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# 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;



(3) Provide to the purchasing agency best practice processes for analysis of and contracting for public private partnerships, including modeling the potential economic benefits and financial outcomes and contract terms and conditions that will achieve those economic benefits and financial outcomes;

(4) Provide to the purchasing agency best practice processes for resolving contract disputes that may arise in public private partnerships, including alternative dispute resolution and mediation;

(5) Create and maintain an analysis report of the value of public-private partnership delivery over traditional delivery for each public-private partnership project that shall include:

(A) Proposed economic benefits;

(B) Potential financial outcomes;

(C) Contract terms and conditions; and

(D) Social benefits;

(6) Develop, analyze, and implement plans for future public-private partnership projects, including objectives and criteria to measure the accomplishment



1 of objectives, programs through which the objectives  
2 are to be attained, and financial requirements for  
3 public resources based on the needs and goals of the  
4 State;

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

13 (8) Develop educational and advisory programs that enhance  
14 the public-private project procurement process to  
15 continuously encourage best practice procurement of  
16 public-private partnership projects that will result  
17 in improved infrastructure and government services in  
18 the State;

19 (9) Assist state and county agencies in formulating  
20 specific program and procurement documents to solicit  
21 public-private partnerships; and



(10) Undertake the program established in section 26-6 relating to centralized engineering and office leasing services, to facilitate facility agreements between the State and private investors for the sale of facilities including operation and maintenance of public buildings.

**§103- Annual report.** The department of accounting and general services, in coordination with the office of public-private partnership, shall submit a report to the legislature no later than twenty days prior to the convening of each regular session, that shall include but not be limited to:

(1) The process developed by the office of public-private partnerships to support state and county agencies in the use of best practices in contracting for public-private partnerships;

(2) A detailed description of any public-private partnerships entered into, including a cost-benefit analysis of the public-private partnership in comparison to the traditional means of financing and delivering public contracts; and



(3) A detailed listing of any effects the public private partnership had on state or county agencies involved in the public-private partnership, including fiscal and personnel impacts."

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

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

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

"Independent peer reviewer services" means additional professional services provided to the purchasing agency in design-build-operate-maintain or design-build-finance-operate-maintain procurements to confirm that the key elements of the



1 professional engineering and architectural design provided by  
2 the contractor conform to the applicable standard of care.

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

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

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





- 1 (1) A request for proposals is issued to prequalify  
2 offerors to select a short list of no more than three  
3 responsible offerors, prior to the submittal of  
4 proposals; provided that the number of offerors to be  
5 selected for the short list shall be stated in the  
6 request for proposals and prompt notice is given to  
7 all offerors as to which offerors have been short-  
8 listed;
- 9 (2) A conceptual design fee may be paid to non-selected  
10 offerors that submit a technically responsive  
11 proposal; provided that the cost of the entire project  
12 is greater than \$1,000,000; ~~and~~
- 13 (3) The criteria for pre-qualification of offerors, design  
14 requirements, development documents, proposal  
15 evaluation criteria, terms of the payment of a  
16 conceptual design fee, or any other pertinent  
17 information shall be stated in the request for  
18 proposals ~~[ ]~~; and
- 19 (4) Each request for proposals to use the design-build-  
20 operate-maintain or design-build-finance-operate-  
21 maintain project delivery method shall:



1           (A) State the relative importance of:

2               (i) Demonstrated compliance with the design  
3               requirements;

4               (ii) Offeror qualifications;

5               (iii) Financial capacity;

6               (iv) Project schedule;

7               (v) Price or lifecycle price; and

8               (vi) Other factors, if any; and

9           (B) Require each offeror, for a project:

10               (i) With a contract price estimated to exceed  
11               \$10,000,000;

12               (ii) With a contract period of operations and  
13               maintenance of at least ten years; or

14               (iii) In other circumstances identified by the  
15               comptroller by rule,

16               to include and identify qualified and competent  
17               independent peer reviewer services, which shall  
18               be an additional evaluation factor in the award  
19               of the contract."

20           SECTION 5. Section 103D-323, Hawaii Revised Statutes, is  
21   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;



- 1        (2) Letters of credit in an amount appropriate to cover  
2        the cost to the purchasing agency of preventing  
3        infrastructure service interruptions for a period up  
4        to twelve months; and
- 5        (3) Appropriate written guarantees from the contractor or  
6        depending upon the circumstances, from the  
7        contractor's parent corporation, to secure the  
8        recovery of re-procurement costs to the purchasing  
9        agency in the event of a default in performance by the  
10       contractor."

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

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

- 18       (1) Establish and operate the office of public-private  
19       partnership; and
- 20       (2) Establish and fill the state public-private  
21       partnership coordinator position; provided that the



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

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

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

10 SECTION 9. This Act shall take effect on July 1, 2112.



**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. Requires an annual report. (HB2581 HD1)

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

