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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, the Hawaii health systems  
3 corporation, provides essential hospital and long-term care  
4 services, in addition to physician and other health care  
5 services throughout the State. Hawaii health systems  
6 corporation facilities are often the only hospitals and  
7 emergency care providers in many rural communities. Due to  
8 rapid changes taking place in the health care industry, the  
9 legislature acknowledges that the governing structure of our  
10 public hospital system must provide the appropriate flexibility  
11 and autonomy needed to compete and remain viable and to respond  
12 to the needs of the specific communities served, by furthering  
13 the development of centers of excellence in health care.

14           The current administrative arrangement places the public  
15 hospital system in a single statewide public agency, the Hawaii  
16 health systems corporation, which operates with some autonomy  
17 from the executive branch. This arrangement is the result of



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

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

20 In Act 182, Session Laws of Hawaii 2009 (Act 182), the  
21 legislature determined that it was in the State's best interest



1 to limit the authority of the corporation by prohibiting the  
2 corporation from granting mortgages on corporation real property  
3 in order to secure loans and revenue bonds. However, the  
4 legislature finds that the economic downturn, coupled with the  
5 inability to leverage its biggest asset of real property by  
6 pledging it as collateral, has hindered the ability of the  
7 system to obtain outside financing and refinance loans for more  
8 favorable terms.

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

15 The purpose of this Act is to advance the State's  
16 commitment to provide quality health care for the people of  
17 Hawaii, by:

18 (1) Lifting the prohibition on mortgages of Hawaii health  
19 systems corporation real property, in order to give  
20 the corporation the ability to fully utilize its real  
21 property assets for the benefit of the community; and



# H.B. NO. 1145

1           (2) Clarifying that the \$25,000,000 limit on municipal  
2           leases is per region, annually.

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

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

8           (1) Developing corporation-wide policies, procedures, and  
9           rules necessary or appropriate to plan, operate,  
10          manage, and control the system of public health  
11          facilities and services without regard to chapter 91;  
12          provided that each regional system board shall be  
13          responsible for its own policies, procedures, and  
14          rules necessary or appropriate to plan, operate,  
15          manage, and control the public health facilities  
16          within its own regional system consistent with  
17          corporation policies;

18          (2) Evaluating the need for additional health facilities  
19          and services; provided that each regional system board  
20          shall be responsible for the evaluation within its own  
21          regional system;



1           (3) Entering into and performing any contracts, leases,  
2           cooperative agreements, partnerships, or other  
3           transactions whatsoever that may be necessary or  
4           appropriate in the performance of its purposes and  
5           responsibilities, and on terms the corporation, or  
6           regional system boards, may deem appropriate, with  
7           either:

8           (A) Any agency or instrumentality of the United  
9           States, or with any state, territory, or  
10          possession, or with any subdivision thereof; or

11          (B) Any person, firm, association, partnership, or  
12          corporation, whether operated on a for-profit or  
13          not-for-profit basis;

14          provided that the transaction furthers the public  
15          interest; and provided further that if any dispute  
16          arises between any contract, lease, cooperative  
17          agreement, partnership, or other transaction entered  
18          into by the corporation and a regional system board  
19          with regard to matters solely within that regional  
20          system, after July 1, 2007, the contract, lease,  
21          cooperative agreement, partnership, or other



1 transaction entered into by the regional system board  
2 shall prevail; and provided further that [~~such~~] the  
3 agreements are consistent with corporation policies;

4 (4) Conducting activities and entering into business  
5 relationships as the corporation board, or any  
6 regional system board, deems necessary or appropriate,  
7 including [~~but not limited to~~]:

8 (A) Creating nonprofit corporations, including [~~but~~  
9 ~~not limited to~~] charitable fund-raising  
10 foundations, to be controlled wholly by the  
11 corporation, any regional system board, or  
12 jointly with others;

13 (B) Establishing, subscribing to, and owning stock in  
14 business corporations individually or jointly  
15 with others; and

16 (C) Entering into partnerships and other joint  
17 venture arrangements, or participating in  
18 alliances, purchasing consortia, health insurance  
19 pools, or other cooperative arrangements, with  
20 any public or private entity; provided that any  
21 corporation, venture, or relationship entered



1           into under this section furthers the public  
2           interest; provided further that this paragraph  
3           shall not be construed to authorize the  
4           corporation or a regional system board to  
5           abrogate any responsibility or obligation under  
6           paragraph (15);

