

ACT 229

H.B. NO. 3468

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

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

SECTION 1. Chapter 323F, Hawaii Revised Statutes, is amended by adding three<sup>1</sup> new sections to be appropriately designated and to read as follows:

**“§323F-A Executive public health facility management advisory committee; establishment.** (a) There is established within the corporation an executive public health facility management advisory committee to consist of the chairpersons of each of the five regional public health facility management advisory committees. The executive committee shall, through its chairperson, represent the interests of all regional committees on the corporation board.

(b) The executive committee shall select its own chairperson to serve on the corporation board and shall adopt rules governing the terms of office and removal from the corporation board. The executive committee shall also adopt rules governing the terms of office for each of the five regional committee chairpersons. The executive committee may also adopt other rules as it may consider necessary for the conduct of its business.

(c) The members of the executive committee shall serve without compensation, but shall be reimbursed for reasonable expenses incurred in the performance of their duties.

**§323F-B Peer review and credentialing.** Corporation board or other committee meetings pertaining to peer review and credentialing matters shall not be subject to part I of chapter 92. Peer review activities shall be subject to the provisions of chapters 663 and 671D and all other provisions and restrictions of medical peer review committees established by state law.”

SECTION 2. Section 76-121, Hawaii Revised Statutes, is amended to read as follows:

“**[§76-121]** **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) Administrating 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] approve positions in the corporation [as may be authorized and funded by the legislature].”

SECTION 3. Section 82-6, Hawaii Revised Statutes, is amended to read as follows:

“[[§82-6]] 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 a designee.”

SECTION 4. Section 323F-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) [Twelve] 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 Honolulu;
- (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;
- (6) One member from region II who resides in the county of Kauai or from region III who resides in the district of Hana or on the island of Lanai; provided that in no event shall the member be appointed from the same region for two consecutive terms; and
- (7) [Six] Four at-large members who reside in the State.

The eleventh member shall be the chairperson of the executive public health facility management advisory committee, who shall serve as an ex officio, voting member.

The twelfth member, who shall serve as a voting member, shall be a physician with active medical staff privileges at one of the corporation’s public health facilities. The physician member shall serve a term of two years. The initial physician member shall be from region II, and subsequent physician members shall come from regions IV, III, and V respectively. The physician member position shall continue to rotate in this order. The physician member shall be appointed to the corporation board by a simple majority vote of the members of the executive public health facility management advisory committee from a list of qualified nominees submitted by the public health facility management advisory committee for the region from which the physician member is to be chosen. If for any reason a physician member is unable to serve a full term, the remainder of that term shall be filled by a physician from the same region.

The thirteenth member shall be the director of health or the director’s designee, who shall serve as an ex officio, voting member.

Appointments to the corporation board, with the exception of the chairperson of the executive public health facility management advisory committee and the regional physician member, shall be made by the governor, subject to confirmation

by the senate pursuant to section 26-34. 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 323F-10 for each region may make such recommendations to the governor. The appointed board members shall serve for a term of four years; provided that upon the initial appointment of the first ten 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.”

SECTION 5. Section 323F-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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[;], with the exception of the eleventh and twelfth members set forth in section 323F-3, who may only be removed pursuant to sections 323F-A and 323F-10;
- (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.”

SECTION 6. Section 323F-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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] from chapter 103D and shall not subject the corporation to any other provision of chapter 103D;
  - (31) Authorizing and establishing positions;
  - [(31)] (32) Calling upon the attorney general for such legal services as the corporation may require; and
  - [(32)] (33) 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."

SECTION 7. Section 323F-8, Hawaii Revised Statutes, is amended to read as follows:

**“[[§323F-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.

(c) The corporation's chief executive officer or the chief executive officer's designee may appoint, exempt from chapters 76, 77, and 89, hospital administrators, assistant administrators, directors of nursing, medical directors, and staff physicians, to facilitate the management of facilities within the corporation; provided that directors of nursing appointed before July 1, 1998, may maintain their civil service status as provided in chapters 76 and 77, by so communicating in writing to the chief executive officer by October 31, 1998. Hospital administrators and assistant administrators appointed before July 1, 1983, may maintain their permanent civil service status as provided in chapters 76 and 77.”

SECTION 8. Section 323F-10, Hawaii Revised Statutes, is amended to read as follows:

**“[[§323F-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 initially 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.

Following the initial appointments by the chief executive officer of the corporation board, any vacancies on a regional committee shall be filled by a simple majority vote of the members of the executive committee from a list of qualified nominees submitted by the regional committee in which the vacancy occurred. If a regional committee vacancy remains unfilled for more than thirty days, that vacancy may be filled by the chief executive officer of the corporation.

Each regional 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 Ka’u 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 regional committee shall select its own chairperson and vice chairperson and [may] shall adopt rules governing the terms for removal of its chairperson from the executive management advisory committee. In the event of a regional committee voting to remove its chairperson who concurrently sits on the corporation board, that vote shall be unanimous. In the event of a regional committee voting to remove its physician member from the corporation board, that vote shall also be unanimous. Each regional committee may also adopt [such] other rules as it may consider necessary for the conduct of its business.

The members of the regional 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 regional 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 regional 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.”

SECTION 9. Act 262, Session Laws of Hawaii 1996, is amended by amending subsections (a) through (c) of section 22 to read as follows:

“(a) Within [two] three years after the [Transfer] 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] three years after the [Transfer] 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] 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. Notwithstanding any law to the contrary, the corporation may negotiate with the applicable exclusive representative specific terms and conditions of employment, including differentials, covering the employees of the corporation through a memorandum of agreement except for wage increases and contributions to the Hawaii public employees health fund which are normally negotiated under chapter 89, Hawaii Revised Statutes. Any memorandum of agreement shall be executed by the corporation and the applicable exclusive representative and shall have the same expiration date as the applicable collective bargaining agreement negotiated under chapter 89, Hawaii Revised Statutes.”

SECTION 10. The Hawaii health systems corporation shall establish a working group to identify and describe the liabilities assumed by the corporation as of the transfer date. The working group shall include the departments of accounting and general services and budget and finance, at a minimum, and any other state agency identified by the department of budget and finance. The discussions shall include but not be limited to:

- (1) Debts owed to the State by the corporation;
- (2) Any reparations issued by the office of Hawaiian affairs;
- (3) Pension fund and insurance payments for employees who retired prior to the transfer date;
- (4) Any civil penalties, fines, and judgments that may have arisen due to the division of community hospitals' operation prior to the transfer date; and
- (5) Vacation and sick leave benefits accrued prior to the transfer date.

SECTION 11. The Hawaii health systems corporation shall submit a report to the legislature no later than twenty days prior to the convening of the regular session of 1999.

The report shall:

- (1) Identify all delinquent accounts owed to the Hawaii health systems corporation that were handled by the corporation and the disposition of those accounts;

- (2) Identify and make recommendations concerning the liabilities assumed by the corporation as of the transfer date that may require appropriations or statutory change; and
- (3) Include the position of the corporation, as well as the position on the issues of the departments and agencies participating in the working group.

SECTION 12. The two at-large positions on the corporation board which are eliminated by section 4 of this Act shall be those positions whose terms expire on June 30, 1998.

SECTION 13. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections of this Act.

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 15. This Act shall take effect on June 1, 1998; provided that section 4 shall take effect on June 30, 1998.

(Approved July 20, 1998.)

**Notes**

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