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# A BILL FOR AN ACT

RELATING TO THE HAWAII HEALTH SYSTEMS CORPORATION.

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

1           SECTION 1. The legislature finds that the State's  
2 community hospital system, Hawaii health systems corporation,  
3 provides essential safety-net hospital and long-term care  
4 services throughout the State and are often the only hospitals  
5 in many rural communities. Due to rapid changes taking place in  
6 the health care industry, the legislature acknowledges that the  
7 governing structure of our public hospital system must provide  
8 the appropriate flexibility and autonomy needed to compete and  
9 remain viable and respond to the needs of the specific  
10 communities served by furthering the development of centers of  
11 excellence in health care.

12           The legislature acknowledges that the current  
13 administrative arrangement places the public hospital system in  
14 a single statewide public agency, the Hawaii health systems  
15 corporation, which operates with some autonomy from the  
16 executive branch. This arrangement is the result of landmark  
17 legislation, Act 262, Session Laws of Hawaii 1996, which was  
18 passed after years of study. Act 262 was largely the result of



1 the work of a task force established pursuant to Act 266,  
2 Session Laws of Hawaii 1994, charged with studying the  
3 establishment of an agency for community hospitals, then a  
4 division of the department of health. On December 20, 1994, the  
5 task force issued its report to the governor and the legislature  
6 entitled, "The Preliminary Report of the Governor's Task Force  
7 on the Establishment of an Agency for Community Hospitals".  
8 Many of the recommendations of the task force were adopted by  
9 the legislature, resulting in passage of Act 262, and the  
10 creation of the Hawaii health systems corporation in 1996.

11 One significant recommendation of the task force included  
12 the establishment of regional system boards of directors, along  
13 with the system-wide board. This was accomplished by Act 290,  
14 Session Laws of Hawaii 2007, which established a two-tiered  
15 board system, giving the regional boards custodial control over  
16 the operations, facilities, and personnel, to be exercised  
17 within corporate policy.

18 In 2009, the legislature determined through Act 182,  
19 Session Laws of Hawaii 2009, that it was in the State's best  
20 interest to limit the authority of the corporation by  
21 prohibiting the corporation from granting mortgages on  
22 corporation real property in order to secure loans and revenue



1 bonds. However, the legislature finds that the economic  
2 downturn coupled with the inability to leverage its biggest  
3 asset of real property by pledging it as collateral has hindered  
4 the ability of the system to obtain outside financing and  
5 refinance loans for more favorable terms.

6 In addition, Act 182 (2009) put a dollar cap on the  
7 facilities' authority to enter into municipal leases. The  
8 language is ambiguous because it is not clear if the aggregate  
9 limit is on the entire corporation as a whole, or each region.  
10 Again, this restriction is a hindrance on the ability of the  
11 system to obtain outside financing.

12 The purpose of this Act is to advance the State's  
13 commitment to provide quality health care for the people of  
14 Hawaii by lifting the prohibition on mortgages of Hawaii health  
15 systems corporation real property in order to give the  
16 corporation the ability to fully utilize the asset for the  
17 benefit of the community and by clarifying that the \$25,000,000  
18 limit on municipal leases is per region, annually.

19 SECTION 2. Section 323F-7, Hawaii Revised Statutes, is  
20 amended by amending subsections (c) and (d) to read as follows:



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

- 4           (1) Developing corporation-wide policies, procedures, and  
5 rules necessary or appropriate to plan, operate,  
6 manage, and control the system of public health  
7 facilities and services without regard to chapter 91;  
8 provided that each regional system board shall be  
9 responsible for its own policies, procedures, and  
10 rules necessary or appropriate to plan, operate,  
11 manage, and control the public health facilities  
12 within its own regional system consistent with  
13 corporation policies;
- 14           (2) Evaluating the need for additional health facilities  
15 and services; provided that each regional system board  
16 shall be responsible for the evaluation within its own  
17 regional system;
- 18           (3) Entering into and performing any contracts, leases,  
19 cooperative agreements, partnerships, or other  
20 transactions whatsoever that may be necessary or  
21 appropriate in the performance of its purposes and  
22 responsibilities, and on terms the corporation, or



1 regional system boards, may deem appropriate, with  
2 either:

3 (A) Any agency or instrumentality of the United  
4 States, or with any state, territory, or  
5 possession, or with any subdivision thereof; or

6 (B) Any person, firm, association, partnership, or  
7 corporation, whether operated on a for-profit or  
8 not-for-profit basis;