7           provided that each regional system board shall be  
8           responsible for conducting the activities under this  
9           paragraph in its own regional system consistent with  
10          policies established by the corporation board;

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



- 1           (6) Executing, in accordance with all applicable bylaws,  
2           rules, and laws, all instruments necessary or  
3           appropriate in the exercise of any powers of the  
4           corporation or regional system boards;
- 5           (7) Preparing and executing all corporation-wide budgets,  
6           policies, and procedures or any regional system  
7           budgets, policies, and procedures; provided that the  
8           regional system boards shall submit their regional and  
9           facility budgets to the corporation to be consolidated  
10          into a corporation-wide budget for purposes of  
11          corporation-wide planning and appropriation requests.  
12          Regional system and facility budgets shall be received  
13          by the corporation and shall be included in the  
14          corporation-wide budget upon submittal to the  
15          corporation;
- 16          (8) Setting rates and charges for all services provided by  
17          the corporation without regard to chapter 91; provided  
18          that the duty and power of the corporation board shall  
19          be limited to approving the rates and charges  
20          developed by the regional system boards for the  
21          regional system's facilities and services. Rates and





1 charges may vary among regional systems and facilities  
2 and may be consolidated with the rates of other  
3 regional systems into one charge master. Third-party  
4 payer contracts may be negotiated at the corporation-  
5 wide level with input from the regional systems,  
6 taking into consideration the rates set by the  
7 regional system boards. For purposes of securing  
8 revenue bonds, the corporation or regional system  
9 board may covenant to set, and if necessary increase,  
10 rates and charges as needed to pay debt service and  
11 related obligations plus a coverage factor;

12 (9) Developing a corporation-wide hospital system that is  
13 subject to chapters 76 and 89; provided that  
14 employment of regional system and facility personnel  
15 shall be the responsibility of the regional system  
16 boards pursuant to corporation-wide policies and  
17 procedures, applicable laws, rules, regulations, and  
18 collective bargaining agreements;

19 (10) Developing the corporation's corporation-wide capital  
20 and strategic plans or any regional system board's  
21 capital and strategic plans; provided that each



1 regional system board shall be responsible for  
2 development of capital and strategic plans in its own  
3 regional system that shall be consistent with, and  
4 incorporated into, the overall corporation-wide plans;  
5 and provided further that the corporation and each  
6 regional system board shall be entitled to undertake  
7 the acquisition, construction, and improvement of  
8 property, facilities, and equipment to carry out these  
9 capital and strategic plans;

10 (11) Suing and being sued; provided that only the  
11 corporation may sue or be sued; and provided further  
12 that the corporation and regional system boards shall  
13 enjoy the same sovereign immunity available to the  
14 State;

15 (12) Making and altering corporation board and regional  
16 system board bylaws for its organization and  
17 management without regard to chapter 91 and consistent  
18 with this chapter; provided that each regional system  
19 board shall be responsible for the final approval of  
20 its regional system board bylaws;



- 1           (13) Adopting rules without regard to chapter 91 governing  
2           the exercise of the corporation's or regional system  
3           boards' powers and the fulfillment of its purpose  
4           under this chapter;
- 5           (14) Entering into any contract or agreement whatsoever,  
6           not inconsistent with this chapter or the laws of this  
7           State, and authorizing the corporation, regional  
8           system boards, and chief executive officers to enter  
9           into all contracts, execute all instruments, and do  
10          all things necessary or appropriate in the exercise of  
11          the powers granted in this chapter, including securing  
12          the payment of bonds; provided that the corporation  
13          board shall delegate to a regional system board its  
14          authority to enter into and execute contracts or  
15          agreements relating to matters exclusively affecting  
16          that regional system; provided further that a regional  
17          system board shall exercise this power consistent with  
18          corporation-wide policies; and provided further that  
19          contracts or agreements executed by a regional system  
20          board shall encumber only the regional subaccounts of  
21          that regional system board;



- 1           (15) Issuing revenue bonds up to \$100,000,000 subject to  
2           the approval of the governor or the director of  
3           finance; provided that:
- 4           (A) All revenue bonds shall be issued pursuant to  
5           part III, chapter 39;
- 6           (B) The corporation and any regional system board  
7           shall have the power to issue revenue bonds in  
8           any amount without regard to any limitation in  
9           chapter 39; and
- 10          (C) The corporation shall have the power to incur  
11          debt, including the issuance of revenue bonds in  
12          any amount, and the regional system boards shall  
13          have the power to issue revenue bonds in any  
14          amount upon approval by the corporation board;
- 15          (16) Reimbursing the state general fund for debt service on  
16          general obligation bonds or reimbursable general  
17          obligation bonds issued by the State for the purposes  
18          of the corporation or any regional system board;
- 19          (17) Pledging or assigning all or any part of the receipts,  
20          revenues, and other financial assets of the  
21          corporation or the regional system boards for purposes



