

ACT 262

S.B. NO. 2522

A Bill for an Act Relating to Community Hospitals.

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

SECTION 1. The legislature recognizes that the State's community hospitals system is the fifth largest public hospital system in the nation. Due to rapid changes taking place in the health care industry and the impending implementation of national and local health care reform, the legislature acknowledges that the administrative structure of governance must be provided with the appropriate flexibility and autonomy needed for community hospitals to compete and remain viable.

The current administrative arrangement places the State's community hospitals system in a division within the department of health. However, a health care system of such pivotal importance to the quality of people's lives requires significantly greater operational autonomy.

Act 266, Session Laws of Hawaii 1994, mandated the creation of a task force to evaluate the implications of the community hospitals' current operational structure and to make recommendations regarding the transition of the division of community hospitals into an independent agency. In early 1995, the governor's task force on the establishment of an agency for community hospitals issued its report to the governor and the legislature.

The legislature has reviewed those recommendations and conducted its own inquiry into the status of the community hospitals. Based on this process, the legislature has determined that it is in the best interests of the residents of Hawaii that all operations of the division of community hospitals be transferred to the Hawaii health systems corporation, an independent agency of the State.

The purpose of this Act is to affirm the State's commitment to provide quality health care for the people of our State, by creating the Hawaii health systems corporation.

The purpose and overriding goal of this bill is to provide better health care for all the people in the State of Hawaii, including those served by small rural facilities, by freeing the facilities from unwarranted bureaucratic oversight. If there is a conflict between appropriate health care and "bottomline" decisions, quality health care should be given precedence to the extent reasonably possible.

Nothing in this Act other than the provisions for legislative oversight over the budget and activities of the corporation shall be construed as a restriction or limitation upon any other powers that the Hawaii health systems corporation might otherwise have under any other law of this State. This Act is cumulative to any such powers. This Act shall be construed to provide a complete, additional, and alternative method for doing the things authorized in other laws and shall be regarded as supplemental and additional to powers conferred by other laws. It is also the intent of the legislature that all of the activities and services of the division of community hospitals be continued without interruption by the corporation during the implementation of this Act.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER HAWAII HEALTH SYSTEMS CORPORATION

PART I. GENERAL PROVISIONS

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Corporation” means the body corporate and politic known as the Hawaii health systems corporation.

“Corporation board” means the board of directors of the corporation.

“Consumer” means any individual who may utilize a Hawaii health systems facility for health services and is not a provider.

“Department” means the department of health.

“Director” means the director of health.

“Division” means the programs, services, and facilities operated by the department of health, division of community hospitals, prior to the transfer date.

“Health facility” means any one of the facilities that constitute the division of community hospitals.

“Health systems assets” means all property or rights in property, real, personal and mixed, tangible or intangible, existing on the transfer date, used by or accruing to the division in the normal course of its operations.

“Provider” means any supplier of medical or health care goods and services of the type provided at a Hawaii health systems facility.

“Transfer date” means a date agreed to by the department and the corporation for the transfer of health systems assets to and the assumption of health systems liabilities, which includes without limitation, all debts or other obligations, contingent or certain, owing on such date, by the corporation.

§ -2 **Hawaii health systems corporation.** (a) There is established the Hawaii health systems corporation, which shall be a public body corporate and politic and an instrumentality and agency of the State. The corporation shall be placed within the department of health for the administrative purposes specified in section 26-35(6) only.

(b) The corporate organization shall be divided into five regions, as follows:

- (1) The city and county of Honolulu;
- (2) The county of Kauai;
- (3) The county of Maui, except the county of Kalawao;
- (4) The eastern section of the county of Hawaii, comprising the Puna district, north Hilo district, south Hilo district, Hamakua district, and Kau district; and
- (5) The western section of the county of Hawaii, comprising the north Kohala district, south Kohala district, north Kona district, and south Kona district;

and shall be identified as regions I, II, III, IV, and V, respectively.

§ -3 **Corporation board.** (a) The corporation shall be governed by a eleven-member board of directors which shall carry out the duties and responsibilities of the corporation.

(b) Ten members of the corporation board shall be appointed by the governor as follows:

- (1) One member from region I who resides in the city and county of Oahu;
- (2) One member from region II who resides in the county of Kauai;
- (3) One member from region III who resides in the county of Maui;

- (4) One member from region IV who resides in the eastern section of the county of Hawaii;
- (5) One member from region V who resides in the western section of the county of Hawaii; and
- (6) Five at-large members who reside in the State of Hawaii.

The eleventh 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 shall be made by the governor, subject to confirmation by the senate pursuant to section 26-34. Prior to the transfer date, the public health facility management advisory committees appointed pursuant to section 323-66 for each county may recommend names to the governor for each position on the corporation board designated for a region which corresponds to its county. After the transfer date, the public health facility management advisory committees appointed pursuant to section 323-10 for each region may make such recommendations to the governor. The ten appointed board members shall serve for a term of four years; provided that upon the initial appointment of the members:

- (1) Two at-large members shall be appointed for a term of two years;
- (2) Three at-large members shall be appointed for a term of three years; and
- (3) Five regional members shall be appointed for 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.