9 provided that the transaction furthers the public  
10 interest; and provided further that if any dispute  
11 arises between any contract, lease, cooperative  
12 agreement, partnership, or other transaction entered  
13 into by the corporation and a regional system board  
14 with regard to matters solely within that regional  
15 system, after July 1, 2007, the contract, lease,  
16 cooperative agreement, partnership, or other  
17 transaction entered into by the regional system board  
18 shall prevail; and provided further that such  
19 agreements are consistent with corporation policies;

20 (4) Conducting activities and entering into business  
21 relationships as the corporation board, or any



1 regional system board, deems necessary or appropriate,  
2 including but not limited to:

3 (A) Creating nonprofit corporations, including but  
4 not limited to charitable fund-raising  
5 foundations, to be controlled wholly by the  
6 corporation, any regional system board, or  
7 jointly with others;

8 (B) Establishing, subscribing to, and owning stock in  
9 business corporations individually or jointly  
10 with others; and

11 (C) Entering into partnerships and other joint  
12 venture arrangements, or participating in  
13 alliances, purchasing consortia, health insurance  
14 pools, or other cooperative arrangements, with  
15 any public or private entity; provided that any  
16 corporation, venture, or relationship entered  
17 into under this section furthers the public  
18 interest; provided further that this paragraph  
19 shall not be construed to authorize the  
20 corporation or a regional system board to  
21 abrogate any responsibility or obligation under  
22 paragraph (15);



1 provided that each regional system board shall be  
2 responsible for conducting the activities under this  
3 paragraph in its own regional system consistent with  
4 policies established by the corporation board;

5 (5) Participating in and developing prepaid health care  
6 service and insurance programs and other alternative  
7 health care delivery programs, including programs  
8 involving the acceptance of capitated payments or  
9 premiums that include the assumption of financial and  
10 actuarial risk; provided that each regional system  
11 board shall be responsible for conducting the  
12 activities under this paragraph in its own regional  
13 system consistent with policies established by the  
14 corporation board;

15 (6) Executing, in accordance with all applicable bylaws,  
16 rules, and laws, all instruments necessary or  
17 appropriate in the exercise of any powers of the  
18 corporation or regional system boards;

19 (7) Preparing and executing all corporation-wide budgets,  
20 policies, and procedures or any regional system  
21 budgets, policies, and procedures; provided that the  
22 regional system boards shall submit their regional and



1 facility budgets to the corporation to be consolidated  
2 into a corporation-wide budget for purposes of  
3 corporation-wide planning and appropriation requests.  
4 Regional system and facility budgets shall be received  
5 by the corporation and shall be included in the  
6 corporation-wide budget upon submittal to the  
7 corporation;

- 8 (8) Setting rates and charges for all services provided by  
9 the corporation without regard to chapter 91; provided  
10 that the duty and power of the corporation board shall  
11 be limited to approving the rates and charges  
12 developed by the regional system boards for the  
13 regional system's facilities and services. Rates and  
14 charges may vary among regional systems and facilities  
15 and may be consolidated with the rates of other  
16 regional systems into one charge master. Third-party  
17 payer contracts may be negotiated at the corporation-  
18 wide level with input from the regional systems,  
19 taking into consideration the rates set by the  
20 regional system boards. For purposes of securing  
21 revenue bonds, the corporation or regional system  
22 board may covenant to set, and if necessary increase,





1 rates and charges as needed to pay debt service and  
2 related obligations plus a coverage factor;

3 (9) Developing a corporation-wide hospital system that is  
4 subject to chapters 76 and 89; provided that  
5 employment of regional system and facility personnel  
6 shall be the responsibility of the regional system  
7 boards pursuant to corporation-wide policies and  
8 procedures, applicable laws, rules, regulations, and  
9 collective bargaining agreements;

10 (10) Developing the corporation's corporation-wide capital  
11 and strategic plans or any regional system board's  
12 capital and strategic plans; provided that each  
13 regional system board shall be responsible for  
14 development of capital and strategic plans in its own  
15 regional system that shall be consistent with, and  
16 incorporated into, the overall corporation-wide plans;  
17 and provided further that the corporation and each  
18 regional system board shall be entitled to undertake  
19 the acquisition, construction, and improvement of  
20 property, facilities, and equipment to carry out these  
21 capital and strategic plans;



