

ACT 182

S.B. NO. 1673

A Bill for an Act Relating to the Hawaii Health Systems Corporation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the Hawaii health systems corporation is the fourth largest public hospital system in the nation and operates public health care facilities that provide essential safety-net hospital and long-term care services throughout the State. The legislature further finds that the continued financial challenges faced by the Hawaii health systems corporation and the State pose a risk to the public health care services provided by the Hawaii health systems corporation. In addition, these factors hinder efforts to improve the quality of health care services provided to the public.

Prominent national studies have demonstrated that many public hospital systems have struggled financially for a variety of reasons, including providing a disproportionate level of uncompensated and under-compensated care as compared to private hospital systems and because of constraints and inefficiencies inherent in operating as a governmental agency. As a result, an increasing number of public hospitals have converted to non-public status.

While the legislature recognizes the fact that the system of public hospitals in the State will continue to require state subsidies, the legislature finds that allowing the operations of the regional systems of the Hawaii health systems corporation and their facilities to transition into a corporation or corporations,

while providing support during the transition, will improve the operations and efficiencies of the Hawaii health systems corporation and benefit the health care of the people of the State of Hawaii. The legislature further finds that it is essential that this transition be an option available to the various regional systems and facilities of the Hawaii health systems corporation as the change needs to be carefully evaluated by the community representatives that comprise the regional system boards. Furthermore, the legislature finds that the Hawaii health systems corporation must stay intact in order to provide central support services to the regional systems and facilities seeking to remain a part of this valuable state agency.

PART I

SECTION 2. Section 323F-31, Hawaii Revised Statutes, is amended to read as follows:

“§323F-31 Maintenance of services. (a) ~~[The corporation and each regional system board shall notify the legislature of any planned substantial reduction or elimination of direct patient care services.]~~ No planned substantial reduction or elimination of direct patient care services at any facility shall be undertaken unless all of the following requirements are met:

- (1) An initial determination is made by the regional chief executive officer as to critical and emergency services which shall not be subject to reduction or elimination pursuant to this section;
- (2) The plan of the facility to substantially reduce or eliminate any direct patient care services at the health facility shall first be presented to the regional system board for its approval;
- (3) Subsequent to the requisite regional system board approval, the regional chief executive officer shall present the plan to the community in which the facility is located, at a community informational meeting, in order to obtain community input on the plan; and
- (4) Provided that if the regional system board approves the plan, the plan as approved by the regional system board shall be submitted to the corporation board for ratification.

(b) ~~[No substantial reduction or elimination of direct patient care services at any facility shall be undertaken by the corporation without the approval of the legislature.]~~ After the community informational meeting, but at least twenty days prior to the implementation of the plan approved by the regional system board, the regional system board shall give notice of implementation of the plan to the governor, senate president, and the speaker of the house of representatives.

(c) ~~[The legislature shall maintain review and oversight authority over the provision of direct patient care services provided at each facility and may intervene to counter or restrict any substantial reduction or elimination of patient care services.]~~ The decision of the regional system board shall be the final decision with respect to the plan. Implementation of the plan shall commence and continue, provided that no legislation is enacted that:

- (1) Requires the reinstatement and continuation of the direct patient care services that are subject to reduction or elimination under the plan; and
- (2) Includes an appropriation of additional moneys sufficient to adequately fund the mandated reinstatement and continuation of the subject direct patient care services.”

PART II

SECTION 3. Community hospitals; liabilities prior to July 1, 1996; assumption by department of health; report. (a) On July 1, 2009, the department of health shall assume the total amount of all liabilities and debts or other obligations of the Hawaii health systems corporation that had been accrued up to June 30, 1996, by the community hospitals while the community hospitals were operating within the division of community hospitals of the department of health. The department of health, with the assistance and cooperation of the Hawaii health systems corporation, shall determine the final amount of the liabilities and debts or other obligations to be transferred to and assumed by the department of health pursuant to this subsection.

(b) The department of health shall report to the legislature the details of the total amount of liabilities and debts or other obligations transferred from the Hawaii health systems corporation and assumed by the department pursuant to subsection (a) no later than December 1, 2009.

SECTION 4. Section 88-125, Hawaii Revised Statutes, is amended to read as follows:

“§88-125 Contributions by certain state agencies. (a) Each of the departments and agencies hereinafter described ~~and~~, the office of Hawaiian affairs, and the Hawaii health systems corporation shall reimburse the State for the respective amounts payable by the State to cover the liability of the State to the various funds of the system on account of the employees in ~~such~~ the departments and agencies ~~and~~, the trustees of the office of Hawaiian affairs~~[-]~~, and the employees of the Hawaii health systems corporation. This provision shall apply to any department or agency of the State ~~which~~ that is authorized by law to fix, regulate, and collect rents, rates, fees, or charges of any nature. ~~[The provisions herein]~~ This subsection shall not apply as to rental units receiving federal subsidies until approval has been obtained from the appropriate federal agency.

