

HB 1372

Measure Title:	RELATING TO THE TRANSITIONING OF THE REGIONS AND FACILITIES OF HAWAII HEALTH SYSTEMS CORPORATION.
Report Title:	Hawaii Health Systems Corporation; Regional Systems; New Entity
Description:	Authorizes a facility or regional health care system under the Hawaii health systems corporation to transition into a new legal entity, including a nonprofit or for-profit corporation, municipal facility, or public benefit corporation.

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TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
SENATE COMMITTEE
ON
HEALTH

March 16, 2009

3:00 PM

HB 1372

RELATING TO THE TRANSITIONING OF THE REGIONS AND FACILITIES OF HAWAII HEALTH SYSTEMS CORPORATION.

Chair Ige, Vice-Chair Green and committee members, thank you for the opportunity to testify on HB 1372.

The State Procurement Office (SPO) opposes the amendment in SECTION 4, which exempts from HRS chapter 103D, the Hawaii Health Systems Corporation (HHSC).

Statutory exemptions for specific agencies are contrary to the Hawaii Public Procurement Code (Code), section 103D-102, HRS, on the applicability of the chapter that states in part “. . . shall apply to all procurement contracts made by governmental bodies whether the consideration for the contract is cash, revenues, realizations, receipts, or earnings, . . .” Any governmental agency with the authority to expend funds should be in compliance with chapter 103D, which promotes the policy of fair and equitable treatment of all persons who deal with the procurement system; fosters effective broad-based competition; and increases public confidence in public procurement.

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The SPO is against statutorily exempting specific agencies from the Code, as it is not in the best interest of government, the business community, and the general public. The Code establishes a time-tested, fair, and reliable set of rules and processes for award of contracts. The competitive procurement processes of the Code are to insure that all potential providers are afforded the opportunity to compete for the required services. To the extent agencies may need specific purchases to be exempted from Code requirements, the Code provides an exemption process.

The Code should not be viewed as an obstacle to a purchasing agency's mission, but rather as the single source of public procurement policy to be applied equally and uniformly. It was the legislature's intent for the Code to be a single source of public procurement policy. If individual agencies are exempted and allowed to develop their own individual processes, it becomes problematic and confusing to vendors, contractors and service providers that must comply with a variety of different processes and standards. Fairness, open competition, a level playing field, and government disclosure and transparency in the procurement and contracting process are vital to good government. For this to be accomplished, we must participate in the process with one set of statutes and rules.

Thank you.



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2009**

ON THE FOLLOWING MEASURE:

H.B. NO. 1372, THE TRANSITIONING OF THE REGIONS AND FACILITIES OF THE HAWAII HEALTH SYSTEMS CORPORATION.

BEFORE THE:

SENATE COMMITTEE ON HEALTH

DATE: Monday, March 16, 2009 **TIME:** 3:00 PM

LOCATION: State Capitol, Room 016

TESTIFIER(S): Mark J. Bennett, Attorney General
or Andrea J. Armitage, Deputy Attorney General

Chair Ige and Members of the Committee:

The Department of the Attorney General provides these comments regarding potential legal problems with this bill.

The purpose of this bill is to allow regional systems of the Hawaii Health Systems Corporation (HHSC) and their facilities to leave the umbrella of the HHSC and transition into separate legal entities, while leaving the HHSC intact. It also allows for the transition of the entire corporation into a private legal entity.

There are a number of legal concerns with this bill. First, on page 3, lines 4 - 10, the bill provides that notwithstanding section 27-1, Hawaii Revised Statutes (HRS), any of the regional systems or "facilities of the Hawaii health systems corporation is hereby authorized to transition into a new legal entity" Section 27-1(3), HRS, provides that state functions include "[p]lanning, construction, improvement, maintenance, and operation of public hospitals and other public health and medical facilities." Considering the specificity of this provision, it would be prudent to also amend section 27-1, HRS, to allow facilities of the HHSC to transition from state facilities to private legal entities.