- 1           (11)    Suing and being sued; provided that only the  
2                    corporation may sue or be sued; and provided further  
3                    that the corporation and regional system boards shall  
4                    enjoy the same sovereign immunity available to the  
5                    State;
- 6           (12)    Making and altering corporation board and regional  
7                    system board bylaws for its organization and  
8                    management without regard to chapter 91 and consistent  
9                    with this chapter; provided that each regional system  
10                  board shall be responsible for the final approval of  
11                  its regional system board bylaws;
- 12          (13)    Adopting rules without regard to chapter 91 governing  
13                    the exercise of the corporation's or regional system  
14                    boards' powers and the fulfillment of its purpose  
15                    under this chapter;
- 16          (14)    Entering into any contract or agreement whatsoever,  
17                    not inconsistent with this chapter or the laws of this  
18                    State, and authorizing the corporation, regional  
19                    system boards, and chief executive officers to enter  
20                    into all contracts, execute all instruments, and do  
21                    all things necessary or appropriate in the exercise of  
22                    the powers granted in this chapter, including securing



1 the payment of bonds; provided that the corporation  
2 board shall delegate to a regional system board its  
3 authority to enter into and execute contracts or  
4 agreements relating to matters exclusively affecting  
5 that regional system; provided further that a regional  
6 system board shall exercise this power consistent with  
7 corporation-wide policies; and provided further that  
8 contracts or agreements executed by a regional system  
9 board shall encumber only the regional subaccounts of  
10 that regional system board;

11 (15) Issuing revenue bonds up to \$100,000,000 subject to  
12 the approval of the governor or the director of  
13 finance; provided that:

14 (A) All revenue bonds shall be issued pursuant to  
15 part III, chapter 39;

16 (B) The corporation and any regional system board  
17 shall have the power to issue revenue bonds in  
18 any amount without regard to any limitation in  
19 chapter 39; and

20 (C) The corporation shall have the power to incur  
21 debt, including the issuance of revenue bonds in  
22 any amount, and the regional system boards shall



1           have the power to issue revenue bonds in any  
2           amount upon approval by the corporation board;

3       (16) Reimbursing the state general fund for debt service on  
4       general obligation bonds or reimbursable general  
5       obligation bonds issued by the State for the purposes  
6       of the corporation or any regional system board;

7       (17) Pledging or assigning all or any part of the receipts,  
8       revenues, and other financial assets of the  
9       corporation or the regional system boards for purposes  
10      of meeting or securing bond or health systems  
11      liabilities; provided that each regional system board  
12      shall be responsible for conducting the activities  
13      under this paragraph in its own regional system. Any  
14      pledge or assignment by the corporation or any  
15      regional system board to secure revenue bonds or  
16      health system liabilities shall be valid and binding  
17      in accordance with its terms against the pledgor,  
18      creditors, and all others asserting rights thereto  
19      from the time the pledge or assignment is made,  
20      without the need of physical delivery, recordation,  
21      filing, or further act. The corporation shall not  
22      take or omit to take any act that would interfere



1 with, impair, or adversely affect any pledge or  
2 assignment by a regional system board pursuant to this  
3 chapter. In connection with issuing revenue bonds or  
4 related obligations, consistent with corporation  
5 policies and procedures, any regional system board may  
6 make such other covenants, binding on the regional  
7 system board and the corporation, that the regional  
8 system board determines to be necessary or appropriate  
9 to establish and maintain security for the revenue  
10 bonds or related obligations;

11 (18) Owning, purchasing, leasing, exchanging, or otherwise  
12 acquiring property, whether real, personal, or mixed,  
13 tangible or intangible, and of any interest therein,  
14 in the name of the corporation, which property is not  
15 owned or controlled by the State but is owned or  
16 controlled by the corporation; provided that:

17 (A) Regional system boards shall have custodial  
18 control over facilities and physical assets in  
19 their respective regional systems. A regional  
20 system board may own, purchase, lease, exchange,  
21 or otherwise acquire property, whether real,  
22 personal, or mixed, tangible or intangible, and



1 of any interest therein, other than property  
2 owned or controlled by the corporation, in the  
3 name of the regional system board; provided  
4 further that a regional system board shall be  
5 subject to section 323F-3.5; and

6 (B) Each regional system board shall be responsible  
7 for conducting the activities under this  
8 paragraph in its own regional system;

9 (19) Maintaining, improving, pledging, mortgaging, selling,  
10 or otherwise holding or disposing of property, whether  
11 real, personal, or mixed, tangible or intangible, and  
12 of any interest therein, at any time and manner, in  
13 furtherance of the purposes and mission of the  
14 corporation or any regional system board; provided  
15 that the corporation or any regional system board  
16 legally holds or controls the property in its own  
17 name; provided further that other than to secure  
18 revenue bonds and related obligations and agents, and  
19 to transition into a new entity, the corporation or  
20 any regional system board shall not sell, assign,  
21 lease, hypothecate, mortgage, pledge, give, or dispose  
22 of all or substantially all of its property; and