(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.

§ -4 Board meetings. (a) The corporation board shall meet no fewer than four times a year. All meetings of the corporation board shall be subject to chapter 92, except that in addition to matters exempted pursuant to law, the corporation board may elect to hold an executive meeting for the consideration of any matters set forth in section 92-6.

(b) All business of the corporation 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. Any action of the corporation 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 members of the corporation board then in office shall be required for any of the following actions:

- (1) Removal by the corporation board of one of its members;

- (2) Amendment by the corporation board of its bylaws;
- (3) Hiring or removing the chief executive officer of the corporation; and
- (4) Any other actions as provided by the corporation bylaws.

§ **-5 Disclosure of interests.** All corporation board members and employees of the corporation shall be subject to chapter 84.

§ **-6 Records.** The corporation shall be subject to the requirements of chapter 92F, except that the following categories of government records shall not be required to be disclosed:

- (1) Applications for credentials or staff privileges at any of the corporation's medical facilities, records from peer review proceedings, and medical records; and
- (2) Marketing strategies, strategic plans, evaluations, assessments, negotiations, or rates and charges, the disclosure of which would raise the cost of procurement or give a manifestly unfair advantage to any competitor or to any person or entity seeking to do business or proposing to enter into an agreement with the corporation or any of its facilities.

Any person denied access to any such government records shall have available the remedies specified in sections 92F-15 and 92F-15.5. Government records protected from disclosure by this section shall be subject to the interagency disclosure provisions of section 92F-19. Section 624-25.5 shall apply to this part notwithstanding anything to the contrary contained in this section.

§ **-7 Duties and powers of the corporation.** (a) Notwithstanding any other law to the contrary, the corporation shall have and exercise the following duties and powers:

- (1) Developing its own 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;
- (2) Evaluating the need for health facilities and services;
- (3) Entering into and performing any contracts, leases, cooperative agreements, or other transactions whatsoever that may be necessary or appropriate in the performance of its purposes and responsibilities, and on terms it 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, or corporation, whether operated on a for profit or not for profit basis;
 provided that the transaction furthers the public interest;
- (4) Conducting activities and entering into business relationships as the corporation 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 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 to abrogate any responsibility or obligation under paragraph (15);

- (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;
- (6) Executing, in accordance with all applicable bylaws, rules, and laws, all instruments necessary or appropriate in the exercise of any of the corporation's powers;
- (7) Preparing and executing all corporation budgets, policies, and procedures;
- (8) Setting rates and charges for all services provided by the corporation without regard to chapter 91;
- (9) Developing a corporation-wide hospital personnel system that is subject to chapters 76, 77, and 89;
- (10) Developing the corporation's capital and strategic plans;
- (11) Suing and being sued; provided that the corporation shall enjoy the same sovereign immunity available to the State;
- (12) Making and altering corporation board bylaws for its organization and management without regard to chapter 91;
- (13) Adopting rules, without regard to chapter 91, governing the exercise of its 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 chief executive officer 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;
- (15) Issuing revenue bonds subject to the approval of the legislature; provided that all revenue bonds shall be issued pursuant to part III, chapter 39;
- (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;
- (17) Pledging or assigning all or any part of the receipts and revenues of the corporation for purposes of meeting bond or health systems liabilities;
- (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;
- (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; provided that the corporation legally holds or controls the property in its own name; and provided further that the corporation shall not sell, assign, lease, hypothecate, mortgage, pledge, give, or dispose of a substantial portion of its property of any nature;
- (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;

- (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 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;
- (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;
- (24) Providing health and medical services for the public directly or by agreement or lease with any person, firm, or private or public corporation or association through or in the health facilities of the corporation or otherwise;
- (25) Approving medical staff bylaws, rules, and medical staff appointments and reappointments for all public health facilities, including without limitation, determining the conditions under which a health professional may be extended the privilege of practicing within a health facility, 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;
- (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; provided the investment assists the corporation 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 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 and may issue indemnity bonds or may pledge securities as may be required by the corporation board.
- (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 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, 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, and contracting for the provision of services to or on behalf of the State;
- (28) Having a seal and altering the same at pleasure;

- (29) Waiving, by means that the corporation deems appropriate, the exemption from federal income taxation of interest on the corporation's 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, but not subject to chapter 103D. However, where possible, the corporation is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption of chapter 103D and shall not subject the corporation to any other provision of chapter 103D;
- (31) Calling upon the attorney general for such legal services as the corporation may require; and
- (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.

(b) The corporation shall not be subject to chapters 36 to 38, 40, and 41D, except as otherwise provided in this chapter.

