
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 recognizes that the State's
2 community hospital system, Hawaii health systems corporation, is
3 the fourth largest public hospital system in the nation. Its
4 public health facilities provide essential safety-net hospital
5 and long-term care services throughout the state and are often
6 the only hospitals in many rural communities.

7 In light of rapid changes taking place in the healthcare
8 industry as well as conflicting federal laws and regulations,
9 the legislature acknowledges that our public hospital system
10 must be provided the authority to operate with appropriate
11 flexibility and autonomy to remain viable and to respond to the
12 needs of the specific communities it serves.

13 The legislature wishes to affirm the State's commitment to
14 providing quality healthcare for its people by allowing the
15 State's hospital system the flexibility to conduct its
16 contracting and procurement activities in a manner similar to
17 not-for-profit healthcare systems, while complying with federal
18 laws and regulations and following sound procurement practices.



1 Hence, the purpose of this Act is to exempt the Hawaii health
2 systems corporation from statutory requirements regarding state
3 risk management, contracts for concessions, tax clearance for
4 contracts with the State or counties, and the Hawaii Public
5 Procurement Code.

6 SECTION 2. Section 41D-2, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

8 "(b) Any provision in this section to the contrary
9 notwithstanding, the University of Hawaii (as to casualty
10 insurance risks only), the Research Corporation of the
11 University of Hawaii (as to casualty insurance risks only),
12 [~~and~~] the public health facilities of the department of health
13 (with respect to medical malpractice risks only), and the Hawaii
14 health systems corporation shall be exempt from the requirements
15 of this chapter."

16 SECTION 3. Section 102-2, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:

18 "(b) The bidding requirements of subsection (a) shall not
19 apply to concessions or space on public property set aside for
20 the following purposes:



- 1 (1) For operation of ground transportation services and
2 parking lot operations at airports, except for motor
3 vehicle rental operations under chapter 437D;
- 4 (2) For lei vendors;
- 5 (3) For airline and aircraft operations;
- 6 (4) For automatic teller machines and vending machines,
7 except vending machines located at public schools
8 operated by blind or visually handicapped persons in
9 accordance with section 302A-412;
- 10 (5) For operation of concessions set aside without any
11 charge;
- 12 (6) For operation of concessions by handicapped or blind
13 persons; except concessions operated in the public
14 schools by blind or visually handicapped persons in
15 accordance with section 302A-412;
- 16 (7) For operation of concessions on permits revocable on
17 notice of thirty days or less; provided that no such
18 permits shall be issued for more than a one year
19 period;
- 20 (8) For operation of concessions or concession spaces for
21 a beach service association dedicated to the
22 preservation of the Hawaii beachboy tradition,



1 incorporated as a nonprofit corporation in accordance
2 with state law, and whose members are appropriately
3 licensed or certified as required by law;

4 (9) For operation of concessions at county zoos, botanic
5 gardens, or other county parks which are
6 environmentally, culturally, historically, or
7 operationally unique and are supported, by nonprofit
8 corporations incorporated in accordance with state law
9 solely for purposes of supporting county aims and
10 goals of the zoo, botanic garden, or other county
11 park, and operating under agreement with the
12 appropriate agency solely for such purposes, aims, and
13 goals;

14 (10) For operation of concessions that furnish goods or
15 services for which there is only one source, as
16 determined by the head of the awarding government
17 agency in writing that shall be included in the
18 contract file; [and]

19 (11) For operation of concession or concession spaces at
20 the convention center under chapter 201B[-]; and

21 (12) For the Hawaii health systems corporation."



1 SECTION 4. Section 103-53, Hawaii Revised Statutes, is
2 amended by amending subsection (e) to read as follows:

3 "(e) This section shall not apply to:

4 (1) Any procurement of less than \$25,000 or that is
5 considered a small purchase under section 103D-305 and
6 any state or county department contract of less than
7 \$25,000;

8 (2) Emergency purchases for the procurement of goods,
9 services, or construction under section 103D-307,
10 disaster relief under chapter 127, or a civil defense
11 emergency under chapter 128;

12 (3) Grants and subsidies disbursed by a state agency
13 pursuant to chapter 42F or in accordance with
14 standards provided by law as required by article VII,
15 section 4, of the State Constitution, or made by the
16 counties pursuant to their respective charters or
17 ordinances;

18 (4) Contracts or agreements between government agencies;

19 (5) Contracts or agreements to disburse funds:

20 (A) To make payments to or on behalf of public
21 officers and employees for salaries, fringe
22 benefits, professional fees, and reimbursements;