1 of meeting or securing bond or health systems  
2 liabilities; provided that each regional system board  
3 shall be responsible for conducting the activities  
4 under this paragraph in its own regional system. Any  
5 pledge or assignment by the corporation or any  
6 regional system board to secure revenue bonds or  
7 health system liabilities shall be valid and binding  
8 in accordance with its terms against the pledgor,  
9 creditors, and all others asserting rights thereto  
10 from the time the pledge or assignment is made,  
11 without the need of physical delivery, recordation,  
12 filing, or further act. The corporation shall not  
13 take or omit to take any act that would interfere  
14 with, impair, or adversely affect any pledge or  
15 assignment by a regional system board pursuant to this  
16 chapter. In connection with issuing revenue bonds or  
17 related obligations, consistent with corporation  
18 policies and procedures, any regional system board may  
19 make [~~such~~] other covenants, binding on the regional  
20 system board and the corporation, that the regional  
21 system board determines to be necessary or appropriate



1 to establish and maintain security for the revenue  
2 bonds or related obligations;

3 (18) Owning, purchasing, leasing, exchanging, or otherwise  
4 acquiring property, whether real, personal, or mixed,  
5 tangible or intangible, and of any interest therein,  
6 in the name of the corporation, which property is not  
7 owned or controlled by the State but is owned or  
8 controlled by the corporation; provided that:

9 (A) Regional system boards shall have custodial  
10 control over facilities and physical assets in  
11 their respective regional systems. A regional  
12 system board may own, purchase, lease, exchange,  
13 or otherwise acquire property, whether real,  
14 personal, or mixed, tangible or intangible, and  
15 of any interest therein, other than property  
16 owned or controlled by the corporation, in the  
17 name of the regional system board; provided  
18 further that a regional system board shall be  
19 subject to section 323F-3.5; and



1           (B) Each regional system board shall be responsible  
2                   for conducting the activities under this  
3                   paragraph in its own regional system;

4       (19) Maintaining, improving, pledging, mortgaging, selling,  
5           or otherwise holding or disposing of property, whether  
6           real, personal, or mixed, tangible or intangible, and  
7           of any interest therein, at any time and manner, in  
8           furtherance of the purposes and mission of the  
9           corporation or any regional system board; provided  
10          that the corporation or any regional system board  
11          legally holds or controls the property in its own  
12          name; provided further that other than to secure  
13          revenue bonds and related obligations and agents, and  
14          to transition into a new entity, the corporation or  
15          any regional system board shall not sell, assign,  
16          lease, hypothecate, mortgage, pledge, give, or dispose  
17          of all or substantially all of its property; and  
18          provided further that each regional system board shall  
19          be responsible for conducting the activities under  
20          this paragraph in its own regional system, and control  
21          over [~~such~~] the property shall be delegated to each



1 regional system board; [~~provided further that this~~  
2 ~~paragraph shall not be construed to authorize the~~  
3 ~~sale, pledge, or mortgage of real property under the~~  
4 ~~control of the corporation or a regional system~~  
5 ~~board;]~~

6 (20) Purchasing insurance and creating captive insurers in  
7 any arrangement deemed in the best interest of the  
8 corporation, including [~~but not limited to~~] funding  
9 and payment of deductibles and purchase of  
10 reinsurance; provided that only the corporation shall  
11 have the power to create captive insurers to benefit  
12 public health facilities and operations in all  
13 regional systems; and provided further that a regional  
14 system board may purchase insurance for its regional  
15 system in collaboration with the other regional  
16 systems and the corporation until captive coverage is  
17 provided by the corporation;

18 (21) Acquiring by condemnation, pursuant to chapter 101,  
19 any real property required by the corporation to carry  
20 out the powers granted by this chapter;