(c) The duties and powers granted to the corporation may not be used to enter into contractual or business relationships which have the practical effect of allowing or are intended to allow the private sector counterparts to replace existing employee positions or responsibilities within the corporation or its facilities; provided the corporation shall be allowed to enter into such relationships to the extent and for the purposes that the division of community hospitals could have done under collective bargaining contracts which were in effect for the 1995-1996 fiscal year.

§ -8 Chief executive officer; exempt positions. (a) The corporation board may appoint, exempt from chapters 76 and 77 and section 26-35(4), a chief executive officer of the corporation whose salary shall be set by the corporation board. The chief executive officer may also appoint up to eighteen other personnel, exempt from chapters 76, 77, 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.

§ -9 Hiring of attorneys. The corporation may employ or retain any attorney, by contract or otherwise, for the purpose of representing the corporation in any litigation, rendering legal counsel to the corporation, or drafting legal documents for the corporation.

§ -10 Regional public health facility management advisory committees. (a) On the transfer date, there shall be established within the corporation for each region, a public health facility management advisory committee to consist of nine members to be appointed by the chief executive officer of the corporation with the advice of the hospital administrators of the facilities in the affected regions. The members shall serve for a term of four years; provided that upon the initial appointment of the members, two shall be appointed for a term of one year, two for a term of two years, two for a term of three years, and three for a term of four years.

Each management advisory committee shall include medical and health care providers, consumers, and knowledgeable individuals in other appropriate areas such as business and law; provided that at least one member shall be a physician with active medical staff privileges at one of the region's public health facilities. At least three members of the committee shall be consumers.

The management advisory committee for the East Hawaii region shall have three members who reside in the Kau district, three members who reside in the Hamakua/North Hilo districts, and three members who reside in the South Hilo/Puna districts. The management advisory committee for the West Hawaii region shall have not less than three members who reside in the North Kohala/South Kohala districts.

Each committee shall select its own chairperson and vice chairperson and may adopt such rules as it may consider necessary for the conduct of its business.

The members of the committees shall serve without compensation, but shall be reimbursed for traveling expenses incurred in the performance of their duties. The corporation shall provide for the necessary expenses of the committees; provided that no expenses may be incurred without prior authorization by the chief executive officer.

(b) Each committee shall sit in an advisory capacity to the chief executive officer on matters concerning the formulation of regional operational and capital improvement budgets, and the planning, construction, improvement, maintenance, and operation of public health facilities within its respective jurisdiction and shall sit in an advisory capacity to the governor on matters concerning the nominees for positions on the corporation board. Nothing in this section shall be construed as precluding or preventing the committees from coordinating their efforts and activities with the facility administrators within their counties.

(c) Each committee may prepare a report for inclusion with the corporation's annual report and audit which shall include, but not be limited to, comments and analyses on the corporation's regional operational and capital improvement budgets for its respective region.

§ -11 Executive branch; noninterference. Notwithstanding any other law to the contrary, the governor and executive branch agencies shall limit their responsibilities to that of review and oversight when the corporation receives general funds from the State to subsidize the operating budgets of deficit facilities. The governor and executive branch agencies shall not interfere with the systemic change, capacity building, advocacy, budget, personnel, system plan development, or plan implementation activities of the corporation. The governor and executive branch agencies shall not interfere with the ability of the corporation to function as a multiple facility public hospital system delivering health care services to the residents of the State.

PART II. BUDGET AND FINANCE

§ -21 Fiscal provisions. (a) There is created in the state treasury a special fund to be known as the health systems special fund into which shall be deposited all fees, proceeds, reimbursements, and the like owed to or received by the corporation and its facilities, except as herein provided. The special fund shall be used solely to fulfill the purposes outlined in this chapter.

The corporation may establish and maintain within its special fund, accounts that may be necessary and appropriate to carry out its purposes and responsibilities.

The corporation may provide reasonable reserves for any of the following purposes:

- (1) Insurance deductibles;

- (2) The improvement, replacement, or expansion of its facilities or services;
- (3) The securing of the corporation's bonds, notes, or other instruments of indebtedness; or
- (4) Any other purpose it deems necessary or appropriate in the performance of its purposes and responsibilities.

(b) The corporation board shall develop annual operating and capital budgets for each facility. The corporation shall develop budgetary guidelines, and may allocate to each facility reasonable corporation administrative costs, including funds determined by the corporation to be needed from or provided to each facility to:

- (1) Repay corporation debts;
- (2) Provide subsidies to any facility determined to be unable to fund from within that facility's programs and services deemed essential to community needs; and
- (3) Maintain appropriate reserves.

(c) The corporation shall develop annual corporation operating and capital budgets, taking into account anticipated surpluses from or subsidies to the facilities pursuant to the annual guidelines described in this section, accumulated corporation reserves and accounts, subsidies, if any, that are determined to be needed from the general fund, and other sources of corporation-wide income as may be identified.

