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## A BILL FOR AN ACT

RELATING TO HEALTH CARE.

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

1           SECTION 1. Chapter 323D, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§323D-     Performance bond. The state agency may require  
5 the recipient of a certificate of need to furnish a performance  
6 bond executed by a surety company authorized to do business in  
7 this State or otherwise secured in a manner satisfactory to the  
8 state agency, in a form prescribed in rules adopted by the state  
9 agency, in accordance with chapter 91, and in an amount to be  
10 determined by the state agency, at its discretion, to ensure the  
11 proper implementation of the certificate of need."

12          SECTION 2. Section 323D-2, Hawaii Revised Statutes, is  
13 amended as follows:

14          1. By amending the definition of "state health services  
15 and facilities plan" to read:

16          ""State health services and facilities plan" means the  
17 comprehensive plan for the economical delivery of health



1 services in the State prepared by the [~~statewide council.~~] the  
2 subarea councils."

3 2. By deleting the definition of "statewide council".

4 [~~"Statewide council" means the statewide health  
5 coordinating council established in section 323D-13."~~]

6 SECTION 3. Section 323D-12, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 **"§323D-12 Health planning and development functions; state  
9 agency.** (a) The state agency shall:

10 (1) Have as a principal function the responsibility for  
11 promoting accessibility for all the people of the  
12 State to quality health care services at reasonable  
13 cost. The state agency shall conduct such studies and  
14 investigations as may be necessary as to the causes of  
15 health care costs including inflation. The state  
16 agency may contract for services to implement this  
17 paragraph. The certificate of need program mandated  
18 under part V shall serve this function. The state  
19 agency shall promote the sharing of facilities or  
20 services by health care providers whenever possible to  
21 achieve economies and shall restrict unusual or



- 1 unusually costly services to individual facilities or  
2 providers where appropriate;
- 3 (2) Serve as staff to and provide technical assistance and  
4 advice to [~~the statewide council and~~] the subarea  
5 councils in the preparation, review, and revision of  
6 the state health services and facilities plan;
- 7 (3) Conduct the health planning activities of the State in  
8 coordination with the subarea councils, implement the  
9 state health services and facilities plan, and  
10 determine the statewide health needs of the State  
11 after consulting with the [~~statewide~~] appropriate  
12 subarea council; and
- 13 (4) Administer the state certificate of need program  
14 pursuant to part V.
- 15 (b) The state agency may:
- 16 (1) Prepare such reports and recommendations on Hawaii's  
17 health care costs and public or private efforts to  
18 reduce or control costs and health care quality as it  
19 deems necessary. The report may include, but need not  
20 be limited to, a review of health insurance plans, the  
21 availability of various kinds of health insurance and  
22 malpractice insurance to consumers, and strategies for



- 1 increasing competition in the health insurance  
2 field[-];
- 3 (2) Prepare and revise as necessary the state health  
4 services and facilities plan[-];
- 5 (3) Prepare, review, and revise the annual implementation  
6 plan[-];
- 7 (4) Assist the [~~statewide council~~] subarea councils in the  
8 performance of [~~its~~] their functions[-];
- 9 (5) Determine the need for new health services proposed to  
10 be offered within the State[-];
- 11 (6) Assess existing health care services and facilities to  
12 determine whether there are redundant, excessive, or  
13 inappropriate services or facilities and make public  
14 findings of any that are found to be so. The state  
15 agency shall weigh the costs of the health care  
16 services or facilities against the benefits the  
17 services or facilities provide and there shall be a  
18 negative presumption against marginal services[-];
- 19 (7) Provide technical assistance to persons, public or  
20 private, in obtaining and filling out the necessary  
21 forms for the development of projects and programs[-];



- 1 (8) Prepare reports, studies, and recommendations on
- 2 emerging health issues, such as medical ethics, health
- 3 care rationing, involuntary care, care for the
- 4 indigent, and standards for research and development
- 5 of biotechnology and genetic engineering[-]; and
- 6 (9) Conduct such other activities as are necessary to meet
- 7 the purposes of this chapter."