(b) Whenever any department or agency of the State or the Hawaii health systems corporation receives federal-aid funds ~~which~~ that may be expended for the purpose of covering the liability of the State to the various funds of the system, the department or agency or the Hawaii health systems corporation shall set aside a portion of these funds sufficient to cover the amount of the State's liability to the various funds of the system on account of the employees in the department or agency or the Hawaii health systems corporation whose compensation is paid in whole or part from federal funds.

(c) The amount payable by each department or agency of the State, ~~or~~ the office of Hawaiian affairs, or the Hawaii health systems corporation, covered by this section shall be determined at least quarterly by the department of budget and finance on the basis of the payroll of the employees of the department or agency, ~~or~~ trustees of the office of Hawaiian affairs, or the Hawaii health systems corporation who are members of the system in the same manner the allocation of employer contributions is determined in section 88-123. The comptroller of the State, the office of Hawaiian affairs, the Hawaii health systems corporation, or any department or agency having control of its own funds ~~shall~~, upon information furnished by the department of budget and finance, shall issue a check for the proper amount to the director of finance, charging the same to the appropriate fund. The director of finance shall place all such sums to the credit of the State as part payment of the State's contributions to the various funds of the system.

(d) With respect to the Hawaii health systems corporation only, this section shall be operative with respect to costs accrued beginning July 1, 1996.”

PART III

SECTION 5. Chapter 89, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§89- Negotiating authority; Hawaii health systems corporation. Notwithstanding any law to the contrary, including section 89-6(d), the Hawaii health systems corporation or any of the regional boards, as a sole employer negotiator, may negotiate with the exclusive representative of any appropriate bargaining unit and execute memorandums of understanding for employees under its control to alter any existing or new collective bargaining agreement on any item or items subject to section 89-9.”

PART IV

SECTION 6. Chapter 323F, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§323F- Criminal history record checks. (a) The corporation may request a criminal history record check of persons who are employed or seeking employment, or are current or prospective contractors, providers, or volunteers in any of the corporation’s health facilities, in accordance with section 846-2.7.

(b) For the purpose of this section, the criminal history record check shall be performed by the Hawaii criminal justice data center. The Hawaii criminal justice data center may assess providers and contractors a reasonable fee for criminal history record checks performed. Providers and contractors shall be responsible for payment to the Hawaii criminal justice data center of the fee for the criminal history record checks.

(c) Any person who is a current or prospective member of the corporation board or regional system board; employed or who seeks employment with the corporation; or is a current or prospective contractor, provider, or volunteer in any of the corporation’s health facilities may be required to provide to the corporation:

- (1) Personal identifying information including name, social security number, and date of birth;
- (2) Written consent for the corporation to obtain criminal history record check information for verification; and
- (3) Written consent to be fingerprinted for the purpose of a criminal history record check.

Information obtained pursuant to subsection (a) and this subsection shall be used by the corporation exclusively for the purposes of this section.

(d) Any inquiry into or consideration of the criminal history record of an employee or prospective employee of the corporation shall be limited to that which is allowed under section 378-2.5 or required under federal law.

(e) A current or prospective contractor, provider, or volunteer or a current or prospective member of the corporation board or regional system board who has been convicted of a criminal offense for which incarceration is a sentencing option, may be terminated, released, or not used. This action shall be based on the corporation’s analysis of whether the nature and circumstances of the crime may pose a risk to the health, safety, or well-being of patients, residents, and organizations in its health facilities.

(f) For the purposes of this section:

“Contractor” means any individual who enters into a contract or agreement to provide services to the patients or residents in any of the corporation’s health facilities.

“Criminal history record check” means an examination of an individual’s criminal history records by means including fingerprint analysis and name inquiry into state and national criminal history record files.

“Provider” means any individual who currently provides or intends to enter into a contract or agreement to provide services to the patients or residents in any of the corporation’s health facilities, or is a student in any program at any of the corporation’s health facilities.”

SECTION 7. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Criminal history record checks may be conducted by:

- (1) The department of health on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
- (2) The department of health on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services as provided by section 321-171.5;
- (3) The department of health on all applicants for licensure for, operators for, and prospective employees, and volunteers at one or more of the following: skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care home, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for the mentally retarded, hospital, rural health center and rehabilitation agency, and, in the case of any of the above-related facilities operating in a private residence, on any adult living in the facility other than the client as provided by section 321-15.2;
- (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
- (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
- (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
- (7) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
- (8) The department of human services on prospective adoptive parents as established under section 346-19.7;
- (9) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;
- (10) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;

- (11) The department of human services on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-335;
- (12) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (13) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
- (14) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (15) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
- (16) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
- (17) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided [~~as provided by~~] pursuant to section 302C-1;
- (18) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- (19) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
- (20) The department of human services on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 346-97;
- (21) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch, as provided by section 346-97;
- (22) The department of human services on foster grandparent program, retired and senior volunteer program, senior companion program, and respite companion program participants as provided by section 346-97;
- (23) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under Section 1915(c) of the Social Security Act (Title 42 United States Code Section 1396n(c)), or under any other applicable section or sections