(d) The corporation may share in any facility's surplus and may offset any facility's deficits. Obligations undertaken by a facility shall be paid only from funds of that facility, unless the corporation board or its authorized agent explicitly agrees to guarantee the obligation.

(e) In accordance with each annual facility budget, each facility of the corporation shall:

- (1) Bill and collect for its services;
- (2) Maintain bank accounts; and
- (3) Pay for needed personnel, supplies, equipment, and other operational and capital expenditures.

(f) The corporation may elect to manage its own capital improvement project and funds, either directly or indirectly by contract; provided that annual reports of the project moneys are provided to the governor and legislature.

(g) The corporation board may hold public informational meetings on its budget. Representatives of any county government, state government, or any other person having an interest in the budget, shall have the right to be heard at the meetings.

§ -22 Annual audit and report; disclosure of revenue projections. (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 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.

(b) In addition to the submittal of the audit required under subsection (a), the corporation 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 -10(c).

§ -23 **Exemption from taxation.** The corporation shall not be required to pay assessments levied by any county, nor shall the corporation be required to pay state taxes of any kind.

§ -24 **Budget oversight.** The corporation's operating and capital improvement budgets shall not be subject to review or approval by the governor or any state agency, except where state general funds or capital improvement moneys are requested. If general funds or capital improvement moneys are requested, then the corporation shall include with its request, the proposed budget for which the funds or moneys are to be included. The corporation shall submit its budgets annually to the legislature for review and approval at least twenty days prior to the convening of the regular legislative session, beginning with the budgets for the 1997-1998 fiscal years.

PART III. OTHER PROVISIONS

§ -31 **Maintenance of services.** (a) The corporation shall notify the legislature of any planned substantial reduction or elimination of direct patient care services.

(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.

(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."

SECTION 3. Chapter 76, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

"§76- Employees of the Hawaii health systems corporation. It is the intent of the legislature that the personnel of the Hawaii health systems corporation shall constitute a separately administered part of the system of personnel administration established by this chapter and chapter 77, unless specifically exempted by this chapter or any other law; provided that:

- (1) The Hawaii health systems corporation shall have a status coequal with the executive branch of the State and with the several counties for purposes of:
 - (A) Developing a position classification plan;
 - (B) Formulating personnel rules; and
 - (C) Administering the Hawaii health systems corporation personnel system, including classification, reclassification, allocation, and reallocation of a particular position; the publication of a vacancy announcement; the examination of applicants; and the preparation of eligible lists;
- (2) In the development of a position classification plan, the formulation of personnel rules and regulations, and the administration of the Hawaii health systems corporation personnel system, the corporation chief executive officer or the corporation chief executive officer's designee shall consult with the director of human resources development;
- (3) Any action of the corporation chief executive officer or the corporation chief executive officer's designee including:
 - (A) The classification, reclassification, allocation, and reallocation of a particular position;

- (B) The publication of a vacancy announcement;
- (C) The examination of applicants;
- (D) The preparation of an eligible list; and
- (E) Appeals from suspensions, dismissals, and demotions not covered by collective bargaining;

may be appealed by any person, employee, or the exclusive bargaining unit representative to the Hawaii health systems corporation personnel appeals board. The board shall be composed of three members, one representative from the department of human resources development, one representative of the Hawaii health systems corporation, and one appropriate exclusive bargaining unit representative. Section 26-34 shall not apply to the members of the Hawaii health systems corporation personnel appeals board. The board shall sit as an appellate body on matters within the jurisdiction of the Hawaii health systems corporation with equal authority as the civil service commission established by section 26-5; and

- (4) Nothing in chapters 76 and 77 shall be construed to require the approval of the governor or any executive agency for the Hawaii health systems corporation to establish such positions in the corporation as may be authorized and funded by the legislature.

§76- Hawaii health systems corporation; powers and duties. All of the powers and duties assigned in parts I, IV, and V of this chapter to the governor or the director of human resources development shall with respect to the Hawaii health systems corporation be assigned to the Hawaii health systems corporation chief executive officer or the Hawaii health systems corporation chief executive officer's designee.

§76- Civil service for the Hawaii health systems corporation. (a) There shall be a civil service system for the Hawaii health systems corporation. Except as otherwise specifically provided in this section, all of the provisions of part II shall apply to the Hawaii health systems corporation.

(b) All of the powers and duties assigned to the director of human resources development in part II of this chapter, with respect to the Hawaii health systems corporation, shall be exercised by the Hawaii health systems corporation chief executive officer's designee.

(c) When applying part II of this chapter to the Hawaii health systems corporation:

“Department” means the Hawaii health systems corporation.

“Director” means the corporation chief executive officer's designee; and

“Governor” means the corporation chief executive officer;

“State” means the Hawaii health systems corporation.”

