
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,
3 especially in light of the economic impacts of the COVID-19
4 pandemic, making it more important to partner with the private
5 sector and reform limited governmental resources. Public-
6 private partnership projects will help the state and local
7 governments in reforming certain capital improvement projects in
8 a more cost-effective and efficient manner.

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



1 a public-private partnership is to provide the best value and
2 performance in its delivery of assets and services for the
3 benefit of the general public.

4 The purpose of this Act is to:

5 (1) Establish the office of public-private partnerships to
6 reform state and county agencies with the use of best
7 practices in contracting for public-private
8 partnerships;

9 (2) Clarify that the intent of a public-private
10 partnership is not to dilute or circumnavigate the
11 home rule of any county or community oversight over
12 its traditional functions; and

13 (3) Add design-build-operate-maintain and design-build-
14 finance-operate-maintain project delivery methods to
15 the Procurement Code and related conditions and
16 requirements.

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



1 **"PART . OFFICE OF PUBLIC-PRIVATE PARTNERSHIP**
2 **§103- Office of public-private partnership; established;**
3 **state public-private partnership coordinator.** There is
4 established within the department of accounting and general
5 services an office of public-private partnership to support
6 state and county agencies in the use of best practices in
7 contracting for public-private partnerships to deliver and
8 finance public projects at a lower lifecycle cost and more
9 diversified risk than traditional delivery processes. The
10 comptroller may appoint a public-private partnership coordinator
11 who shall be exempted from chapter 76, to administer the office.
12 **§103- Duties.** The office of public-private partnership
13 shall:
14 (1) Create a strategic plan for the provision of advisory
15 services to state and county agencies that includes:
16 (A) Objectives and goals for the office of public-
17 private partnership and criteria to measure the
18 objectives and goals;
19 (B) A website for maintaining the status of public-
20 private projects and best practice resources that



- 1 meet the office of public-private partnership's
2 objectives and goals;
- 3 (C) A framework for retention of qualified legal,
4 financial, and technical advisors that can assist
5 in the delivery of services contemplated by this
6 part; and
- 7 (D) The necessary funding to establish and operate
8 the office of public-private partnership and fee
9 structures for advisory services to maintain the
10 office of public-private partnership;
- 11 (2) Coordinate collaboration among state and county
12 agencies to analyze the value of potential public-
13 private partnership delivery over other delivery
14 methods permitted in chapter 103D and other needs and
15 goals of the state and county agencies;
- 16 (3) Provide to the purchasing agency best practice
17 processes for analysis of and contracting for public
18 private partnerships, including modeling the potential
19 economic benefits and financial outcomes and contract
20 terms and conditions that will achieve those economic
21 benefits and financial outcomes;



- 1 (4) Create and maintain an analysis report of the value of
2 public-private partnership delivery over traditional
3 delivery for each public-private partnership project
4 that shall include:
5 (A) Proposed economic benefits;
6 (B) Potential financial outcomes;
7 (C) Contract terms and conditions; and
8 (D) Social benefits;
- 9 (5) Develop, analyze, and implement plans for future
10 public-private partnership projects, including
11 objectives and criteria to measure the accomplishment
12 of objectives, programs through which the objectives
13 are to be attained, and financial requirements for
14 public resources based on the needs and goals of the
15 State;
- 16 (6) Assist state and county agencies, and their respective
17 purchasing agencies, that have an interest in public-
18 private partnership projects with the legal authority
19 to coordinate activities that involve cross-agency
20 responsibilities and encourage the timely and
21 effective implementation and completion of project



- 1 milestones and objectives among multiple governmental
2 agencies;
- 3 (7) Develop educational and advisory programs that enhance
4 the public-private project procurement process to
5 continuously encourage best practice procurement of
6 public-private partnership projects that will result
7 in improved infrastructure and government services in
8 the State;
- 9 (8) Assist state and county agencies in formulating
10 specific program and procurement documents to solicit
11 public-private partnerships; and
- 12 (9) Undertake the program established in section 26-6
13 relating to centralized engineering and office leasing
14 services, to facilitate facility agreements between
15 the State and private investors for the sale of
16 facilities including operation and maintenance of
17 public buildings.