1 provided further that each regional system board shall  
2 be responsible for conducting the activities under  
3 this paragraph in its own regional system, and control  
4 over such property shall be delegated to each regional  
5 system board; [~~provided further that this paragraph~~  
6 ~~shall not be construed to authorize the sale, pledge,~~  
7 ~~or mortgage of real property under the control of the~~  
8 ~~corporation or a regional system board;]~~

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 provided that only the corporation shall have the  
14 power to create captive insurers to benefit public  
15 health facilities and operations in all regional  
16 systems; and provided further that a regional system  
17 board may purchase insurance for its regional system  
18 in collaboration with the other regional systems and  
19 the corporation until captive coverage is provided by  
20 the corporation;



1           (21) Acquiring by condemnation, pursuant to chapter 101,  
2           any real property required by the corporation to carry  
3           out the powers granted by this chapter;

4           (22) Depositing any moneys of the corporation or any  
5           regional system board in any banking institution  
6           within or without the State, and appointing, for the  
7           purpose of making deposits, one or more persons to act  
8           as custodians of the moneys of the corporation or any  
9           regional system board; provided that regional system  
10          boards may deposit moneys in banking institutions  
11          pursuant to corporation-wide guidelines established by  
12          the corporation board;

13          (23) Contracting for and accepting any gifts, grants, and  
14          loans of funds, property, or any other aid in any form  
15          from the federal government, the State, any state  
16          agency, or any other source, or any combination  
17          thereof, and complying, subject to this chapter, with  
18          the terms and conditions thereof; provided that the  
19          regional system boards shall be responsible for  
20          contracting for and accepting any gifts, grants,  
21          loans, property, or other aid if intended to benefit  
22          the public health facilities and operations





1 exclusively in their respective regional systems; and  
2 provided further that all contracting for or  
3 acceptance of gifts, grants, loans, property, or other  
4 aid shall be consistent with corporation-wide policies  
5 established by the corporation board;

6 (24) Providing health and medical services for the public  
7 directly or by agreement or lease with any person,  
8 firm, or private or public corporation, partnership,  
9 or association through or in the health facilities of  
10 the corporation or regional system boards or  
11 otherwise; provided that the regional system boards  
12 shall be responsible for conducting the activities  
13 under this paragraph in their respective regional  
14 systems;

15 (25) Approving medical staff bylaws, rules, and medical  
16 staff appointments and reappointments for all public  
17 health facilities of the corporation or any regional  
18 system board, including but not limited to determining  
19 the conditions under which a health professional may  
20 be extended the privilege of practicing within a  
21 health facility, as determined by the respective  
22 regional system board and consistent with corporation-



1 wide policies, and adopting and implementing  
2 reasonable rules, without regard to chapter 91, for  
3 the credentialing and peer review of all persons and  
4 health professionals within the facility; provided  
5 that regional system boards shall be the governing  
6 body responsible for all medical staff organization,  
7 peer review, and credentialing activities to the  
8 extent allowed by law;

9 (26) (A) Investing any funds not required for immediate  
10 disbursement in property or in securities that  
11 meet the standard for investments established in  
12 chapter 88 as provided by the corporation board  
13 or any regional system board; provided that  
14 proceeds of bonds and moneys pledged to secure  
15 bonds may be invested in obligations permitted by  
16 any document that authorizes the issuance or  
17 securing of bonds; and provided further that the  
18 investment assists the corporation or any  
19 regional system board in carrying out its public  
20 purposes; selling from time to time securities  
21 thus purchased and held, and depositing any  
22 securities in any bank or financial institution



1 within or without the State. Any funds deposited  
2 in a banking institution or in any depository  
3 authorized in this section shall be secured in a  
4 manner and subject to terms and conditions as the  
5 corporation board or a regional system board may  
6 determine, with or without payment of any  
7 interest on the deposit, including without  
8 limitation time deposits evidenced by  
9 certificates of deposit. Any bank or financial  
10 institution incorporated under the laws of this  
11 State may act as depository of any funds of the  
12 corporation or a regional system board and may  
13 issue indemnity bonds or may pledge securities as  
14 may be required by the corporation or regional  
15 system board; provided that regional system  
16 boards may exercise the powers under this  
17 subsection with respect to financial assets of  
18 the regional system consistent with corporation-  
19 wide policies; 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 or  
2 regional system board and of any moneys held in  
3 trust or otherwise for the payment of notes or  
4 bonds and carrying out the contract. Moneys held  
5 in trust or otherwise for the payment of notes or  
6 bonds or in any way to secure notes or bonds, and  
7 deposits of such moneys, may be secured in the  
8 same manner as moneys of the corporation or  
9 regional system board, and all banks and trust  
10 companies are authorized to give security for the  
11 deposits;

