

---

---

# 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.

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



1 Public-private partnership projects will help the state and  
2 local governments in undertaking certain capital improvement  
3 projects in a more cost-effective and efficient manner by  
4 allowing more innovative project delivery methods.

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

8 "PART . OFFICE OF PUBLIC-PRIVATE PARTNERSHIP

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

19 §103- Duties. The office of public-private partnership  
20 shall:



- 1           (1) Create a strategic plan for the provision of advisory  
2           services to state and county agencies that includes:  
3           (A) Objectives and goals for the office of public-  
4           private partnership and criteria to measure the  
5           objectives and goals;  
6           (B) A website for maintaining the status of public-  
7           private projects and best practice resources that  
8           meet the office of public-private partnership's  
9           objectives and goals;  
10          (C) A framework for retention of qualified legal,  
11          financial, and technical advisors that can assist  
12          in the delivery of services contemplated by this  
13          part; and  
14          (D) The necessary funding to establish and operate  
15          the office of public-private partnership and fee  
16          structures for advisory services to maintain the  
17          office of public-private partnership;  
18          (2) Coordinate collaboration among state and county  
19          agencies to analyze the value of potential public-  
20          private partnership delivery over other delivery



1 methods permitted in chapter 103D and other needs and  
2 goals of the state and county agencies;

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

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

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

- 17 (A) Proposed economic benefits;
- 18 (B) Potential financial outcomes;
- 19 (C) Contract terms and conditions; and
- 20 (D) Social benefits;

- 1           (6)   Develop, analyze, and implement plans for future  
2                   public-private partnership projects, including  
3                   objectives and criteria to measure the accomplishment  
4                   of objectives, programs through which the objectives  
5                   are to be attained, and financial requirements for  
6                   public resources based on the needs and goals of the  
7                   State;
- 8           (7)   Assist state and county agencies, and their respective  
9                   purchasing agencies, that have an interest in public-  
10                  private partnership projects with the legal authority  
11                  to coordinate activities that involve cross-agency  
12                  responsibilities and encourage the timely and  
13                  effective implementation and completion of project  
14                  milestones and objectives among multiple governmental  
15                  agencies;
- 16          (8)   Develop educational and advisory programs that enhance  
17                   the public-private partnership procurement process to  
18                   continuously encourage best practice procurement of  
19                   public-private partnership projects that will result  
20                   in improved infrastructure and government services in  
21                   the State;



- 1           (9) Assist state and county agencies in formulating  
2           specific program and procurement documents to solicit  
3           public-private partnerships; and
- 4           (10) Undertake the program established in section 26-6  
5           relating to centralized engineering and office leasing  
6           services, to facilitate facility agreements between  
7           the State and private investors for the sale of  
8           facilities including operation and maintenance of  
9           public buildings.

10           **§103- Annual report.** The department of accounting and  
11 general services, in coordination with the office of public-  
12 private partnership, shall submit a report to the legislature no  
13 later than twenty days prior to the convening of each regular  
14 session, that shall include but not be limited to:

- 15           (1) The process developed by the office of public-private  
16           partnership to support state and county agencies in  
17           the use of best practices in contracting for public-  
18           private partnerships;
- 19           (2) A detailed description of any public-private  
20           partnerships entered into, including a cost-benefit  
21           analysis of the public-private partnership in



1 comparison to the traditional means of financing and  
2 delivering public contracts; and

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

7 SECTION 3. Section 103D-104, Hawaii Revised Statutes, is  
8 amended by adding four new definitions to be appropriately  
9 inserted and to read as follows:

10 "Independent peer reviewer services" means additional  
11 professional services provided to the purchasing agency in  
12 public-private partnership procurements to confirm that the key  
13 elements of the professional engineering and architectural  
14 design provided by the contractor conform to the applicable  
15 standard of care.