- 1 (B) To satisfy obligations required to be paid by
- 2 law, including fees, judgments, settlements, and
- 3 other payments for resolving claims;
- 4 (C) To make refunds or return funds held by the State
- 5 or county as trustee, custodian, or bailee;
- 6 (D) For entitlement programs, including public
- 7 assistance, unemployment, and workers'
- 8 compensation programs, established by state or
- 9 federal law;
- 10 (E) For deposit, investment, or safekeeping,
- 11 including sums to pay expenses related to their
- 12 deposit investment, or safekeeping;
- 13 (F) For loans under government-administered loan
- 14 programs; or
- 15 (G) To make periodic, recurring payments for utility
- 16 services; [~~and~~]
- 17 (6) Rent for the use or occupation of the premises and
- 18 facilities at Aloha Stadium, the convention center, or
- 19 any other state or county large spectator events
- 20 facility[-]; and
- 21 (7) Contracts or agreements of the Hawaii health systems
- 22 corporation."



1 SECTION 5. Section 103D-102, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§103D-102 **Application of this chapter.** (a) This chapter
4 shall apply to all procurement contracts made by governmental
5 bodies whether the consideration for the contract is cash,
6 revenues, realizations, receipts, or earnings, any of which the
7 State receives or is owed; in-kind benefits; or forbearance;
8 provided that nothing in this chapter or rules adopted hereunder
9 shall prevent any governmental body from complying with the
10 terms and conditions of any other grant, gift, bequest, or
11 cooperative agreement.

12 (b) Notwithstanding subsection (a), this chapter shall not
13 apply to contracts by governmental bodies:

14 (1) Solicited or entered into before July 1, 1994, unless
15 the parties agree to its application to a contract
16 solicited or entered into prior to July 1, 1994;

17 (2) To disburse funds, irrespective of their source:

18 (A) For grants or subsidies as those terms are
19 defined in section 42F-101, made by the State in
20 accordance with standards provided by law as
21 required by article VII, section 4, of the State



- 1 Constitution; or by the counties pursuant to
2 their respective charters or ordinances;
- 3 (B) To make payments to or on behalf of public
4 officers and employees for salaries, fringe
5 benefits, professional fees, or reimbursements;
- 6 (C) To satisfy obligations that the State is required
7 to pay by law, including paying fees, permanent
8 settlements, subsidies, or other claims, making
9 refunds, and returning funds held by the State as
10 trustee, custodian, or bailee;
- 11 (D) For entitlement programs, including public
12 assistance, unemployment, and workers'
13 compensation programs, established by state or
14 federal law;
- 15 (E) For dues and fees of organizations of which the
16 State or its officers and employees are members,
17 including the National Association of Governors,
18 the National Association of State and County
19 Governments, and the Multi-State Tax Commission;
- 20 (F) For deposit, investment, or safekeeping,
21 including expenses related to their deposit,
22 investment, or safekeeping;



- 1 (G) To governmental bodies of the State;
- 2 (H) As loans, under loan programs administered by a
- 3 governmental body; and
- 4 (I) For contracts awarded in accordance with chapter
- 5 103F.
- 6 (3) To procure goods, services, or construction from a
- 7 governmental body other than the University of Hawaii
- 8 bookstores, from the federal government, or from
- 9 another state or its political subdivision;
- 10 (4) To procure the following goods or services which are
- 11 available from multiple sources but for which
- 12 procurement by competitive means is either not
- 13 practicable or not advantageous to the State:
- 14 (A) Services of expert witnesses for potential and
- 15 actual litigation of legal matters involving the
- 16 State, its agencies, and its officers and
- 17 employees, including administrative quasi-
- 18 judicial proceedings;
- 19 (B) Works of art for museum or public display;
- 20 (C) Research and reference materials including books,
- 21 maps, periodicals, and pamphlets, which are



- 1 published in print, video, audio, magnetic, or
2 electronic form;
- 3 (D) Meats and foodstuffs for the Kalaupapa
4 settlement;
- 5 (E) Opponents for athletic contests;
- 6 (F) Utility services whose rates or prices are fixed
7 by regulatory processes or agencies;
- 8 (G) Performances, including entertainment, speeches,
9 and cultural and artistic presentations;
- 10 (H) Goods and services for commercial resale by the
11 State;
- 12 (I) Services of printers, rating agencies, support
13 facilities, fiscal and paying agents, and
14 registrars for the issuance and sale of the
15 State's or counties' bonds;
- 16 (J) Services of attorneys employed or retained to
17 advise, represent, or provide any other legal
18 service to the State or any of its agencies, on
19 matters arising under laws of another state or
20 foreign country, or in an action brought in
21 another state, federal, or foreign jurisdiction,



