
A BILL FOR AN ACT

RELATING TO PUBLIC-PRIVATE PARTNERSHIPS.

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

1 SECTION 1. Hawaii is faced with limited if not declining
2 government funding. This trend is expected to continue, making
3 it more important to partner with the private sector and
4 leverage limited governmental resources. Public-private
5 partnership projects will help the state and local governments
6 in undertaking certain capital improvement projects in a more
7 cost-effective and efficient manner.

8 A public-private partnership is a contractual agreement
9 between a public agency and a private entity that allows for a
10 greater risk transfer to the private sector in the delivery and
11 financing of a public project in a manner that creates greater
12 value for the public than traditional delivery methods. In a
13 public-private partnership project, the public agency retains
14 ownership and substantial control but transfers responsibility
15 to the private partner under a single contract, which often is a
16 long-term contract involving lifecycle cost risk. The focus of
17 a public-private partnership is to provide the best value and



1 performance in its delivery of assets and services for the
2 benefit of the general public.

3 SECTION 2. Chapter 103, Hawaii Revised Statutes, is
4 amended by adding a new part to be appropriately designated and
5 to read as follows:

6 "PART . OFFICE OF PUBLIC-PRIVATE PARTNERSHIP

7 §103- Office of public-private partnership; established;
8 state public-private partnership coordinator. There is
9 established within the department of accounting and general
10 services an office of public-private partnership to support
11 state and county agencies in the use of best practices in
12 contracting for public-private partnerships to deliver and
13 finance public projects at a lower lifecycle cost and more
14 diversified risk than traditional delivery processes. The
15 comptroller may appoint a public-private partnership coordinator
16 who shall be exempted from chapter 76, to administer the office.

17 §103- Duties. The office of public-private partnership
18 shall:

19 (1) Create a strategic plan for the provision of advisory
20 services to state and county agencies that includes:



1 (A) Objectives and goals for the office of public-
2 private partnership and criteria to measure the
3 objectives and goals;

4 (B) A website for maintaining the status of public-
5 private projects and best practice resources that
6 meet the office of public-private partnership's
7 objectives and goals;

8 (C) A framework for retention of qualified legal,
9 financial, and technical advisors that can assist
10 in the delivery of services contemplated by this
11 part; and

12 (D) The necessary funding to establish and operate
13 the office of public-private partnership and fee
14 structures for advisory services to maintain the
15 office of public-private partnership;

16 (2) Coordinate collaboration among state and county
17 agencies to analyze the value of potential public-
18 private partnership delivery over other delivery
19 methods permitted in chapter 103D and other needs and
20 goals of the state and county agencies;



- 1 (3) Provide to the purchasing agency best practice
2 processes for analysis of and contracting for public
3 private partnerships, including modeling the potential
4 economic benefits and financial outcomes and contract
5 terms and conditions that will achieve those economic
6 benefits and financial outcomes;
- 7 (4) Create and maintain an analysis report of the value of
8 public-private partnership delivery over traditional
9 delivery for each public-private partnership project
10 that shall include:
- 11 (A) Proposed economic benefits;
12 (B) Potential financial outcomes;
13 (C) Contract terms and conditions; and
14 (D) Social benefits;
- 15 (5) Develop, analyze, and implement plans for future
16 public-private partnership projects, including
17 objectives and criteria to measure the accomplishment
18 of objectives, programs through which the objectives
19 are to be attained, and financial requirements for
20 public resources based on the needs and goals of the
21 State;



1 (6) Assist state and county agencies, and their respective
2 purchasing agencies, that have an interest in public-
3 private partnership projects with the legal authority
4 to coordinate activities that involve cross-agency
5 responsibilities and encourage the timely and
6 effective implementation and completion of project
7 milestones and objectives among multiple governmental
8 agencies;

9 (7) Develop educational and advisory programs that enhance
10 the public-private project procurement process to
11 continuously encourage best practice procurement of
12 public-private partnership projects that will result
13 in improved infrastructure and government services in
14 the State;

15 (8) Assist state and county agencies in formulating
16 specific program and procurement documents to solicit
17 public-private partnerships; and

18 (9) Undertake the program established in section 26-6
19 relating to centralized engineering and office leasing
20 services, to facilitate facility agreements between
21 the State and private investors for the sale of



1 facilities including operation and maintenance of
2 public buildings."

3 SECTION 3. Section 103D-4, Hawaii Revised Statutes, is
4 amended by adding four new definitions to be appropriately
5 inserted and to read as follows:

6 "Design-build-finance-operate-maintain" means a project
7 delivery method in which the purchasing agency enters into a
8 single contract for design, construction, financing,
9 maintenance, and operation of an infrastructure facility over a
10 contractually defined period.

11 "Design-build-operate-maintain" means a project delivery
12 method in which the purchasing agency enters into a single
13 contract for design, construction, maintenance, and operation of
14 an infrastructure facility over a contractually defined period.

15 "Independent peer reviewer services" means additional
16 professional services provided to the purchasing agency in
17 design-build-operate-maintain or design-build-finance-operate-
18 maintain procurements to confirm that the key elements of the
19 professional engineering and architectural design provided by
20 the contractor conform to the applicable standard of care.