SECTION 4. Section 28-8.3, Hawaii Revised Statutes, is amended to read as follows:

“[[§28-8.3]] Employment of attorneys. (a) No department of the State other than the attorney general may employ or retain any attorney, by contract or otherwise, for the purpose of representing the State or the department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department; provided that the foregoing provision shall not apply to the employment or retention of attorneys:

- (1) By the public utilities commission, the labor and industrial relations appeals board, and the Hawaii labor relations board;

- (2) By any court or judicial or legislative office of the State;
- (3) By the legislative reference bureau;
- (4) By any compilation commission that may be constituted from time to time;
- (5) By the real estate commission for any action involving the real estate recovery fund;
- (6) By the contractors license board for any action involving the contractors recovery fund;
- (7) By the trustees for any action involving the travel agency recovery fund;
- (8) By the office of Hawaiian affairs;
- (9) By the department of commerce and consumer affairs for the enforcement of violations of chapters 480 and 485;
- (10) As grand jury counsel;
- (11) By the Hawaiian home lands trust individual claims review panel;
- (12) By the Hawaii health systems corporation or any of its facilities; or
- [(12)] (13) By a department, in the event the attorney general, for reasons deemed by the attorney general good and sufficient, declines, to employ or retain an attorney for a department; provided that the governor thereupon waives the provision of this section.

(b) For purposes of this section the term "department" includes any department, board, commission, agency, bureau, or officer of the State.

(c) Every attorney employed by any department on a full-time basis, except an attorney employed by the public utilities commission, the labor and industrial relations appeals board, the Hawaii labor relations board, the office of Hawaiian affairs, the Hawaii health systems corporation, the department of commerce and consumer affairs in prosecution of consumer complaints, or the Hawaiian home lands trust individual claims review panel, or as grand jury counsel, shall be a deputy attorney general.

(d) All attorneys retained by contract, whether by the attorney general or a department, shall be retained in accordance with chapter 103D."

SECTION 5. Section 37-74, Hawaii Revised Statutes, is amended to read as follows:

"§37-74 Program execution. (a) Except as limited by policy decisions of the governor, appropriations by the legislature, and other provisions of law, the several agencies responsible for administering state programs shall administer their program assignments and shall be responsible for their proper management.

(b) The appropriations by the legislature for a biennium shall be allocated between the two fiscal years of the biennium in the manner provided in the budget or appropriations act and as further prescribed by the director of finance. The amounts allocated for each fiscal year shall be subject to the allotment system prescribed in chapter 37, part II. Each agency (except the courts), in estimating its quarterly requirements under chapter 37, part II, shall prepare a plan for the fiscal year for the operation of each of the programs it is responsible for administering. The operations plan shall be in such form and content as the department of budget and finance may prescribe. It shall be submitted, together with the estimated quarterly requirements, to the department of budget and finance on such date as the department may prescribe.

(c) The department of budget and finance shall:

(1) Review each operations plan to determine:

(A) That it is consistent with the policy decisions of the governor and appropriations by the legislature;

- (B) That it reflects proper planning and efficient management methods; and
- (C) That appropriations have been made for the planned purpose and will not be exhausted before the end of the fiscal year; provided that the department of budget and finance shall review the operations plan submitted by the University of Hawaii solely for consistency with the allotment ceilings established by the governor under section 37-34, appropriations by the legislature, and the status of revenues to support operations plans for all state programs;
- (2) Approve the operations plan if satisfied that it meets the requirements under paragraph (1). Otherwise, the department of budget and finance shall require revision of the operations plan in whole or in part; and
- (3) Modify or withhold the planned expenditures at any time during the appropriation period if the department of budget and finance finds that the expenditures are greater than those necessary to execute the programs at the level authorized by the governor and the legislature, or that state receipts and surpluses will be insufficient to meet the authorized expenditure levels; provided that the planned expenditures for the University of Hawaii may be modified or withheld only in accordance with sections 37-36 and 37-37.
- (d) No appropriation transfers or changes between programs or agencies shall be made without legislative authorization; provided that:
 - (1) Authorized transfers or changes, when made, shall be reported to the legislature;
 - (2) The University of Hawaii shall have the flexibility to transfer general fund appropriations for the operating cost category among programs with the same or similar objectives, among cost elements in a program, and between quarters, as applicable; and the [division of community hospitals] Hawaii health systems corporation shall have the flexibility to transfer special fund appropriations among community hospitals [division] facilities as applicable; provided that the [division of community hospitals] Hawaii health systems corporation shall maintain the integrity and services of each individual facility and shall not transfer appropriations out of any facility which would result in a reduction of services offered by the facility, with due regard for statutory requirements, changing conditions, the needs of the programs, and the effective utilization of resources; and
 - (3) The university [and the division of community hospitals] shall account for each transfer implemented under this subsection in quarterly reports to the governor and annual reports at the end of each fiscal year to the legislature and the governor, which shall be prepared in the form and manner prescribed by the governor and shall include information on the sources and uses of the transfer.
- [(e) The division of community hospitals shall not use current appropriations in any manner that would result in the expansion of programs or the initiation of new programs that may require any future increase in the commitment of state resources, without the specific prior concurrence of the legislature and advice of the governor.]”