- of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97;
- (24) The department of commerce and consumer affairs on proposed directors and executive officers of a bank, savings bank, savings and loan association, trust company, and depository financial services loan company as provided by section 412:3-201;
 - (25) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;
 - (26) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103;
 - [(27)] The department of commerce and consumer affairs on:
 - (A) Each principal of every non-corporate applicant for a money transmitter license; and
 - (B) The executive officers, key shareholders, and managers in charge of a money transmitter's activities of every corporate applicant for a money transmitter license,
 as provided by section 489D-9; ~~and~~
 - (28) The Hawaii health systems corporation on:
 - (A) Employees;
 - (B) Applicants seeking employment;
 - (C) Current or prospective members of the corporation board or regional system board; or
 - (D) Current or prospective volunteers, providers, or contractors, in any of the corporation's health facilities as provided by section 323F- ; and
 - [(28)] (29) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.”

PART V

SECTION 8. Chapter 323F, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§323F- Transition of Hawaii health systems regional system or health facility to a new entity. (a) Notwithstanding any other law to the contrary, including but not limited to section 27-1 and chapter 171, any of the regional systems or individual facilities of the Hawaii health systems corporation is hereby authorized to transition into a new legal entity in any form recognized under the laws of the State, including but not limited to:

- (1) A non-profit corporation;
- (2) A for-profit corporation;
- (3) A municipal facility;
- (4) A public benefit corporation; or
- (5) Any two or more of the entities in paragraphs (1) through (4).

A transition shall occur through the sale, lease, or transfer of all or substantially all of the assets of the facility or regional system, except for real property which shall only be transferred by lease. Any transition shall comply with chapter 323D.

(b) A transition shall only occur upon approval of the appropriate regional system board in the case of a regional system or individual facility transition, or upon approval of the regional system boards and the corporation in the case of the transition of the entire corporation. Any transition shall be subject

to legal review by the attorney general who shall approve the transition if satisfied that the transition conforms to all applicable laws, subject to the review of the director of the department of budget and finance who shall approve the transition if it conforms to all applicable financing procedures, and subject to the governor's approval. In addition the transition shall be subject to the following terms and conditions:

- (1) All proceeds from the sale, lease, or transfer of assets shall be used for health care services in the respective regional system or facility, except that real property shall only be transferred by lease;
- (2) Any and all liabilities of a regional system or facility transitioning into a new entity that were transferred to the Hawaii health systems corporation upon its creation by Act 262, Session Laws of Hawaii 1996, and all liabilities of the regional system or facility related to collective bargaining contracts negotiated by the State, shall become the responsibility of the State; and
- (3) During the period of transition:
 - (A) The State shall continue to fund the provision of health care services provided for by the regional system or individual facility; and
 - (B) All applicable provisions of this chapter shall continue to apply.

Upon the completion of the transition of all the facilities in a regional system to a new entity, the regional system board for that regional system shall terminate; provided that if not all of a regional system's facilities are transitioned to a new entity, the existing regional system board shall not terminate but shall continue to retain jurisdiction over those facilities remaining in the regional system.

§323F- Regional system board; community hospitals; community health centers; collaboration. Each regional system board and each community hospital under the jurisdiction of the corporation shall collaborate with community health centers within their respective geographic jurisdictions to maximize funding from the state and federal governments to:

- (1) Maximize reimbursement for health care services provided;
- (2) Acquire funds for capital investment;
- (3) Provide expanded hours of service; and
- (4) Ensure the provision of the appropriate level of care to the community served by each community health center."

SECTION 9. Section 323F-3, Hawaii Revised Statutes, is amended to read as follows:

"§323F-3 Corporation board. (a) The corporation shall be governed by a ~~fifteen-member~~ twelve-member board of directors that shall carry out the duties and responsibilities of the corporation other than those duties and responsibilities relating to the establishment of any captive insurance company pursuant to section ~~[[323F-7(c)(20)]]~~ and the operation thereof.

(b) ~~[Twelve]~~ The members of the corporation board shall be appointed as follows:

- (1) ~~[Two members from regional system I who reside in the city and county of Honolulu shall be appointed by the governor from a list consisting of four individuals, two individuals submitted by the speaker of the house of representatives and two individuals submitted by the president of the senate within fifteen days of July 1, 2007;~~