16 "Infrastructure facility" means a building, a structure, or  
17 networks of buildings, structures, pipes, controls, and  
18 equipment that provide transportation, utilities, public  
19 education, or public safety services, including government  
20 office buildings; public schools; courthouses; jails; prisons;  
21 public hospitals; water treatment plants, distribution systems,



1 and pumping stations; wastewater treatment plants, collection  
2 systems, and pumping stations; solid waste disposal plants,  
3 incinerators, landfills, and related facilities; public roads  
4 and streets; highways; public parking facilities; public  
5 transportation systems, terminals, and rolling stock; and rail,  
6 air, and water port structures, terminals, and equipment.

7 "Public-private partnership" means a project delivery  
8 method in which the purchasing agency enters into a single  
9 contract for any combination of design, build, financing,  
10 maintenance, or operation in addition to design-build of an  
11 infrastructure facility over a contractually defined period.

12 "Responsible public-private partnership persons" means the  
13 persons designated to attend meetings and otherwise stay  
14 apprised of important events and decisions related to a public-  
15 private partnership after the initial approval and in  
16 anticipation of the final approval of the public-private  
17 partnership, who shall include, at a minimum, representatives  
18 from the department of budget and finance, the comptroller, and  
19 the attorney general in the case of a state project, or  
20 representatives from the mayor and the corporation counsel of  
21 the county in the case of a county project."



1 SECTION 4. Section 103D-303, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§103D-303 **Competitive sealed proposals.** (a) Competitive  
4 sealed proposals may be used to procure goods, services, or  
5 construction that are either not practicable or not advantageous  
6 to the State to procure by competitive sealed bidding.

7 (b) Proposals shall be solicited through a request for  
8 proposals.

9 (c) Notice of the request for proposals shall be given in  
10 the same manner as provided in section 103D-302(c).

11 (d) Proposals shall be opened so as to avoid disclosure of  
12 contents to competing offerors during the process of evaluation.  
13 A register of proposals shall be prepared and shall be open for  
14 public inspection after contract award.

15 (e) The request for proposals shall state the relative  
16 importance of price and other evaluation factors.

17 (f) Discussions may be conducted with responsible offerors  
18 who submit proposals determined to be reasonably likely to be  
19 selected for a contract award for the purpose of clarification  
20 to assure full understanding of, and responsiveness to, the  
21 solicitation requirements. Offerors shall be accorded fair and



1 equal treatment with respect to any opportunity for discussion  
2 and revision of proposals, and revisions may be permitted after  
3 submissions and prior to award for the purpose of obtaining best  
4 and final offers. In conducting discussions, there shall be no  
5 disclosure of any information derived from proposals submitted  
6 by competing offerors.

7 (g) Award shall be made to the responsible offeror whose  
8 proposal is determined in writing to be the most advantageous,  
9 taking into consideration price and the evaluation factors set  
10 forth in the request for proposals. No other factors or  
11 criteria shall be used in the evaluation. The contract file  
12 shall contain the basis on which the award is made.

13 (h) In cases of awards made under this section, non-  
14 selected offerors may submit a written request for debriefing to  
15 the procurement officer within three working days after the  
16 posting of the award of the contract. Thereafter, the  
17 procurement officer shall provide the non-selected offeror a  
18 prompt debriefing. Any protest by the non-selected offeror  
19 pursuant to section 103D-701 following debriefing shall be filed  
20 in writing with the procurement officer within five working days  
21 after the date upon which the debriefing is completed.