12 (27) Entering into any agreement with the State, including  
13 but not limited to contracts for the provision of  
14 goods, services, and facilities in support of the  
15 corporation's programs or the regional system boards'  
16 programs, and contracting for the provision of  
17 services to or on behalf of the State; provided that  
18 the regional system boards shall be responsible for  
19 entering into agreements to provide goods, services,  
20 and facilities in support of programs in their  
21 respective regional systems consistent with  
22 corporation-wide policies;



- 1           (28) Having a seal and altering the same at pleasure;
- 2           (29) Waiving, by means that the corporation or regional  
3           system board deems appropriate, the exemption from  
4           federal income taxation of interest on the  
5           corporation's or regional system boards' bonds, notes,  
6           or other obligations provided by the Internal Revenue  
7           Code of 1986, as amended, or any other federal statute  
8           providing a similar exemption;
- 9           (30) Developing internal policies and procedures for the  
10           procurement of goods and services, consistent with the  
11           goals of public accountability and public procurement  
12           practices, and subject to management and financial  
13           legislative audits; provided that the regional system  
14           boards shall be responsible for developing internal  
15           policies and procedures for each of their regional  
16           systems consistent with the corporation's policies and  
17           procedures; and further provided that:
- 18           (A) The regional system boards and the corporation  
19           board shall enjoy the exemption under section  
20           103-53 (e);
- 21           (B) The regional system boards shall enjoy the  
22           exemption under chapter 103D; and



- 1 (C) The corporation shall be subject to chapter 103D;
- 2 (31) Authorizing and establishing positions; provided that
- 3 regional system boards shall be responsible for hiring
- 4 and firing regional and facility personnel consistent
- 5 with corporation policies, except a regional chief
- 6 executive officer shall only be hired or dismissed
- 7 upon the approval of the regional system board as
- 8 further set forth in section 323F-8.5;
- 9 (32) Having and exercising all rights and powers necessary
- 10 or incidental to or implied from the specific powers
- 11 granted in this chapter, which specific powers shall
- 12 not be considered as a limitation upon any power
- 13 necessary or appropriate to carry out the purposes and
- 14 intent of this chapter; provided that the regional
- 15 system boards shall be responsible for having and
- 16 exercising all powers and rights with respect to
- 17 matters in their regional systems consistent with the
- 18 law; and
- 19 (33) Each regional system, through its regional system
- 20 board, shall:
- 21 (A) Develop policies and procedures necessary or
- 22 appropriate to plan, operate, manage, and control



1 the day-to-day operations of facilities within  
2 the regional system that are consistent with  
3 corporation-wide policies;

4 (B) Exercise custodial control over and use of all  
5 assets of the corporation that are located in the  
6 regional system pursuant to this chapter; and

7 (C) Expend funds within its approved regional system  
8 budget and expend additional funds in excess of  
9 its approved regional system budget upon approval  
10 of the corporation board.

11 (d) Each regional system board shall not be subject to  
12 chapters 36 to 38, 40, 41D, and 103D as well as part I of  
13 chapter 92 and shall enjoy the exemptions contained in sections  
14 102-2 and 103-53(e), except as otherwise provided in this  
15 chapter. The corporation shall not be subject to chapters 36 to  
16 38, 40, and 41D, as well as part I of chapter 92, and shall  
17 enjoy the exemptions contained in sections 102-2 and 103-53(e);  
18 provided that the exemption provided under this subsection to  
19 chapter 37D shall only apply to financing agreements of  
20 \$5,000,000 or less; provided further that the aggregate value of  
21 financing agreements per fiscal year shall not exceed  
22 \$25,000,000 [-] per regional system."



1           SECTION 3. All acts passed prior to or during the regular  
2 session of 2011, whether enacted before or after passage of this  
3 Act shall be interpreted to conform to this Act, unless the acts  
4 specifically provide that this Act is being amended. In so far  
5 as this Act is inconsistent with any other law, this Act shall  
6 control.

7           SECTION 4. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9           SECTION 5. This Act shall take effect upon its approval.

10





**Report Title:**

Hawaii Health Systems Corporation; Real Property; Mortgage

**Description:**

Authorizes the Hawaii health systems corporation to mortgage its real property and clarifies that the dollar cap on municipal leasing authority applies to each regional system. (Proposed SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