- provided that this list shall not include physicians;] The director of health as an ex-officio, non-voting member;
- (2) [~~Two members from regional system II who reside in the county of Kauai shall be appointed by the governor from a list consisting of four individuals, two individuals submitted by the speaker of the house of representatives and two individuals submitted by the president of the senate within fifteen days of July 1, 2007; provided that this list shall not include physicians;~~] The five regional chief executive officers as ex-officio, voting members; and
 - (3) [~~Two members from regional system III who reside in the county of Maui shall be appointed by the governor from a list consisting of four individuals, two individuals submitted by the speaker of the house of representatives and two individuals submitted by the president of the senate within fifteen days of July 1, 2007; provided that this list shall not include physicians;~~] Two members who reside in the county of Maui who shall be appointed by the Maui regional system board;
 - (4) [~~Two members from regional system IV] One member who [reside] resides in the eastern section of the county of Hawaii who shall be appointed by [the governor from a list consisting of four individuals, two individuals submitted by the speaker of the house of representatives and two individuals submitted by the president of the senate within fifteen days of July 1, 2007; provided that this list shall not include physicians;] the East Hawaii regional system board;~~
 - (5) [~~Two members from regional system V] One member who [reside] resides in the western section of the county of Hawaii who shall be appointed by the [governor from a list consisting of four individuals, two individuals submitted by the speaker of the house of representatives and two individuals submitted by the president of the senate within fifteen days of July 1, 2007; provided that this list shall not include physicians; and'] West Hawaii regional system board;~~
 - (6) [~~Two additional members who reside in the State shall be appointed by the governor.] One member who resides on the island of Kauai who shall be appointed by the Kauai regional system board; and~~
 - (7) One member who resides on the island of Oahu who shall be appointed by the Oahu regional system board.

[~~The thirteenth and fourteenth members, who shall serve as voting members, shall be physicians with active medical staff privileges at one of the corporation's public health facilities. The physician members shall each serve a term of two years. The initial physician members shall be from regional system II, and subsequent physician members shall come from regional systems IV, III, and V respectively. The physician member positions shall continue to rotate in this order. The physician members shall be appointed to the corporation board by a two-thirds majority vote of the corporation board from a list of qualified nominees submitted by the public health facility management advisory committees or by any regional system board. If for any reason a physician member is unable to serve a full term, the remainder of that term shall be filled by a physician from the same regional system.~~

~~The fifteenth member shall be the director of health or the director's designee, who shall serve as an ex-officio, voting member.~~

~~Appointments to the corporation board, with the exception of the chairperson of the executive public health facility management advisory committee~~

~~and the regional physician member, shall be made by the governor, subject to confirmation by the senate pursuant to section 26-34.]~~

The appointed board members shall serve for a term of four years; provided that the ~~[first member appointed from each regional system shall be appointed for a term of two years.]~~ terms of the initial appointments shall be as follows: one of the initial members from the county of Maui shall be appointed to serve a term of two years and the other shall be appointed to serve a term of four years; the initial member from East Hawaii shall be appointed to serve a term of two years; the initial member from West Hawaii shall be appointed to serve a term of four years; the initial member from the island of Kauai shall be appointed to serve a term of two years; and the initial member from the island of Oahu shall be appointed to serve a term of four years.

Any vacancy shall be filled in the same manner provided for the original appointments. The corporation board shall elect its own chair from among its members. Appointments to the corporation board shall be as representative as possible of the system's stakeholders as outlined in this subsection.

(c) The selection, appointment, and confirmation of any nominee shall be based on ensuring that board members have diverse and beneficial perspectives and experiences and that they include, to the extent possible, representatives of the medical, business, management, law, finance, and health sectors, and patients or consumers. Members of the board shall serve without compensation but may be reimbursed for actual expenses, including travel expenses incurred in the performance of their duties.

(d) Any member of the board may be removed for cause ~~[by the governor or for cause]~~ by vote of a two-thirds majority of the board's members then in office. For purposes of this section, cause shall include without limitation:

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

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

SECTION 10. Section 323F-3.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

~~"(d) Each regional system board shall [be]:~~

- (1) Be responsible for local governance, operations, and administration of the delivery of services in its respective regional system as set forth in this chapter and as further delegated by the corporation[-: Each regional system board shall include]:
- (2) Include medical and health care providers and professionals, consumers, and knowledgeable individuals in other appropriate areas, such as business, finance, and law; provided that no more than three members of the regional system board shall be physicians[-: Each regional system board shall be]:
- (3) Be as balanced and representative of the community stakeholders as possible[-: and
- (4) Have the powers, duties, and responsibilities that are specific to the regional system board as provided in this chapter."

SECTION 11. Section 323F-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All business of the corporation board and each regional system board shall be conducted at a regular or special meeting at which a quorum is present, consisting of at least a majority of the directors then in office. The corporation board and each regional system board shall adopt procedural rules for meetings, not subject to chapter 91, that shall include provisions for meetings via electronic and telephonic communications and other methods that allow the boards to conduct business in a timely and efficient manner. Any action of the corporation board or each regional system board shall require the affirmative vote of a majority of those present and voting at the meeting; except that a vote of two-thirds of the entire membership of the respective board then in office shall be required for any of the following actions:

- (1) Removal by the corporation board or respective regional system board of one of its members;
- (2) Amendment by the corporation or a regional system board of its bylaws;
- (3) Hiring or removing ~~[the chief executive officer of the corporation or]~~ a regional chief executive officer;
- (4) Filling of vacancies on a board; and
- (5) Any other actions as provided by the corporation or regional system board bylaws~~[-]~~, except the hiring or removing of the chief executive officer of the corporation.”