8 SECTION 4. Section 323D-13.5, Hawaii Revised Statutes, is  
 9 amended to read as follows:

10 "[+]§323D-13.5[+] **Disqualification from position or**  
 11 **membership.** The chairpersons of [~~the statewide council,~~] the  
 12 subarea health planning councils and the review panel[7] shall  
 13 not be employed by or married to health care providers."

14 SECTION 5. Section 323D-14, Hawaii Revised Statutes, is  
 15 amended to read as follows:

16 "§323D-14 **Functions; [~~statewide health coordinating~~**  
 17 **~~ouncil.~~]** subarea councils. The [~~statewide council]~~ subarea  
 18 councils shall:

- 19 (1) Prepare and revise as necessary the state health
- 20 services and facilities plan; for each subarea;
- 21 (2) Advise the state agency on actions under section 323D-
- 22 12;



1 (3) Appoint the review panel pursuant to section 323D-42;  
2 and

3 (4) Review and comment upon the following actions by the  
4 state agency before such actions are made final:

5 (A) The making of findings as to applications for  
6 certificate of need; and

7 (B) The making of findings as to the appropriateness  
8 of those institutional and noninstitutional  
9 health services offered in the State."

10 SECTION 6. Section 323D-17, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "**§323D-17 Public hearings required.** In the preparation of  
13 the state health services and facilities plan or amendments to  
14 the state health services and facilities plan, the state agency  
15 and the [~~statewide~~] appropriate subarea council shall conduct a  
16 public hearing on the proposed plan or the amendments and shall  
17 comply with the provisions for notice of public hearings in  
18 chapters 91 and 92."

19 SECTION 7. Section 323D-21, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "**§323D-21 Subarea health planning councils, established.**

22 There are established, subarea health planning councils for



1 geographical areas [~~which~~] that shall be designated by the state  
2 agency [~~in consultation with the statewide council~~]. Each  
3 county shall have at least one subarea health planning council.  
4 The subarea health planning councils shall be placed within the  
5 state agency for administrative purposes."

6 SECTION 8. Section 323D-22, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8 "(a) Each subarea health planning council shall review,  
9 seek public input, and make recommendations relating to health  
10 planning for the geographical subarea it serves. In addition,  
11 the subarea health planning councils shall:

12 (1) Identify and recommend to the state agency [~~and the~~  
13 ~~council~~] the data needs and special concerns of the  
14 respective subareas with respect to the preparation of  
15 the state plan[-];

16 (2) Provide specific recommendations to the state agency  
17 [~~and the council~~] regarding the highest priorities for  
18 health services and resources development[-];

19 (3) Review the state health services and facilities plan  
20 as it relates to the respective subareas and make  
21 recommendations to the state agency [~~and the~~  
22 ~~council~~].;



- 1           (4) Advise the state agency in the administration of the  
2           certificate of need program for their respective  
3           subareas~~[-]~~;
- 4           (5) Advise the state agency on the cost of reimbursable  
5           expenses incurred in the performance of their  
6           functions for inclusion in the state agency budget~~[-]~~;
- 7           (6) Advise the state agency in the performance of its  
8           specific functions~~[-]~~; and
- 9           (7) Perform other such functions as agreed upon by the  
10          state agency and the respective subarea councils.
- 11          ~~[(8) Each subarea health planning council shall recommend  
12          for gubernatorial appointment at least one person from  
13          its membership to be on the statewide council.]"~~

14          SECTION 9. Section 323D-42, Hawaii Revised Statutes, is  
15          amended to read as follows:

16          "**§323D-42 Review panel.** There is established a review  
17          panel for the purposes of reviewing applications for  
18          certificates of need. The review panel shall be appointed by  
19          the ~~[statewide council.]~~ subarea councils. The review panel  
20          shall include at least one member from each county and a  
21          majority of the members shall be consumers. Membership on ~~[the~~



1 ~~statewide]~~ a subarea council shall not preclude membership on  
2 the review panel established in this section."