Second, on page 3, line 13, the bill states that the regional system or facility may transition into a "municipal facility." The term "municipal facility" is not defined in this bill or in the Hawaii Revised Statutes. Its meaning is unclear.

Third, on page 4, lines 12 - 15, the bill states that "all liabilities of the regional system or facility related to collective bargaining contracts negotiated by the State, shall become the responsibility of the State." This provision requires clarification as to what liabilities are included in this obligation; i.e. whether this provision makes the State liable for **all** of the collective bargaining liabilities of the regional system or facility without condition, or whether it refers to specific liabilities.

Fourth, on page 4, line 16, the proposed bill states that funding and other provisions of the chapter shall continue during "the period of transition." The phrase "period of transition" is not defined. There should be an explanation as to when the period of transition begins and when it ends.

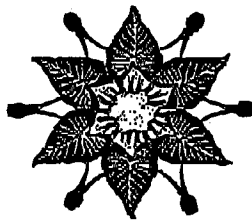
Fifth, on page 4, line 17, the bill states that during the period of transition, "the State shall continue to fund the provision of health care services provided for by the regional system or individual facility." The meaning of this provision is completely unclear. Currently regional systems and individual facilities are supported through their own funding mechanisms. The State is not obligated to provide funding, although the Legislature may, of course, decide to make specific appropriations. This provision in the bill should make clear that it does not create any new financial obligation for the State to fund services provided by the regional systems or individual facilities.

Sixth, this bill may violate article III, section 14 of the Hawaii Constitution. That section requires each bill to include only one subject, which is to be expressed in its title. The title of the bill is "Relating to the Transitioning of the Regions and Facilities of Hawaii Health Systems Corporation." The following sections do not

appear to be related to transitioning any part of the HHSC into a separate legal entity:

- Section 4, which amends section 103D-102(c), HRS. This provision adds the HHSC in its entirety to the exemption for the regional system boards from the requirements of procuring and contracting for goods and services;
- Section 5, which amends section 323F-7(c), HRS, by deleting the provision that authorizes a regional chief financial officer to be hired or dismissed by the regional system board and deleting the requirement of approval of the corporation board;
- Section 6, which amends section 323F-8.5, HRS. This section dictates the powers of the regional system boards to appoint, discharge and set the salaries for the regional chief executive officer and the regional chief financial officer. It also allows the regional chief executive officer to appoint other personnel exempt from the civil service laws and the collective bargaining laws to supporting positions. The bill would delete the regional financial officers from this provision and also allow the regional system boards to discharge exempt personnel with or without cause, with no further conditions; and
- Section 7, which amends section 323F-31, HRS, by deleting the requirement that the entire Legislature shall be notified of any substantial reduction or elimination of direct patient care services, and also the requirement of approval of the Legislature prior to doing so. The amendment specifies which legislators must be notified, and eliminates the requirement of legislative approval.

We respectfully ask that the Committee take into consideration our legal concerns and amend the bill accordingly, if it decides to recommend passage of the bill.



Maui Memorial
MEDICAL CENTER

March 13, 2009

**TO: Senator David Y. Ige, Chair
Senator Josh Green, M.D., Vice Chair
SENATE COMMITTEE ON HEALTH
Monday, March 16, 2009, 3:00 p.m.
Conference Room 415**

FROM: Wesley Lo, Regional Chief Executive Officer

**RE: HB 1372, RELATING TO THE TRANSITIONING OF THE REGIONS
AND FACILITIES OF HAWAII HEALTH SYSTEMS CORPORATION.**

Thank you for the opportunity to submit testimony in strong support of HB 1372. The purpose of HB 1372 is to authorize a facility or regional health care system under the Hawaii Health Systems Corporation (HHSC) to transition into a new legal entity, including a nonprofit or for-profit corporation, municipal facility, or public benefit corporation.