1 "Infrastructure facility" means a building, a structure, or
2 networks of buildings, structures, pipes, controls, and
3 equipment that provide transportation, utilities, public
4 education, or public safety services, including government
5 office buildings; public schools; courthouses; jails; prisons;
6 public hospitals; water treatment plants, distribution systems,
7 and pumping stations; wastewater treatment plants, collection
8 systems, and pumping stations; solid waste disposal plants,
9 incinerators, landfills, and related facilities; public roads
10 and streets; highways; public parking facilities; public
11 transportation systems, terminals, and rolling stock; and rail,
12 air, and water port structures, terminals, and equipment."

13 SECTION 4. Section 103D-303, Hawaii Revised Statutes, is
14 amended by amending subsection (i) to read as follows:

15 "(i) In addition to any other provisions of this section,
16 construction projects may be solicited through a request for
17 proposals to use the design-build, design-build-operate-
18 maintain, or design-build-finance-operate-maintain project
19 delivery method; provided that:

20 (1) A request for proposals is issued to prequalify
21 offerors to select a short list of no more than three



1 responsible offerors, prior to the submittal of
2 proposals; provided that the number of offerors to be
3 selected for the short list shall be stated in the
4 request for proposals and prompt notice is given to
5 all offerors as to which offerors have been short-
6 listed;

7 (2) A conceptual design fee may be paid to non-selected
8 offerors that submit a technically responsive
9 proposal; provided that the cost of the entire project
10 is greater than \$1,000,000; [and]

11 (3) The criteria for pre-qualification of offerors, design
12 requirements, development documents, proposal
13 evaluation criteria, terms of the payment of a
14 conceptual design fee, or any other pertinent
15 information shall be stated in the request for
16 proposals[-]; and

17 (4) Each request for proposals to use the design-build-
18 operate-maintain or design-build-finance-operate-
19 maintain project delivery method shall:

20 (A) State the relative importance of:



- 1 (i) Demonstrated compliance with the design
2 requirements;
3 (ii) Offeror qualifications;
4 (iii) Financial capacity;
5 (iv) Project schedule;
6 (v) Price or lifecycle price; and
7 (vi) Other factors, if any; and
8 (B) Require each offeror, for a project:
9 (i) With a contract price estimated to exceed
10 \$10,000,000;
11 (ii) With a contract period of operations and
12 maintenance of at least ten years; or
13 (iii) In other circumstances identified by the
14 comptroller by rule,
15 to include and identify qualified and competent
16 independent peer reviewer services, which shall
17 be an additional evaluation factor in the award
18 of the contract."

19 SECTION 5. Section 103D-323, Hawaii Revised Statutes, is
20 amended by amending subsections (a) and (b) to read as follows:



1 "(a) Unless the policy board determines otherwise by
2 rules, bid security shall be required only for construction
3 contracts to be awarded pursuant to sections 103D-302 and 103D-
4 303 and when the price of the contract is estimated by the
5 procurement officer to exceed \$25,000 or, if the contract is for
6 goods or services, the purchasing agency secures the approval of
7 the chief procurement officer. Bid security shall be a bond
8 provided by a surety company authorized to do business in the
9 State, or the equivalent in cash, or otherwise supplied in a
10 form specified in rules[-] and shall be in an amount equal to at
11 least five per cent of the amount of the bid.

12 (b) ~~[Bid security shall be in an amount equal to at least~~
13 ~~five per cent of the amount of the bid.]~~ In addition to other
14 requirements of this section, one or more of the following forms
15 of security shall be required to assure the timely, faithful,
16 and uninterrupted provision of operations and maintenance
17 services as elements of design-build-operate-maintain or design-
18 build-finance-operate-maintain services:

19 (1) Operations period surety bonds that secure the
20 performance of the contractor's operations and
21 maintenance obligations;



(2) Letters of credit in an amount appropriate to cover the cost to the purchasing agency of preventing infrastructure service interruptions for a period up to twelve months; and

(3) Appropriate written guarantees from the contractor or depending upon the circumstances, from the contractor's parent corporation, to secure the recovery of re-procurement costs to the purchasing agency in the event of a default in performance by the contractor."

SECTION 6. This Act is not intended to modify and shall not be construed to expand or limit any rights and duties of any laws relating to the subject of this Act, unless expressly stated herein.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ or so much thereof as may be necessary for fiscal year 2018-2019 to:

(1) Establish and operate the office of public-private partnership; and

(2) Establish and fill the state public-private partnership coordinator position; provided that the



position may be added to the position count for the department of accounting and general services and shall be appointed by the comptroller and exempt from chapter 76, Hawaii Revised Statutes, to carry out the purposes of this Act.

The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act.

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

SECTION 9. This Act shall take effect on July 1, 2018.

INTRODUCED BY:

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JAN 24 2018



H.B. NO. 2581

Report Title:

Office of Public-Private Partnership; Procurement Code;
Appropriation

Description:

Establishes the Office of Public-Private Partnership and the position of State Public-Private Partnership Coordinator. Adds design-build-operate-maintain and design-build-finance-operate-maintain project delivery methods to the Procurement Code and related conditions and requirements.

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