3 SECTION 10. Section 323D-44, Hawaii Revised Statutes, is  
4 amended by amending its title and subsections (a) and (b) to  
5 read as follows:

6 "**§323D-44 Applications for certificates of need[-];**  
7 **decision subject to approval of governor.** (a) An applicant for  
8 a certificate of need shall file an application with the state  
9 agency. The state agency shall provide technical assistance to  
10 the applicant in the preparation and filing of the application.

11 Each application shall include a statement evaluating the  
12 facility's or service's probable impact on health care costs and  
13 providing additional data as required by rule. The statement  
14 shall include cost projections for at least the first and third  
15 years after its approval.

16 The state agency shall not accept an application for review  
17 until the application is complete and includes all necessary  
18 information required by the state agency. The state agency  
19 shall determine if the application is complete within thirty  
20 days of receipt of the application. If the state agency  
21 determines that the application is incomplete, the state agency  
22 shall inform the applicant of the additional information that is



1 required to complete the application. When the state agency  
2 determines that the application is complete, the period for  
3 agency review described in subsection (b) shall begin, and the  
4 state agency shall transmit the completed application to the  
5 appropriate subarea councils, the review panel, [~~the statewide~~  
6 ~~council,~~] appropriate individuals, and appropriate public  
7 agencies. The state agency may require the applicant to provide  
8 copies of the application to the state agency, the appropriate  
9 subarea councils, the review panel, [~~the statewide council,~~]  
10 appropriate individuals, and appropriate public agencies. If,  
11 during the period for agency review, the state agency requires  
12 the applicant to submit information respecting the subject of  
13 the review, the period for agency review [~~shall~~], at the request  
14 of the applicant, shall be extended fifteen days.

15 (b) The state agency, subject to the approval of the  
16 governor, shall issue a decision [~~on~~] to approve or reject the  
17 application within ninety days after the beginning of the period  
18 for agency review, unless the state agency within the ninety  
19 days notifies the applicant in writing that the period for  
20 agency review has been extended by the state agency sixty days  
21 beyond the ninety days. The decision shall be subject to post-



1 decision review procedures which the state agency may provide  
2 for by rules adopted in conformity with chapter 91."

3 SECTION 11. Section 323D-44.6, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "~~{}~~§323D-44.6~~{}~~ **Review of certain applications for**  
6 **certificate of need; waiver.** The subarea council~~[,]~~ and the  
7 review panel~~[, and the statewide council may]~~, at their  
8 discretion, may choose to waive their respective prerogatives of  
9 review of any certificate of need application~~[,]~~ subject to the  
10 approval of the governor."

11 SECTION 12. Section 323D-45, Hawaii Revised Statutes, is  
12 amended by amending its title and subsection (a) to read as  
13 follows:

14 "§323D-45 **Subarea council~~[,]~~ and review panel~~[, and~~**  
15 **~~statewide council]~~ recommendations for issuance or denial of**  
16 **certificates of need.** (a) Except for an administrative review  
17 as provided in section 323D-44.5, or in an emergency situation  
18 or other unusual circumstances as provided in section 323D-  
19 44(c), the state agency shall refer every application for a  
20 certificate of need to the appropriate subarea council or  
21 councils~~[,]~~ and the review panel~~[, and the statewide council]~~.  
22 The subarea council and the review panel shall consider all



1 relevant data and information submitted by the state agency,  
 2 subarea councils, other areawide or local bodies, and the  
 3 applicant[7] and may request from them additional data and  
 4 information. The review panel shall consider each application  
 5 at a public meeting and shall submit its recommendations with  
 6 findings to the [~~statewide~~] appropriate subarea council. The  
 7 [~~statewide~~] appropriate subarea council shall consider the  
 8 recommendation of the review panel at a public meeting and shall  
 9 submit its recommendations to the state agency within [~~such~~] the  
 10 time [~~as~~] the state agency prescribes. The [~~statewide~~]  
 11 appropriate subarea council and the review panel may join  
 12 together to hear or consider simultaneously information related  
 13 to an application for a certificate of need."

