16 elective office, or conviction of a felony consistent with  
17 section 831-3.1, shall automatically and immediately disqualify  
18 a board member from office.

19 (e) No member of the captive insurance board shall be an  
20 employee or vendor of the corporation, or an immediate family  
21 member thereof. For purposes of this subsection, "immediate  
22 family member" means a corporation board employee's or vendor's



1 spouse, child, parent, grandparent, or any related individual  
2 who resides in the same household of the employee or vendor."

3 SECTION 3. Section 323F-3, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) The corporation shall be governed by a thirteen-  
6 member board of directors which shall carry out the duties and  
7 responsibilities of the corporation other than those duties and  
8 responsibilities relating to the establishment of any captive  
9 insurance company pursuant to section 323F-7(a)(20) and the  
10 operation thereof.

11 SECTION 4. No later than twenty days prior to the  
12 convening of the regular session of 2008, the board of directors  
13 of the Hawaii health systems corporation shall submit to the  
14 legislature a report on the feasibility of establishing a  
15 captive insurance company pursuant to section 323F-7(a)(20),  
16 Hawaii Revised Statutes, to provide medical malpractice and  
17 hospital professional and general liability coverage for Hawaii  
18 health systems corporation facilities and physicians.

19 SECTION 5. In organizing a captive insurance company  
20 pursuant to section 323F-7(a)(20), Hawaii Revised Statutes, to  
21 provide medical malpractice and hospital professional and



1 general liability coverage for Hawaii health systems facilities  
2 and physicians, the Hawaii health systems corporation shall:

3 (1) Submit a formalized financial plan to the director of  
4 finance for review and approval; and

5 (2) Upon receiving the approval required by paragraph (1),  
6 in addition to the documents required to be submitted  
7 by article 19, chapter 431, Hawaii Revised Statutes,  
8 submit to the insurance commissioner a formalized  
9 business plan that includes the establishment of a  
10 captive insurer board of directors.

11 SECTION 6. There is appropriated out of the general  
12 revenues of the State of Hawaii the sum of \$6,739,000 or so much  
13 thereof as may be necessary for fiscal year 2007-2008 to be  
14 deposited into the health systems special fund.

15 SECTION 7. There is appropriated out of the health system  
16 special fund the sum of \$13,279,000 or so much thereof as may be  
17 necessary for fiscal year 2007-2008 to establish a captive  
18 insurance company as authorized by this Act.

19 The sums appropriated shall be expended by the Hawaii  
20 health systems corporation for the purposes of this Act.

21 SECTION 8. New statutory material is underscored.

22 SECTION 9. This Act shall take effect on July 1, 2007.