SECTION 12. Section 323F-7, Hawaii Revised Statutes, is amended by amending subsection (c) and (d) to read as follows:

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

- (1) Developing corporation-wide policies, procedures, and rules necessary or appropriate to plan, operate, manage, and control the system of public health facilities and services without regard to chapter 91; provided that each regional system board shall be responsible for its own policies, procedures, and rules necessary or appropriate to plan, operate, manage, and control the public health facilities within its own regional system consistent with ~~[corporate]~~ corporation policies;
- (2) Evaluating the need for additional health facilities and services; provided that each regional system board shall be responsible for the evaluation within its own regional system;
- (3) Entering into and performing any contracts, leases, cooperative agreements, partnerships, or other transactions whatsoever that may be necessary or appropriate in the performance of its purposes and responsibilities, and on terms the corporation, or regional system boards, may deem appropriate, with either:
 - (A) Any agency or instrumentality of the United States, or with any state, territory, or possession, or with any subdivision thereof; or
 - (B) Any person, firm, association, partnership, or corporation, whether operated on a for-profit or not-for-profit basis; provided that the transaction furthers the public interest; and provided further that if any dispute arises between any contract, lease, cooperative agreement, partnership, or other transaction entered into by the corporation and a regional system board with regard

to matters solely within that regional system, after July 1, 2007, the contract, lease, cooperative agreement, partnership, or other transaction entered into by the regional system board shall prevail; and provided further that such agreements are consistent with corporation policies;

- (4) Conducting activities and entering into business relationships as the corporation board, or any regional system board, deems necessary or appropriate, including but not limited to:
 - (A) Creating nonprofit corporations, including but not limited to charitable fund-raising foundations, to be controlled wholly by the corporation, any regional system board, or jointly with others;
 - (B) Establishing, subscribing to, and owning stock in business corporations individually or jointly with others; and
 - (C) Entering into partnerships and other joint venture arrangements, or participating in alliances, purchasing consortia, health insurance pools, or other cooperative arrangements, with any public or private entity; provided that any corporation, venture, or relationship entered into under this section furthers the public interest; provided further that this paragraph shall not be construed to authorize the corporation or a regional system board to abrogate any responsibility or obligation under paragraph (15);

provided that each regional system board shall be responsible for conducting the activities under this paragraph in its own regional system consistent with policies established by the corporation board;
- (5) Participating in and developing prepaid health care service and insurance programs and other alternative health care delivery programs, including programs involving the acceptance of capitated payments or premiums that include the assumption of financial and actuarial risk; provided that each regional system board shall be responsible for conducting the activities under this paragraph in its own regional system consistent with policies established by the corporation board;
- (6) Executing, in accordance with all applicable bylaws, rules, and laws, all instruments necessary or appropriate in the exercise of any powers of the corporation or regional system boards;
- (7) Preparing and executing all corporation-wide budgets, policies, and procedures or any regional system budgets, policies, and procedures; provided that the regional system boards shall submit their regional and facility budgets to the corporation to be consolidated into a corporation-wide budget for purposes of corporation-wide planning and appropriation requests. Regional system and facility budgets shall be received by the corporation and shall be included in the corporation-wide budget upon submittal to the corporation;
- (8) Setting rates and charges for all services provided by the corporation without regard to chapter 91; provided that the duty and power of the corporation board shall be limited to approving the rates and charges developed by the regional system boards for the regional system's facilities and services. Rates and charges may vary among regional systems and facilities and may be consolidated with the rates of other regional systems into one charge master. Third-party payer contracts may be negotiated at the corporation-wide level with

- input from the regional systems, taking into consideration the rates set by the regional system boards. For purposes of securing revenue bonds, the corporation or regional system board may covenant to set, and if necessary increase, rates and charges as needed to pay debt service and related obligations plus a coverage factor;
- (9) Developing a corporation-wide hospital system that is subject to chapters 76 and 89; provided that employment of regional system and facility personnel shall be the responsibility of the regional system boards pursuant to corporation-wide policies and procedures, applicable laws, rules, regulations, and collective bargaining agreements;
 - (10) Developing the corporation's corporation-wide capital and strategic plans or any regional system board's capital and strategic plans; provided that each regional system board shall be responsible for development of capital and strategic plans in its own regional system that shall be consistent with, and incorporated into, the overall corporation-wide plans; and provided further that the corporation and each regional system board shall be entitled to undertake the acquisition, construction, and improvement of property, facilities, and equipment to carry out these capital and strategic plans;
 - (11) Suing and being sued; provided that only the corporation may sue or be sued; and provided further that the corporation and regional system boards shall enjoy the same sovereign immunity available to the State;
 - (12) Making and altering corporation board and regional system board bylaws for its organization and management without regard to chapter 91 and consistent with this chapter; provided that each regional system board shall be responsible for the final approval of its regional system board bylaws;
 - (13) Adopting rules without regard to chapter 91 governing the exercise of the corporation's or regional system boards' powers and the fulfillment of its purpose under this chapter;
 - (14) Entering into any contract or agreement whatsoever, not inconsistent with this chapter or the laws of this State, and authorizing the corporation, regional system boards, and chief executive officers to enter into all contracts, execute all instruments, and do all things necessary or appropriate in the exercise of the powers granted in this chapter, including securing the payment of bonds; provided that the corporation board shall delegate to a regional system board its authority to enter into and execute contracts or agreements relating to matters exclusively affecting that regional system; provided further that a regional system board shall exercise this power consistent with corporation-wide policies; and provided further that contracts or agreements executed by a regional system board shall encumber only the regional subaccounts of that regional system board;
 - (15) Issuing revenue bonds up to \$100,000,000 subject to the approval of the governor or the director of finance; provided that:
 - (A) All revenue bonds shall be issued pursuant to part III, chapter 39;
 - (B) The corporation and any regional system board shall have the power to issue revenue bonds in any amount without regard to any limitation in chapter 39; and
 - (C) The corporation shall have the power to incur debt, including the issuance of revenue bonds in any amount, and the regional