1 when substantially all legal services are
2 expected to be performed outside this State;
3 (K) Financing agreements under chapter 37D; and
4 (L) Any other goods or services which the policy
5 board determines by rules or the chief
6 procurement officer determines in writing is
7 available from multiple sources but for which
8 procurement by competitive means is either not
9 practicable or not advantageous to the State; and
10 (5) Which are specific procurements expressly exempt from
11 any or all of the requirements of this chapter by:
12 (A) References in state or federal law to provisions
13 of this chapter or a section of this chapter, or
14 references to a particular requirement of this
15 chapter; and
16 (B) Trade agreements, including the Uruguay Round
17 General Agreement on Tariffs and Trade (GATT)
18 which require certain non-construction and non-
19 software development procurements by the
20 comptroller to be conducted in accordance with
21 its terms.



1 (c) Notwithstanding subsection (a), this chapter shall not
2 apply to contracts made by the Hawaii health systems
3 corporation.

4 [~~e~~] (d) Governmental bodies making procurements which
5 are exempt from this chapter are nevertheless encouraged to
6 adopt and use provisions of this chapter and its implementing
7 rules as appropriate; provided that the use of one or more
8 provisions shall not constitute a waiver of the exemption
9 conferred and subject the procurement or the governmental body
10 to any other provision of this chapter. "

11 SECTION 6. Section 323F-7, Hawaii Revised Statutes, is
12 amended by amending subsections (a) and (b) to read as follows:

13 "(a) Notwithstanding any other law to the contrary, the
14 corporation shall have and exercise the following duties and
15 powers:

16 (1) Developing its own policies, procedures, and rules
17 necessary or appropriate to plan, operate, manage, and
18 control the system of public health facilities and
19 services without regard to chapter 91;

20 (2) Evaluating the need for health facilities and
21 services;



- 1 (3) Entering into and performing any contracts, leases,
2 cooperative agreements, or other transactions
3 whatsoever that may be necessary or appropriate in the
4 performance of its purposes and responsibilities, and
5 on terms it may deem appropriate, with either:
6 (A) Any agency or instrumentality of the United
7 States, or with any state, territory, or
8 possession, or with any subdivision thereof; or
9 (B) Any person, firm, association, or corporation,
10 whether operated on a for-profit or not-for-
11 profit basis;
12 provided that the transaction furthers the public
13 interest;
- 14 (4) Conducting activities and entering into business
15 relationships as the corporation board deems necessary
16 or appropriate, including but not limited to:
17 (A) Creating nonprofit corporations, including but
18 not limited to charitable fund-raising
19 foundations, to be controlled wholly by the
20 corporation or jointly with others;



1 (B) Establishing, subscribing to, and owning stock in
2 business corporations individually or jointly
3 with others; and

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

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

21 (6) Executing, in accordance with all applicable bylaws,
22 rules, and laws, all instruments necessary or



- 1 appropriate in the exercise of any of the
2 corporation's powers;
- 3 (7) Preparing and executing all corporation budgets,
4 policies, and procedures;
- 5 (8) Setting rates and charges for all services provided by
6 the corporation without regard to chapter 91;
- 7 (9) Developing a corporation-wide hospital personnel
8 system that is subject to chapters 76 and 89;
- 9 (10) Developing the corporation's capital and strategic
10 plans;
- 11 (11) Suing and being sued; provided that the corporation
12 shall enjoy the same sovereign immunity available to
13 the State;
- 14 (12) Making and altering corporation board bylaws for its
15 organization and management without regard to chapter
16 91;
- 17 (13) Adopting rules, without regard to chapter 91,
18 governing the exercise of its powers and the
19 fulfillment of its purpose under this chapter;
- 20 (14) Entering into any contract or agreement whatsoever,
21 not inconsistent with this chapter or the laws of this
22 State, and authorizing the corporation chief executive



- 1 officer to enter into all contracts, execute all
2 instruments, and do all things necessary or
3 appropriate in the exercise of the powers granted in
4 this chapter, including securing the payment of bonds;
- 5 (15) Issuing revenue bonds subject to the approval of the
6 legislature; provided that all revenue bonds shall be
7 issued pursuant to part III, chapter 39;
- 8 (16) Reimbursing the state general fund for debt service on
9 general obligation bonds or reimbursable general
10 obligation bonds issued by the State for the purposes
11 of the corporation;
- 12 (17) Pledging or assigning all or any part of the receipts
13 and revenues of the corporation for purposes of
14 meeting bond or health systems liabilities;
- 15 (18) Owning, purchasing, leasing, exchanging, or otherwise
16 acquiring property, whether real, personal or mixed,
17 tangible or intangible, and of any interest therein,
18 in the name of the corporation, which property is not
19 owned or controlled by the State but is owned or
20 controlled by the corporation;
- 21 (19) Maintaining, improving, pledging, mortgaging, selling,
22 or otherwise holding or disposing of property, whether