I support this measure for the following reasons:

1. It will allow the regions access to alternative funding sources.
2. If alternative funding sources are secured, the level of state funding required by HHSC would be significantly reduced.
3. Partnerships with larger healthcare organizations will allow for the opportunity to improve healthcare in the State.

If this measure is not passed, the State faces having to fully subsidize HHSC or if it is unable to do so, health care services in all the regions will have to be dramatically reduced or eliminated. For a region such as Maui where there is only ONE acute health care facility available to residents and visitors, the reduction or elimination of services will have devastating effects.

Thank you for this opportunity to testify in support of HB 1372.

Respectfully submitted,

Wesley Lo
Regional Chief Executive Officer
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Hawai'i Primary Care Association

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To: **The Senate Committee on Health**
The Hon. David Y. Ige, Chair
The Hon. Josh Green, MD, Vice Chair

Testimony in Support of House Bill 1372
Relating to the Transitioning of the Regions and Facilities of
Hawaii Health Systems Corporation
Submitted by Beth Giesting, CEO
March 16, 2009, 3:00 p.m. agenda, Room 016

The Hawaii Primary Care Association supports this bill, especially the section that requires collaboration between HHSC and community health centers. As noted in §323F, community health centers, also known as Federally Qualified Health Centers or FQHCs, are ideal partners as bring to the community the benefits of enhanced Medicaid and Medicare reimbursement, stable federal funding with periodic opportunities for enhancement, state grants, federal tort claims coverage that relieves them of malpractice costs, and qualify for National Health Service Corps and other loan repayment programs to enhance recruitment and retention. In addition, the health centers have a clinically and economically effective model of comprehensive primary care, systems of quality assurance, electronic medical records systems, VTC systems, and other operational advantages.

Thank you for your consideration of this measure and for the opportunity to present our support.



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Touching Lives Every Day"

**The Senate
Committee on Health
Senator David Y. Ige, Chair
Senator Josh Green, M.D., Vice Chair**

Monday, March 16, 2009
3:00 PM
Conference Room 016
Hawaii State Capitol

**HB 1372 Relating to the Transitioning of the Regions and Facilities of Hawaii
Health Systems Corporation**
*Authorizes a facility or regional health care system under the Hawaii Health Systems
Corporation to transition into a new legal entity, including a nonprofit or for-profit
corporation, municipal facility, or public benefit corporation*

By Thomas M. Driskill, Jr.
President and Chief Executive Officer
Hawaii Health Systems Corporation (HHSC)

On behalf of the Hawaii Health Systems Corporation (HHSC) Corporation Board of Directors, thank you for the opportunity to provide testimony on HB 1372 to authorize a facility or regional health care system under HHSC to transition into a new legal entity, including a nonprofit or for-profit corporation, municipal facility, or other such corporate entity.

Our HHSC Corporate Board of Directors supports the concept of this proposed bill but suggest that HB 1372 be incorporated into SB 1673 that has become enhanced into an omnibus bill, as the vehicle for implementing change in HHSC.

In light of the growing financial and structural challenges that the community-hospital system has been undergoing since its establishment in 1996, SB 1673 provides the HHSC regions and facilities an additional option to respond effectively to the changing health care needs of their island communities. SB 1673 seeks restructure options that

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would enable HHSC regions and facilities to consider entering into various forms of public / private partnerships while at the same time remaining part of a system or a "federated" system of HHSC related healthcare facilities. Since we have taken the position that the State can no longer financially underwrite the escalating cost of healthcare for the communities we serve, it is essential that we look for new innovative ways to involve private partnerships in the provision of care.

The HHSC Corporate Board and corporate management are committed to working collaboratively with each of its five regions when they are ready to ensure a smooth transitioning process for any facility or regional restructuring that may be undertaken as a result of SB 1673.

In light of today's challenging health care and economic environments, this legislation is vital and needed now.

Your support for SB 1673 as the vehicle for change is greatly appreciated. Thank you.