SECTION 6. Section 76-3, Hawaii Revised Statutes, is amended to read as follows:

“§76-3 Uniform administration. It is the intent of the legislature that the system of personnel administration established by this chapter and chapter 77 shall

be as uniformly administered as is practicable. In order to promote such uniformity, the several commissioners and directors of the state department of human resources development and of the county departments of civil service [and], the administrative director of the courts, and the Hawaii health systems corporation chief executive officer's designee shall meet at least once each year at the call of the director of human resources development of the State."

SECTION 7. Section 76-4, Hawaii Revised Statutes, is amended to read as follows:

"§76-4 Agreements of state [and], county departments [and], judiciary[.], and the Hawaii health systems corporation. The state department of human resources development, the judiciary, [and], the several departments of civil service of the counties, and the Hawaii health systems corporation may enter into agreements for the joint administration of matters that may be practicable and consistent with this chapter and chapter 77, including the conducting of examinations and other procedures for the establishment and use of eligible lists, reciprocity in the use of eligible lists, and the conducting of salary studies. All eligible lists established or used under the agreements shall be as fully effective as those established or used separately."

SECTION 8. Section 76-5, Hawaii Revised Statutes, is amended to read as follows:

"§76-5 Service to judiciary and counties by the State. Subject to the rules of the state department of human resources development, the director of human resources development may enter into agreements with the judiciary [and], any county, and the Hawaii health systems corporation to furnish services and facilities of the state department to the judiciary [and], any county, and the Hawaii health systems corporation in the administration of civil service including position classification in the judiciary [and], any county[.], and the Hawaii health systems corporation. The agreements may provide for the reimbursement to the State of the reasonable value of the services and facilities furnished, as determined by the director. The judiciary [and], all counties, and the Hawaii health systems corporation are authorized to enter into the agreements."

SECTION 9. Section 76-5.5, Hawaii Revised Statutes, is amended to read as follows:

"[[§76-5.5]] Recruitment flexibility for the counties[.], the judiciary, and the Hawaii health systems corporation. Notwithstanding section 76-23, or any other provision to the contrary, the directors of the county departments of civil service [and], the administrative director of the courts, and the Hawaii health systems corporation chief executive officer's designee may determine, establish, and maintain the manner in which positions shall be filled in accordance with section 78-1 and the following standards:

- (1) Equal opportunity for all regardless of race, sex, age, religion, color, ancestry, physical handicap, or politics;
- (2) First consideration for competent employees already within public service; and
- (3) Impartial selection of the ablest person through competitive means which are fair, objective, and practical."

SECTION 10. Section 77-1, Hawaii Revised Statutes, is amended by amending the definitions for the terms “chief executive officer”, “department”, “director”, and “fiscal officer”, to read as follows:

““Chief executive officer” means the governor in the case of the State, the chief justice of the supreme court in the case of the judiciary, the chief executive officer in the case of the Hawaii health systems corporation, the mayor in the case of the city and county of Honolulu or the counties of Hawaii, Maui, and Kauai.

“Department” includes the judicial branch, the Hawaii health systems corporation, and any department, board, commission, or agency of the State or any of its political subdivisions.

“Director” means the director of human resources development in the case of the State, the administrative director of the courts in the case of the judiciary, the chief executive officer in the case of the Hawaii health systems corporation, the director of civil service in the case of the city and county of Honolulu, or the respective personnel directors in the case of the counties of Hawaii, Maui, and Kauai.

“Fiscal officer” means the director of finance in the case of the State, the administrative director of the courts in the case of the judiciary, the chief executive officer in the case of the Hawaii health systems corporation, the director of finance in the case of the city and county of Honolulu and the counties of Hawaii, Maui, and Kauai.”

SECTION 11. Section 77-2.5, Hawaii Revised Statutes, is amended to read as follows:

“[[§77-2.5]] Applicability of chapter to the judiciary[.] and the Hawaii health systems corporation. All of the provisions of this chapter apply with equal force to the judiciary and the Hawaii health systems corporation as to the State.”

SECTION 12. Section 77-13, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Salary ranges SC-1, SC-2, and SC-3 shall be utilized in the following manner:

- (1) Salary ranges SC-1, SC-2, and SC-3 may be utilized by the State, the judiciary, [and] counties, and the Hawaii health systems corporation for physician and psychiatrist positions;
- (2) No position shall be classified and paid in salary ranges SC-1, SC-2, and SC-3 unless specifically recommended by the director of human resources development and approved by the governor, recommended by the administrative director of the courts and approved by the chief justice, or recommended by the personnel director of a county and approved by the respective council and mayor[;] or recommended by the Hawaii health systems corporation chief executive officer’s designee and approved by the chief executive officer;
- (3) There shall be at any given period not more than sixteen positions classified and paid in salary ranges SC-1, SC-2, and SC-3 by the State, not more than two positions classified and paid in salary ranges SC-1, SC-2, and SC-3 by the judiciary, and not more than eight positions classified and paid in salary ranges SC-1, SC-2, and SC-3 by any county. Psychiatrist and physician positions shall be excluded from the above-mentioned totals; and

- (4) The director of human resources development, the administrative director of the courts, and the personnel directors of each county shall report annually to the legislature as to the manner in which the positions assigned to salary ranges SC-1, SC-2, and SC-3 are being used.”