- system boards shall have the power to issue revenue bonds in any amount upon approval by the corporation board;
- (16) Reimbursing the state general fund for debt service on general obligation bonds or reimbursable general obligation bonds issued by the State for the purposes of the corporation or any regional system board;
 - (17) Pledging or assigning all or any part of the receipts, revenues, and other financial assets of the corporation or the regional system boards for purposes of meeting or securing bond or health systems liabilities; provided that each regional system board shall be responsible for conducting the activities under this paragraph in its own regional system. Any pledge or assignment by the corporation or any regional system board to secure revenue bonds or health system liabilities shall be valid and binding in accordance with its terms against the pledgor, creditors, and all others asserting rights thereto from the time the pledge or assignment is made, without the need of physical delivery, recordation, filing, or further act. The corporation shall not take or omit to take any act that would interfere with, impair, or adversely affect any pledge [øf] or assignment by a regional system board pursuant to this chapter. In connection with issuing revenue bonds or related obligations, consistent with corporation policies and procedures, any regional system board may make such other covenants, binding on the regional system board and the corporation, that the regional system board determines to be necessary or appropriate to establish and maintain security for the revenue bonds or related obligations;
 - (18) Owning, purchasing, leasing, exchanging, or otherwise acquiring property, whether real, personal, or mixed, tangible or intangible, and of any interest therein, in the name of the corporation, which property is not owned or controlled by the State but is owned or controlled by the corporation; provided that:
 - (A) Regional system boards shall have custodial control over facilities and physical assets in their respective regional systems. A regional system board may own, purchase, lease, exchange, or otherwise acquire property, whether real, personal, or ~~mixe~~ mixed, tangible or intangible, and of any interest therein, other than property owned or controlled by the corporation, in the name of the regional system board; provided further that a regional system board shall be subject to section 323F-3.5; and
 - (B) Each regional system board shall be responsible for conducting the activities under this paragraph in its own regional system;
 - (19) Maintaining, improving, pledging, mortgaging, selling, or otherwise holding or disposing of property, whether real, personal, or mixed, tangible or intangible, and of any interest therein, at any time and manner, in furtherance of the purposes and mission of the corporation or any regional system board; provided that the corporation or any regional system board legally holds or controls the property in its own name; provided further that other than to secure revenue bonds and related obligations and agents, and to transition into a new entity, the corporation or any regional system board shall not sell, assign, lease, hypothecate, mortgage, pledge, give, or dispose of all or substantially all of its property; and provided further that each regional system board shall be responsible for conducting the activities under this paragraph in its own regional system, and con-

trol over such property shall be delegated to each regional system board; provided further that this paragraph shall not be construed to authorize the sale, pledge, or mortgage of real property under the control of the corporation or a regional system board.

- (20) Purchasing insurance and creating captive insurers in any arrangement deemed in the best interest of the corporation, including but not limited to funding and payment of deductibles and purchase of reinsurance; provided that only the corporation shall have the power to create captive insurers to benefit public health facilities and operations in all regional systems; and provided further that a regional system board may purchase insurance for its regional system in collaboration with the other regional systems and the corporation until captive coverage is provided by the corporation;
- (21) Acquiring by condemnation, pursuant to chapter 101, any real property required by the corporation to carry out the powers granted by this chapter;
- (22) Depositing any moneys of the corporation or any regional system board in any banking institution within or without the State, and appointing, for the purpose of making deposits, one or more persons to act as custodians of the moneys of the corporation[§] or any regional system board; provided that regional system boards may deposit moneys in banking institutions pursuant to corporation-wide guidelines established by the corporation board;
- (23) Contracting for and accepting any gifts, grants, and loans of funds, property, or any other aid in any form from the federal government, the State, any state agency, or any other source, or any combination thereof, and complying, subject to this chapter, with the terms and conditions thereof; provided that the regional system boards shall be responsible for contracting for and accepting any gifts, grants, loans, property, or other aid if intended to benefit the public health facilities and operations exclusively in their respective regional systems; and provided further that all contracting for or acceptance of gifts, grants, loans, property, or other aid shall be consistent with corporation-wide policies established by the corporation board;
- (24) Providing health and medical services for the public directly or by agreement or lease with any person, firm, or private or public corporation, partnership, or association through or in the health facilities of the corporation or regional system boards or otherwise; provided that the regional system boards shall be responsible for conducting the activities under this paragraph in their respective regional systems;
- (25) Approving medical staff bylaws, rules, and medical staff appointments and reappointments for all public health facilities of the corporation or any regional system board, including but not limited to determining the conditions under which a health professional may be extended the privilege of practicing within a health facility, as determined by the respective regional system board and consistent with ~~[corporate-wide]~~ corporation-wide policies, and adopting and implementing reasonable rules, without regard to chapter 91, for the credentialing and peer review of all persons and health professionals within the facility; provided that regional system boards shall be the governing body responsible for all medical staff organization, peer review, and credentialing activities to the extent allowed by law;