14 SECTION 13. Section 323D-45.3, Hawaii Revised Statutes, is  
 15 amended to read as follows:

16 "**§323D-45.3 Approval of applications required to meet**  
 17 **safety, licensure, or accreditation standards.** (a)

18 Notwithstanding section 323D-43, the state agency, subject to  
 19 the approval of the governor, shall approve an application for a  
 20 certificate of need for a capital expenditure [~~which~~] that is  
 21 required:



1           (1) To eliminate or prevent imminent safety hazards as  
2           defined by federal, state, or county fire, building,  
3           or life safety codes or regulations~~[, or]~~;  
4           (2) To comply with state licensure standards~~[, or]~~; or  
5           (3) To comply with accreditation standards, compliance  
6           with which is required to receive reimbursements under  
7           title XVIII of the Social Security Act or payments  
8           under a state plan for medical assistance approved  
9           under title XIX of ~~[such]~~ the Act,  
10 unless the state agency finds that the facility or service with  
11 respect to which the capital expenditure is proposed to be made  
12 is not needed or that the obligation of the capital expenditure  
13 is not consistent with the state health services and facilities  
14 plan in effect under section 323D-15.

15           (b) An application for a certificate of need approved by  
16 the state agency, subject to the approval of the governor, under  
17 this section shall be approved only to the extent that the  
18 capital expenditure is required to eliminate or prevent the  
19 hazards described in paragraph (1) or to comply with the  
20 standards described in paragraph (2) or (3)."

21           SECTION 14. Section 323D-46, Hawaii Revised Statutes, is  
22 amended to read as follows:



1           "**§323D-46 Conditional certification**~~[--]~~; subject to the  
2 approval of the governor. The state agency shall provide by  
3 rules adopted in conformity with chapter 91 for the conditional  
4 certification of those proposals [~~which,~~] that, by modification  
5 of specific items of the proposal, would successfully meet the  
6 criteria for approval. The state agency shall establish a time  
7 period not to exceed one hundred fifty days from the date of the  
8 conditional certification within which the applicant shall  
9 certify to the state agency that the required modifications have  
10 been made. The state agency shall require a statement from the  
11 applicant certifying that the required modifications have been  
12 made before issuing, subject to the approval of the governor, a  
13 certificate of need [~~is issued~~]. The state agency, subject to  
14 the approval of the governor, shall deny any application in  
15 which the required modifications have not been made within the  
16 time period established by the state agency."

17           SECTION 15. Section 323D-47, Hawaii Revised Statutes, is  
18 amended to read as follows:

19           "**§323D-47 Request for reconsideration.** The state agency  
20 may provide by rules adopted in conformity with chapter 91 for a  
21 procedure by which any person [~~may~~], for good cause shown, may  
22 request in writing a public hearing before a reconsideration



1 committee for purposes of reconsideration of the agency's  
2 decision. The reconsideration committee shall consist of the  
3 administrator of the state agency and the chairpersons of [~~the~~  
4 ~~statewide council,~~] the review panel[~~, the plan development~~  
5 ~~committee of the statewide council,~~] and the appropriate subarea  
6 health planning council. The administrator shall be the  
7 chairperson of the reconsideration committee. A request for a  
8 public hearing shall be deemed by the reconsideration committee  
9 to have shown good cause, if:

- 10 (1) It presents significant, relevant information not  
11 previously considered by the state agency;
- 12 (2) It demonstrates that there have been significant  
13 changes in factors or circumstances relied upon by the  
14 state agency in reaching its decision;
- 15 (3) It demonstrates that the state agency has materially  
16 failed to follow its adopted procedures in reaching  
17 its decision;
- 18 (4) It provides such other bases for a public hearing as  
19 the state agency determines constitutes good causes;  
20 or



1           (5) The decision of the administrator differs from the  
2           recommendation of the [~~statewide~~] appropriate subarea  
3           council.

4 To be effective a request for such a hearing shall be received  
5 within ten working days of the state agency decision. A  
6 decision of the reconsideration committee following a public  
7 hearing under this section shall be considered a decision of the  
8 state agency for purposes of section 323D-44."