1 (i) In addition to any other provisions of this section,  
2 construction projects may be solicited through a request for  
3 proposals to use any combination of the design-build [method,]  
4 or public-private partnership delivery methods; provided that:

5 (1) A request for proposals is issued to prequalify  
6 offerors to select a short list of no more than three  
7 responsible offerors, prior to the submittal of  
8 proposals; provided that the number of offerors to be  
9 selected for the short list shall be stated in the  
10 request for proposals and prompt notice is given to  
11 all offerors as to which offerors have been short-  
12 listed;

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

17 (3) The criteria for pre-qualification of offerors, design  
18 requirements, development documents, proposal  
19 evaluation criteria, terms of the payment of a  
20 conceptual design fee, or any other pertinent



1 information shall be stated in the request for  
2 proposals [-]; and

3 (4) Each request for proposals to use any combination of  
4 the design-build or public-private partnership methods  
5 shall:

6 (A) State the relative importance of:

7 (i) Demonstrated compliance with the design  
8 requirements;

9 (ii) Offeror qualifications;

10 (iii) Financial capacity;

11 (iv) Project schedule;

12 (v) Price or lifecycle price; and

13 (vi) Other factors, if any;

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

15 (i) With a contract price estimated to exceed  
16 \$10,000,000;

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

19 (iii) In other circumstances identified by the  
20 comptroller by rule,



1           to include and identify qualified and competent  
2           independent peer reviewer services, which shall  
3           be an additional evaluation factor in the award  
4           of the contract;

5           (C) Achieve initial approval from the governor, in  
6           the case of a state project, or the mayor, in the  
7           case of a county project, of a recommendation  
8           from the head of the purchasing agency to proceed  
9           with a public-private partnership and,  
10           thereafter, include responsible public-private  
11           partnership persons in important communications  
12           and meetings regarding the public-private  
13           partnership throughout the procurement process;  
14           and

15           (D) Achieve final approval from the director of  
16           finance and the comptroller, in the case of a  
17           state project, or the mayor, in the case of a  
18           county project, of a recommendation from the head  
19           of the purchasing agency to execute a public-  
20           private partnership contract.



1        (j) In addition to any other provisions of this section, a  
2 contract for delivery of a construction project procured using a  
3 public-private partnership method:

4        (1) Shall not be enforceable until it receives final  
5 approval under this section; and

6        (2) Shall specify, if an operational phase is part of the  
7 project delivery, the use of public worker union  
8 positions customarily and historically provided for  
9 such projects.

10       (k) Notwithstanding any other provisions of this section  
11 to the contrary, the purchasing agency may engage in  
12 negotiations with the highest-ranked offeror in a public-private  
13 partnership procurement and may negotiate:

14       (1) The statement of work;

15       (2) The contract price as it is affected by negotiating  
16 the statement of work; and

17       (3) Any other terms and conditions reasonably related to  
18 those expressly authorized for negotiation in the  
19 solicitation of public-private partnership proposals.

20       Accordingly, offerors shall not submit, and the public  
21 entity shall not accept, for negotiation any terms and



1 conditions that are not reasonably related to those  
 2 expressly authorized for negotiation in the  
 3 solicitation of public-private partnership proposals.  
 4 In conducting negotiations, there shall be no  
 5 disclosure of any information derived from proposals  
 6 submitted by competing offerors.

7 (1) Notwithstanding any other provisions of this section  
 8 to the contrary, a purchasing agency may terminate negotiations  
 9 with an offeror of a public-private partnership if such  
 10 negotiations are not successful and commence negotiations with  
 11 the next highest scoring offeror, and continue this process  
 12 until the public entity has:

13 (1) Determined to award the contract to the offeror with  
 14 whom it is currently negotiating;

15 (2) Determined to continue negotiations with the offerors;  
 16 or

17 (3) Determined to cancel the solicitation of the public-  
 18 private partnership."

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 or maintenance  
17 services as elements of public-private partnership procurements:~~

18           (1) Operations period surety bonds that secure the  
19 performance of the contractor's operations and  
20 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 and one additional



1 position; provided that these positions may be added  
2 to the position count for the department of accounting  
3 and general services and shall be appointed by the  
4 comptroller and exempt from chapter 76, Hawaii Revised  
5 Statutes, to carry out the 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 Office of Public-Private Partnership Coordinator. Adds public-private partnership project delivery methods to the Procurement Code and related conditions and requirements. Requires an annual report. Appropriates funds. (HB2581 HD2)

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