SECTION 13. Section 77-13.1, Hawaii Revised Statutes, is amended to read as follows:

“[[§77-13.1]] Compensation plan for managerial white-collar positions. (a) The chief executives of the State and counties [and], the chief justice of the supreme court, and the Hawaii health systems corporation chief executive officer shall determine which white-collar positions under this chapter are managerial; provided that no position shall be designated as managerial unless or until the employee occupying such position has been excluded from coverage under chapter 89.

(b) The salary structure for managerial white-collar positions covered under this chapter shall be comprised of such number of salary ranges with each range consisting of such number of steps as the chief executives of the State and counties [and], the chief justice of the supreme court, and the Hawaii health systems corporation deem appropriate under the provisions set forth in chapter 89C.

(c) The salary schedule applicable to employees in managerial white-collar positions shall be subject to chapter 89C.”

SECTION 14. Section 78-51, Hawaii Revised Statutes, is amended to read as follows:

“§78-51 Applicability of chapter to the judiciary[.] and the Hawaii health systems corporation. All of the provisions of this chapter apply with equal force to the judiciary and the Hawaii health systems corporation as to the State. The powers and duties assigned in this chapter shall, with respect to the judiciary, be assigned to the chief justice of the supreme court in the place and stead of the governor or chief executive officer for the State, and to the administrative director of the courts in the place and stead of the director of human resources development. The powers and duties assigned in this chapter, with respect to the Hawaii health systems corporation, shall be assigned to the chief executive officer of the Hawaii health systems corporation in the place and stead of the governor or chief executive officer for the State, and to the Hawaii health systems chief executive officer’s designee in the place and stead of the director of human resource development.”

SECTION 15. Section 79-31, Hawaii Revised Statutes, is amended to read as follows:

“§79-31 Judiciary[;] and the Hawaii health systems corporation; powers and duties. All of the powers and duties assigned in this chapter to the governor or the director of human resources development [shall], with respect to the judiciary, shall be assigned to the chief justice of the supreme court or the administrative director of the courts[.], and with respect to the Hawaii health systems corporation, shall be assigned to the chief executive officer of the Hawaii health systems corporation or designee.”

SECTION 16. Section 80-21, Hawaii Revised Statutes, is amended to read as follows:

“§80-21 Judiciary[;] and the Hawaii health systems corporation; powers and duties. All of the powers and duties assigned in this chapter to the governor or the department or director of human resources development [shall], with respect to the judiciary, shall be assigned to the chief justice of the supreme court or the administrative director of the courts[.], and with respect to the Hawaii health systems corporation, shall be assigned to the chief executive officer of the Hawaii health systems corporation or designee.”

SECTION 17. Section 81-21, Hawaii Revised Statutes, is amended to read as follows:

“§81-21 Judiciary[;] and the Hawaii health systems corporation; powers and duties. All of the powers and duties assigned in this chapter to the governor or the director of human resources development [shall], with respect to the judiciary, shall be exercised by the chief justice of the supreme court or the administrative director of the courts[.], and with respect to the Hawaii health systems corporation, shall be assigned to the chief executive officer of the Hawaii health systems corporation or designee.”

SECTION 18. Section 83-4, Hawaii Revised Statutes, is amended to read as follows:

“§83-4 Judiciary[;] and the Hawaii health systems corporation; powers and duties. All of the powers and duties assigned in this chapter to the governor or the director of human resources development [shall], with respect to the judiciary, shall be exercised by the chief justice of the supreme court or the administrative director of the courts[.], shall and with respect to the Hawaii health systems corporation, shall be assigned to the chief executive officer of the Hawaii health systems corporation or designee.”

SECTION 19. Chapter 323, Part V, Hawaii Revised Statutes, shall be repealed on June 30, 1998.

SECTION 20. It is the intent of this Act that all rights, powers, functions, assets, and operations of the division of community hospitals be conveyed to the Hawaii health systems corporation, such that all of the activities and services of the division of community hospitals be continued without interruption by the corporation. This Act shall be construed with this intent.

All rights, powers, functions, and duties of the division of community hospitals of the department of health are transferred to the Hawaii health systems corporation on the date agreed to by the department and the corporation for the transfer of such right, powers, functions, and duties (“Transfer date”).