- 1           (22) Depositing any moneys of the corporation or any  
2                    regional system board in any banking institution  
3                    within or without the State, and appointing, for the  
4                    purpose of making deposits, one or more persons to act  
5                    as custodians of the moneys of the corporation or any  
6                    regional system board; provided that regional system  
7                    boards may deposit moneys in banking institutions  
8                    pursuant to corporation-wide guidelines established by  
9                    the corporation board;
- 10           (23) Contracting for and accepting any gifts, grants, and  
11                    loans of funds, property, or any other aid in any form  
12                    from the federal government, the State, any state  
13                    agency, or any other source, or any combination  
14                    thereof, and complying, subject to this chapter, with  
15                    the terms and conditions thereof; provided that the  
16                    regional system boards shall be responsible for  
17                    contracting for and accepting any gifts, grants,  
18                    loans, property, or other aid if intended to benefit  
19                    the public health facilities and operations  
20                    exclusively in their respective regional systems; and  
21                    provided further that all contracting for or



1 acceptance of gifts, grants, loans, property, or other  
2 aid shall be consistent with corporation-wide policies  
3 established by the corporation board;

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

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



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

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



1 to the custody, collection, securing, investment,  
2 and payment of any moneys of the corporation or  
3 regional system board and of any moneys held in  
4 trust or otherwise for the payment of notes or  
5 bonds and carrying out the contract. Moneys held  
6 in trust or otherwise for the payment of notes or  
7 bonds or in any way to secure notes or bonds, and  
8 deposits of [~~such~~] the moneys, may be secured in  
9 the same manner as moneys of the corporation or  
10 regional system board, and all banks and trust  
11 companies are authorized to give security for the  
12 deposits;

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



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



- 1           (A) The regional system boards and the corporation  
2           board shall enjoy the exemption under section  
3           103-53(e);
- 4           (B) The regional system boards shall enjoy the  
5           exemption under chapter 103D; and
- 6           (C) The corporation shall be subject to chapter 103D;
- 7       (31) Authorizing and establishing positions; provided that  
8       regional system boards shall be responsible for hiring  
9       and firing regional and facility personnel consistent  
10       with corporation policies, except a regional chief  
11       executive officer shall only be hired or dismissed  
12       upon the approval of the regional system board as  
13       further set forth in section 323F-8.5;
- 14       (32) Having and exercising all rights and powers necessary  
15       or incidental to or implied from the specific powers  
16       granted in this chapter, which specific powers shall  
17       not be considered as a limitation upon any power  
18       necessary or appropriate to carry out the purposes and  
19       intent of this chapter; provided that the regional  
20       system boards shall be responsible for having and  
21       exercising all powers and rights with respect to



1 matters in their regional systems consistent with the  
2 law; and

3 (33) Each regional system, through its regional system  
4 board, shall:

5 (A) Develop policies and procedures necessary or  
6 appropriate to plan, operate, manage, and control  
7 the day-to-day operations of facilities within  
8 the regional system that are consistent with  
9 corporation-wide policies;

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

13 (C) Expend funds within its approved regional system  
14 budget and expend additional funds in excess of  
15 its approved regional system budget upon approval  
16 of the corporation board.

17 (d) Each regional system board shall not be subject to  
18 chapters 36 to 38, 40, 41D, and 103D as well as part I of  
19 chapter 92 and shall enjoy the exemptions contained in sections  
20 102-2 and 103-53(e), except as otherwise provided in this  
21 chapter. The corporation shall not be subject to chapters 36 to





1 38, 40, and 41D, as well as part I of chapter 92, and shall  
 2 enjoy the exemptions contained in sections 102-2 and 103-53(e);  
 3 provided that the exemption provided under this subsection to  
 4 chapter 37D shall only apply to financing agreements of  
 5 \$5,000,000 or less; provided further that the aggregate value of  
 6 financing agreements per fiscal year shall not exceed  
 7 \$25,000,000 ~~[ ]~~ per region."

8 SECTION 3. All acts passed prior to or during the regular  
 9 session of 2015, whether enacted before or after passage of this  
 10 Act, shall be amended to conform to this Act unless such acts  
 11 specifically provide that this Act is being amended. Insofar as  
 12 this Act is inconsistent with any other law, this Act shall  
 13 control.

14 SECTION 4. Statutory material to be repealed is bracketed  
 15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect upon its approval.  
 17

INTRODUCED BY: *Debra A. Kubitz*

JAN 28 2015



# H.B. NO. 1145

**Report Title:**

Hawaii Health Systems Corporation

**Description:**

Authorizes the Hawaii Health Systems Corporation to mortgage its real property and clarifies the dollar cap on municipal leasing authority.

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