9           SECTION 16. Section 323D-54, Hawaii Revised Statutes, is  
10 amended to read as follows:

11           "**§323D-54 Exemptions from certificate of need**  
12 **requirements.** Nothing in this part or rules with respect to the  
13 requirement for certificates of need applies to:

14           (1) Offices of physicians, dentists, or other  
15           practitioners of the healing arts in private practice  
16           as distinguished from organized ambulatory health care  
17           facilities, except in any case of purchase or  
18           acquisition of equipment attendant to the delivery of  
19           health care service and the instruction or supervision  
20           for any private office or clinic involving a total  
21           expenditure in excess of the expenditure minimum;



- 1           (2) Laboratories, as defined in section 321-11(12), except  
2           in any case of purchase or acquisition of equipment  
3           attendant to the delivery of health care service and  
4           the instruction or supervision for any laboratory  
5           involving a total expenditure in excess of the  
6           expenditure minimum;
- 7           (3) Dispensaries and first aid stations located within  
8           business or industrial establishments and maintained  
9           solely for the use of employees; provided [~~such~~] these  
10          facilities do not regularly provide inpatient or  
11          resident beds for patients or employees on a daily  
12          twenty-four-hour basis;
- 13          (4) Dispensaries or infirmaries in correctional or  
14          educational facilities;
- 15          (5) Dwelling establishments, such as hotels, motels, and  
16          rooming or boarding houses that do not regularly  
17          provide health care facilities or health care  
18          services;
- 19          (6) Any home or institution conducted only for those who,  
20          pursuant to the teachings, faith, or belief of any  
21          group, depend for healing upon prayer or other  
22          spiritual means;



- 1           (7) Dental clinics;
- 2           (8) Nonpatient areas of care facilities such as parking
- 3           garages and administrative offices;
- 4           (9) Bed changes that involve ten per cent or ten beds of
- 5           existing licensed bed types, whichever is less, of a
- 6           facility's total existing licensed beds within a two-
- 7           year period;
- 8           (10) Projects that are wholly dedicated to meeting the
- 9           State's obligations under court orders, including
- 10           consent decrees, that have already determined that
- 11           need for the projects exists;
- 12           (11) Replacement of existing equipment with its modern-day
- 13           equivalent;
- 14           (12) Primary care clinics under the expenditure thresholds
- 15           referenced in section 323D-2;
- 16           (13) Equipment and services related to that equipment, that
- 17           are primarily invented and used for research purposes
- 18           as opposed to usual and customary diagnostic and
- 19           therapeutic care;
- 20           (14) Capital expenditures that are required:



1 (A) To eliminate or prevent imminent safety hazards  
2 as defined by federal, state, or county fire,  
3 building, or life safety codes or regulations;

4 (B) To comply with state licensure standards; or

5 (C) To comply with accreditation standards,  
6 compliance with which is required to receive  
7 reimbursements under Title XVIII of the Social  
8 Security Act or payments under a state plan for  
9 medical assistance approved under Title XIX of  
10 [~~such~~] that Act;

11 (15) Extended care adult residential care homes and  
12 assisted living facilities; or

13 (16) Other facilities or services that the agency through  
14 the [~~statewide~~] appropriate subarea council chooses to  
15 exempt, by rules pursuant to section 323D-62."

16 SECTION 17. Section 323D-62, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "**§323D-62 Rules.** The state agency and the [~~statewide~~  
19 ~~health coordinating council~~] subarea councils may adopt  
20 necessary rules for the purposes of this chapter in accordance  
21 with chapter 91."



1 SECTION 18. Section 323D-73, Hawaii Revised Statutes, is  
2 amended by amending subsection (c) to read as follows:

3 "(c) For acquisitions which require approval from the  
4 agency under this part and a certificate of need, the applicant  
5 shall submit a single application for both purposes and the  
6 application shall be reviewed under a single unified review  
7 process by the agency. Following the single unified review  
8 process, the agency shall simultaneously issue its decision,  
9 subject to the approval of the governor, regarding the  
10 certificate of need and its decision for purposes of the sale of  
11 a hospital under this part."