- (26) (A) Investing any funds not required for immediate disbursement in property or in securities that meet the standard for investments established in chapter 88 as provided by the corporation board or any regional system board; provided that proceeds of bonds and moneys pledged to secure bonds may be invested in obligations permitted by any document that authorizes the issuance or securing of bonds; and provided further that the investment assists the corporation or any regional system board in carrying out its public purposes; selling from time to time securities thus purchased and held, and depositing any securities in any bank or financial institution within or without the State. Any funds deposited in a banking institution or in any depository authorized in this section shall be secured in a manner and subject to terms and conditions as the corporation board or a regional system board may determine, with or without payment of any interest on the deposit, including without limitation time deposits evidenced by certificates of deposit. Any bank or financial institution incorporated under the laws of this State may act as depository of any funds of the corporation or a regional system board and may issue indemnity bonds or may pledge securities as may be required by the corporation or regional system board; provided that regional system boards may exercise the powers under this subsection with respect to financial assets of the regional system consistent with corporation-wide policies; and
- (B) Notwithstanding subparagraph (A), contracting with the holders of any of its notes or bonds as to the custody, collection, securing, investment, and payment of any moneys of the corporation or regional system board and of any moneys held in trust or otherwise for the payment of notes or bonds and carrying out the contract. Moneys held in trust or otherwise for the payment of notes or bonds or in any way to secure notes or bonds, and deposits of such moneys, may be secured in the same manner as moneys of the corporation or regional system board, and all banks and trust companies are authorized to give security for the deposits;
- (27) Entering into any agreement with the State, including but not limited to contracts for the provision of goods, services, and facilities in support of the corporation's programs or the regional system boards' programs, and contracting for the provision of services to or on behalf of the State; provided that the regional system boards shall be responsible for entering into agreements to provide goods, services, and facilities in support of programs in their respective regional systems consistent with corporation-wide policies;
- (28) Having a seal and altering the same at pleasure;
- (29) Waiving, by means that the corporation or regional system board deems appropriate, the exemption from federal income taxation of interest on the corporation's or regional system boards' bonds, notes, or other obligations provided by the Internal Revenue Code of 1986, as amended, or any other federal statute providing a similar exemption;
- (30) Developing internal policies and procedures for the procurement of goods and services, consistent with the goals of public accountability and public procurement practices, and subject to management

and financial legislative audits; provided that the regional system boards shall be responsible for developing internal policies and procedures for each of their regional systems consistent with the corporation's policies and procedures; and further provided that:

- (A) The regional system boards and the ~~corporate~~ corporation board shall enjoy the exemption under section 103-53(e);
 - (B) The regional system boards shall enjoy the exemption under chapter 103D; and
 - (C) The corporation shall be subject to chapter 103D;
- (31) Authorizing and establishing positions; provided that regional system boards shall be responsible for hiring and firing regional and facility personnel consistent with corporation policies, except a regional chief executive officer ~~and regional chief financial officer~~ shall only be hired or dismissed upon the approval of the regional system board ~~and the corporation board~~ as further set forth in section 323F-8.5;
- (32) Having and exercising all rights and powers necessary or incidental to or implied from the specific powers granted in this chapter, which specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this chapter; provided that the regional system boards shall be responsible for having and exercising all powers and rights with respect to matters in their regional systems consistent with the law; and
- (33) Each regional system, through its regional system board, shall:
- (A) Develop policies and procedures necessary or appropriate to plan, operate, manage, and control the day-to-day operations of facilities within the regional system that are consistent with corporation-wide policies;
 - (B) Exercise custodial control over and use of all assets of the corporation that are located in the regional system pursuant to this chapter; and
 - (C) Expend funds within its approved regional system budget and expend additional funds in excess of its approved regional system budget upon approval of the corporation board.
- (d) Each regional system board shall not be subject to chapters 36 to 38, 40, 41D, and 103D as well as part I of chapter 92 and shall enjoy the exemptions contained in sections 102-2 and 103-53(e), except as otherwise provided in this chapter. The corporation shall not be subject to chapters 36 to 38, 40, and 41D, as well as part I of chapter 92, and shall enjoy the exemptions contained in sections 102-2 and 103-53(e)~~[-];~~; provided that the exemption provided under this subsection to chapter 37D shall only apply to financing agreements of \$5,000,000 or less; provided further that the aggregate value of financing agreements per fiscal year shall not exceed \$25,000,000."