- 1 real, personal or mixed, tangible or intangible, and
2 of any interest therein, at any time and manner, in
3 furtherance of the purposes and mission of the
4 corporation; provided that the corporation legally
5 holds or controls the property in its own name;
6 provided further that the corporation shall not sell,
7 assign, lease, hypothecate, mortgage, pledge, give, or
8 dispose of all or substantially all of its property;
- 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 (21) Acquiring by condemnation, pursuant to chapter 101,
14 any real property required by the corporation to carry
15 out the powers granted by this chapter;
- 16 (22) Depositing any moneys of the corporation in any
17 banking institution within or without the State, and
18 appointing, for the purpose of making deposits, one or
19 more persons to act as custodians of the moneys of the
20 corporation;
- 21 (23) Contracting for and accepting any gifts, grants, and
22 loans of funds, property, or any other aid in any form



1 from the federal government, the State, any state
2 agency, or any other source, or any combination
3 thereof, and complying, subject to this chapter, with
4 the terms and conditions thereof;

5 (24) Providing health and medical services for the public
6 directly or by agreement or lease with any person,
7 firm, or private or public corporation or association
8 through or in the health facilities of the corporation
9 or otherwise;

10 (25) Approving medical staff bylaws, rules, and medical
11 staff appointments and reappointments for all public
12 health facilities, including without limitation,
13 determining the conditions under which a health
14 professional may be extended the privilege of
15 practicing within a health facility, and adopting and
16 implementing reasonable rules, without regard to
17 chapter 91, for the credentialing and peer review of
18 all persons and health professionals within the
19 facility;

20 (26) (A) Investing any funds not required for immediate
21 disbursement in property or in securities that
22 meet the standard for investments established in



1 chapter 88 as provided by the corporation board;
2 provided the investment assists the corporation
3 in carrying out its public purposes; selling from
4 time to time securities thus purchased and held,
5 and depositing any securities in any bank or
6 financial institution within or without the
7 State. Any funds deposited in a banking
8 institution or in any depository authorized in
9 this section shall be secured in a manner and
10 subject to terms and conditions as the
11 corporation board may determine, with or without
12 payment of any interest on the deposit,
13 including, without limitation, time deposits
14 evidenced by certificates of deposit. Any bank
15 or financial institution incorporated under the
16 laws of this State may act as depository of any
17 funds of the corporation and may issue indemnity
18 bonds or may pledge securities as may be required
19 by the corporation board; 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 and
 2 of any moneys held in trust or otherwise for the
 3 payment of notes or bonds and carrying out the
 4 contract. Moneys held in trust or otherwise for
 5 the payment of notes or bonds or in any way to
 6 secure notes or bonds, and deposits of such
 7 moneys, may be secured in the same manner as
 8 moneys of the corporation, and all banks and
 9 trust companies are authorized to give security
 10 for the deposits;

11 (27) Entering into any agreement with the State including
 12 but not limited to contracts for the provision of
 13 goods, services, and facilities in support of the
 14 corporation's programs, and contracting for the
 15 provision of services to or on behalf of the State;

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

17 (29) Waiving, by means that the corporation deems
 18 appropriate, the exemption from federal income
 19 taxation of interest on the corporation's bonds,
 20 notes, or other obligations provided by the Internal
 21 Revenue Code of 1986, as amended, or any other federal
 22 statute providing a similar exemption;



- 1 (30) Developing internal policies and procedures for the
2 procurement of goods and services, consistent with the
3 goals of public accountability and public procurement
4 practices; provided that the corporation shall be
5 exempt from chapter 103D; provided further that
6 whenever possible, the corporation is encouraged to
7 conduct procurement practices in a manner consistent
8 with the intent of chapter 103D; provided further that
9 the use of one or more provisions of chapter 103D
10 shall not subject the corporation to any other
11 provision of chapter 103D;
- 12 (31) Authorizing and establishing positions;
- 13 (32) Calling upon the attorney general for such legal
14 services as the corporation may require; and
- 15 (33) Having and exercising all rights and powers necessary
16 or incidental to or implied from the specific powers
17 granted in this chapter, which specific powers shall
18 not be considered as a limitation upon any power
19 necessary or appropriate to carry out the purposes and
20 intent of this chapter.



Report Title:

Hawaii Health Systems Corporation

Description:

Exempts the Hawaii Health Systems Corporation from statutory requirements regarding state risk management, contracts for concessions, tax clearance for contracts with the State or counties, and the Hawaii Public Procurement Code.