The assets, including but not limited to hospital special funds related to the division of community hospitals, shall be conveyed to the Hawaii health systems corporation in its own name by the department of health on the Transfer date.

Effective on the Transfer date and thereafter, the corporation shall assume the division of community hospitals’ responsibility for all contracts, agreements, and leases for commodities, services, property, and supplies utilized by the division of community hospitals, all of which shall be transferred to the Hawaii health systems corporation including real property leases.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

An officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service employee without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that such officer or employee possesses the minimum qualifications for the position to which transferred or appointed.

If an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the executive branch of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State, provided that minimum qualifications are met.

Any officer or employee transferred to the corporation pursuant to this section who is a member of or benefits under any existing pension or retirement fund or system shall continue to have all rights, privileges, obligations, and status with respect to such fund or system as are now prescribed by law, but during the period of employment by the corporation, all contributions to such funds or system to be paid by the employer on account of such officer or employee shall be paid by the corporation.

SECTION 21. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the division of community hospitals of the department of health relating to the functions transferred to the Hawaii health systems corporation shall be transferred with the functions to which they relate.

SECTION 22. (a) Within two years after the Transfer date, the corporation in carrying out its duties and responsibilities, shall enter into appropriate agreements with the State to utilize the facilities and real property under the control of the division prior to the effective date of this Act. Each agreement shall be long standing and require compensation of a nominal amount for the use of any facilities or real property. Until the agreements are finalized, the corporation shall be entitled to use the facilities and real property of the division of community hospitals for hospital and health care purposes.

(b) State agencies shall continue to provide to the corporation, without charge for not more than two years after the Transfer date, services that the state agencies provided to the division until the corporation enters into a written contract with the state agencies or chooses to terminate the services.

(c) The corporation shall assume and honor all collective bargaining agreements applicable to employees of the division as of the Transfer date. Upon expiration of those agreements, the corporation may as appropriate and allowable, negotiate collective bargaining agreements or sub-agreements under chapter 89, Hawaii Revised Statutes, to address its needs for efficiency and effectiveness.

(d) Upon the Transfer date, the corporation shall assume and honor all responsibilities and obligations transferred to it from the division of community hospitals regarding the imposition of rates, rents, fees, and charges for the use of public health facilities pursuant to section 323-70, Hawaii Revised Statutes. In no

way shall this Act be construed as allowing either the corporation or the division to abrogate these responsibilities and obligations.

SECTION 23. Changes in services already planned as a result of the opening of the North Hawaii Community Hospital at Kamuela shall not be affected by section 2 of this Act.

SECTION 24. Act 211, Session Laws of Hawaii 1993, is amended by amending section 10 to read as follows:

“SECTION 10. This Act shall take effect on July 1, 1993, and shall be repealed on June 30, [1996, except that section 9 shall be repealed on January 31, 1997.] 1998.”

SECTION 25. Act 188, Session Laws of Hawaii 1994, section 7, as amended by Act 178, Session Laws of Hawaii 1995, is amended to read as follows:

“SECTION 7. This Act shall take effect on July 2, 1994; provided that section 2 shall be repealed on June 30, [1995, and the remaining sections of this Act shall be repealed on June 30, 1996.] 1998.”

SECTION 26. Act 192, Session Laws of Hawaii 1994, section 7 as amended by Act 211, Session Laws of Hawaii 1995, is amended to read as follows:

“SECTION 7. This Act shall take effect upon its approval and sections 1, 2, 4, 5, and 6 shall be repealed on June 30, [1996; provided that section 323-73, Hawaii Revised Statutes, is reenacted in the form in which it read on the day before the approval of this Act.] 1998.”

SECTION 27. Act 193, Session Laws of Hawaii 1994, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect upon its approval; provided that section 2 shall be repealed on June 30, [1996,] 1998, and section 103D-203, Hawaii Revised Statutes, shall be reenacted in the form in which it existed on the day before the effective date of this Act.”

SECTION 28. Act 211, Session Laws of Hawaii 1995, is amended by amending section 17 to read as follows:

“SECTION 17. This Act shall take effect upon its approval; provided that sections 3 and 4 shall apply retroactive to [July 1, 1993] January 1, 1970, and any funds withdrawn under these sections after May 1, 1995, shall be returned [within ninety days of the approval of this Act.] no later than October 1, 1996.”

SECTION 29. All acts passed prior to or during this regular session of 1996, whether enacted before or after the passage of this Act shall be interpreted to conform to this Act, unless the acts specifically provide that this Act is being amended. In so far as this chapter is inconsistent with the provisions of any other law, this chapter shall be controlling.

SECTION 30. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

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SECTION 31. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 32. This Act shall take effect on July 1, 1996.

(Approved June 19, 1996.)²

Notes

1. Edited pursuant to HRS §23G-16.5.

2. This Act was approved on June 19, 1996, which is after the approval date (June 18, 1996) of Acts 266 through 286 and Act 288.