12 SECTION 19. Section 323D-74, Hawaii Revised Statutes, is  
13 amended by amending subsection (a) to read as follows:

14 "(a) The agency, after consultation with the attorney  
15 general, shall~~[, if appropriate,]~~ hold a public hearing during  
16 the course of review, ~~[which hearing]~~ if appropriate, that may  
17 be held jointly with the certificate of need review panel ~~[or~~  
18 ~~the statewide health coordinating council,]~~ and in which any  
19 person may file written comments and exhibits or appear and make  
20 a statement. The agency or the attorney general may subpoena  
21 additional information or witnesses, require and administer  
22 oaths, require sworn statements, take depositions, and use



1 related discovery procedures for purposes of the hearing and at  
2 any time prior to making a decision on the application."

3 SECTION 20. Section 323D-13, Hawaii Revised Statutes, is  
4 repealed.

5 [~~"§323D-13 Statewide health coordinating council. (a)~~

6 ~~There is established a statewide health coordinating council~~  
7 ~~which shall be advisory to the state agency and the membership~~  
8 ~~of which as appointed by the governor shall not exceed twenty~~  
9 ~~members.~~

10 ~~(b) The members of the statewide council shall be~~  
11 ~~appointed by the governor in accordance with section 26-34,~~  
12 ~~provided that a nonvoting, ex officio member who is the~~  
13 ~~representative of the Veterans' Administration shall be~~  
14 ~~designated by the Veterans' Administration. The membership of~~  
15 ~~the statewide council shall be broadly representative of the~~  
16 ~~age, sex, ethnic, income, and other groups that make up the~~  
17 ~~population of the State and shall include representation from~~  
18 ~~the subarea councils, business, labor, and health care~~  
19 ~~providers. A majority but not more than eleven of the members~~  
20 ~~shall be consumers of health care who are not also providers of~~  
21 ~~health care.~~



1       ~~(c) The statewide council shall select a chairperson from~~  
2 ~~among its members. The members of the statewide council shall~~  
3 ~~not be compensated but shall be reimbursed for necessary~~  
4 ~~expenses incurred in the performance of their duties.~~

5       ~~(d) The number of members necessary to constitute a quorum~~  
6 ~~to do business shall consist of a majority of all members who~~  
7 ~~have accepted nomination to the council, and have been confirmed~~  
8 ~~and qualified as members of the council. When a quorum is in~~  
9 ~~attendance, the concurrence of a majority of the members in~~  
10 ~~attendance shall make any action of the council valid.~~

11       ~~(e) No member of the statewide council shall, in the~~  
12 ~~exercise of any function of the statewide council described in~~  
13 ~~section 323D-14(3), vote on any matter before the statewide~~  
14 ~~council respecting any individual or entity with which the~~  
15 ~~member has or, within the twelve months preceding the vote, had~~  
16 ~~any substantial ownership, employment, medical staff, fiduciary,~~  
17 ~~contractual, creditor, or consultative relationship. The~~  
18 ~~statewide council shall require each of its members who has or~~  
19 ~~has had such a relationship with an individual or entity~~  
20 ~~involved in any matter before the statewide council to make a~~  
21 ~~written disclosure of the relationship before any action is~~  
22 ~~taken by the statewide council with respect to the matter in the~~



1 ~~exercise of any function described in section 323D-14 and to~~  
2 ~~make the relationship public in any meeting in which the action~~  
3 ~~is to be taken."]~~

4 SECTION 21. This Act does not affect rights and duties  
5 that matured, penalties that were incurred, and proceedings that  
6 were begun, before its effective date.

7 SECTION 22. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 23. This Act shall take effect upon its approval.

10

INTRODUCED BY: *Bob Drake*

*[Signature]*  
JAN 24 2007



**Report Title:**

Repeal Statewide Health Coordinating Council; Subarea Council

**Description:**

Repeals statewide health coordinating council and requires appropriate subarea councils to assume duties. Subjects to the governor's approval all decisions to approve or deny issue of a certificate need. Requires performance bond to ensure implementation of certificate of need.