18 **§103- Public hearing.** The office of public-private
19 partnerships shall hold a public hearing on all proposed public-
20 private partnerships, public notice of which shall be given no



1 less than twenty days before the date of the hearing and prior
2 to the approval of any public-private partnership agreement.

3 **§103- Intent of public-private partnership.** Nothing in
4 this part shall be construed to dilute or circumnavigate the
5 home rule of any county or community oversight over its
6 traditional functions."

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

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

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

19 "Independent peer reviewer services" means additional
20 professional services provided to the purchasing agency in
21 design-build-operate-maintain or design-build-finance-operate-



1 maintain procurements to confirm that the key elements of the
2 professional engineering and architectural design provided by
3 the contractor conform to the applicable standard of care.

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

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

18 "(i) In addition to any other provisions of this section,
19 construction projects may be solicited through a request for
20 proposals to use the design-build, design-build-operate-



1 maintain, or design-build-finance-operate-maintain project
2 delivery method; provided that:

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

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

15 (3) The criteria for pre-qualification of offerors, design
16 requirements, development documents, proposal
17 evaluation criteria, terms of the payment of a
18 conceptual design fee, or any other pertinent
19 information shall be stated in the request for
20 proposals.



- 1 (4) Each request for proposals to use the design-build-
2 operate-maintain or design-build-finance-operate-
3 maintain project delivery method shall:
- 4 (A) State the relative importance of:
- 5 (i) Demonstrated compliance with the design
6 requirements;
- 7 (ii) Offeror qualifications;
- 8 (iii) Financial capacity;
- 9 (iv) Project schedule;
- 10 (v) Price or lifecycle price; and
- 11 (vi) Other factors, if any; and
- 12 (B) Require each offeror, for a project:
- 13 (i) With a contract price estimated to exceed
14 \$10,000,000;
- 15 (ii) With a contract period of operations and
16 maintenance of at least ten years; or
- 17 (iii) In other circumstances identified by the
18 comptroller by rule,
- 19 to include and identify qualified and competent
20 independent peer reviewer services, which shall



1 be an additional evaluation factor in the award
2 of the contract."

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

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

16 (b) [~~Bid security shall be in an amount equal to at least~~
17 ~~five per cent of the amount of the bid.~~] In addition to other
18 requirements of this section, one or more of the following forms
19 of security shall be required to assure the timely, faithful,
20 and uninterrupted provision of operations and maintenance



1 services as elements of design-build-operate-maintain or design-
2 build-finance-operate-maintain services:

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

16 SECTION 6. There is appropriated out of the general
17 revenues of the State of Hawaii the sum of \$ or so
18 much thereof as may be necessary for fiscal year 2021-2022 and
19 the same sum or so much thereof as may be necessary for fiscal
20 year 2022-2023 to:



H.B. NO. 1212

- 1 (1) Establish and operate the office of public-private
2 partnership; and
- 3 (2) Establish and fill the state public-private
4 partnership coordinator position; provided that the
5 position may be added to the position count for the
6 department of accounting and general services and
7 shall be appointed by the comptroller and exempt from
8 chapter 76, Hawaii Revised Statutes, to carry out the
9 purposes of this Act.

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

12 SECTION 7. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 8. This Act shall take effect on July 1, 2021.

15

INTRODUCED BY: _____



JAN 26 2021



H.B. NO. 1212

Report Title:

Office of Public-Private Partnerships; Procurement Code;
Appropriation

Description:

Establishes the office of public-private partnerships and the position of state public-private partnerships coordinator. Adds design-build-operate-maintain and design-build-finance-operate-maintain project delivery methods to the Procurement Code and related conditions and requirements. Appropriates funds.

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