SECTION 13. Section 323F-8, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The corporation board may appoint, ~~exempt from chapter 76 and section 26-35(a)(4),~~ by majority vote of its entire membership, a chief executive officer of the corporation whose salary shall be set by the corporation board~~[-]~~ and who shall be exempt from chapter 76 and section 26-35(a)(4). The chief executive officer may also appoint up to eighteen other personnel, exempt from chapters 76 and 89, to work directly for the chief executive officer and the corporate board.

(b) The corporation board or its designee may discharge its exempt personnel with or without cause; provided that removal without cause shall not prejudice any contract rights of personnel.

The discharge of the chief executive officer shall require a majority vote of the entire membership of the corporation board.”

SECTION 14. Section 323F-8.5, Hawaii Revised Statutes, is amended by amending its title and subsections (a) and (b) to read as follows:

“[§323F-8.5] Regional chief executive officer; exempt position. (a) Upon establishment~~], and until December 31, 2008~~, a regional system board may appoint a regional chief executive officer ~~[and regional chief financial officer]~~ whose salary shall be set by the corresponding regional system board and may discharge a regional chief executive officer ~~[or regional chief financial officer for cause, consistent with subsection (b)]~~; provided that the position shall be exempt from chapter 76 and section 26-35(a)(4). ~~[Effective January 1, 2009, the hiring and firing of the regional chief executive officers shall be subject to approval of both the regional system board and the corporation board.]~~ Each regional chief executive officer may also appoint, as necessary, other personnel, exempt from chapters 76 and 89, to work directly for the regional chief executive officer for the regional system and for the corresponding regional system board.

(b) Any regional system board or its designee may discharge its exempt personnel with or without cause; provided that removal without cause shall not prejudice any contract rights of personnel~~]; and provided further that the discharge of a regional chief executive officer shall be limited to the reasons outlined in section 323F-3.5(e) up to December 31, 2008. Effective January 1, 2009, regional chief executive officers and other exempt personnel shall be subject to discipline, including discharge, in accordance with duly executed contracts, laws governing exempt personnel of the State, and regional system policies adopted in accordance with corporate policies].”~~

SECTION 15. Section 323F-22, Hawaii Revised Statutes, is amended to read as follows:

“§323F-22 Annual audit and report; disclosure of revenue projections~~]; internal performance audit.~~ (a) The corporation shall engage a certified public accountant to conduct an annual audit of its financial affairs, books, and records in accordance with generally accepted accounting principles. The corporation, in consultation with a regional system board, may permit or require a regional system board to retain an audit firm to conduct an independent audit of the regional system. Each regional system board shall submit the results of the annual audit to the corporation board within one hundred twenty days after the close of the regional system board's fiscal year. The corporation shall submit to the governor and the legislature, within one hundred fifty days after the close of the corporation's fiscal year, a report that shall include the audited financial report for that fiscal year for the corporation and each regional system board.

(b) In addition to the submittal of the audit required under subsection (a), the corporation, in cooperation with the regional system boards, shall submit a report to the legislature at least twenty days prior to the convening of each regular session that shall include but not be limited to:

- (1) The projected revenues for each health care facility;
- (2) A list of all proposed capital improvement projects planned for implementation during the following fiscal year; and

- (3) All reports submitted by regional public health facility management advisory committees pursuant to section 323F-10(c).
- (c) The regional system boards shall prepare a report for inclusion with the corporation's annual report and audit.

(d) There shall be an annual internal audit of the management and operations of the corporation and regions. The corporation, in cooperation with the regional system boards, shall submit a report to the legislature at least twenty days prior to the convening of each regular session on the results of the annual internal audit of the management and operations of the corporation and regions."

PART VI

SECTION 16. (a) Notwithstanding any law to the contrary, including section 26-34, Hawaii Revised Statutes, the terms of the two members of the Hawaii health systems corporation board appointed by the governor pursuant to section 323F-3(b)(6), Hawaii Revised Statutes, as that provision of law read on the day prior to the effective date of this Act, and the two physician members required to have active medical staff privileges at one of the corporation's health facilities appointed by the governor pursuant to section 323F-3(b), Hawaii Revised Statutes, as that provision of law read on the day prior to the effective date of this Act, shall expire on June 30, 2009.

(b) The Hawaii health systems corporation board, in consultation with the regional system boards, shall implement the board member reduction requirement under section 9 no later than July 1, 2010. Any reduction in membership effectuated by the Hawaii health systems corporation board shall maintain adequate regional representation.

PART VII

SECTION 17. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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

SECTION 19. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 20. This Act shall take effect on July 1, 2009.

(Became law on July 15, 2009, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

Notes

- 1. So in original.
- 2. Edited pursuant to HRS §23G-16.5.