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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. The legislature finds that Hawaii is faced with  
2 limited if not declining government funding. This trend is  
3 expected to continue, especially in light of the economic  
4 impacts of the COVID-19 pandemic, making it more important to  
5 partner with the private sector and reform limited governmental  
6 resources. Public-private partnership projects will help the  
7 state and local governments in reforming certain capital  
8 improvement projects in a more cost-effective and efficient  
9 manner.

10           The legislature further finds that a public-private  
11 partnership is a contractual agreement between a public agency  
12 and a private entity that allows for a greater risk transfer to  
13 the private sector in the delivery and financing of a public  
14 project in a manner that creates greater value for the public  
15 than traditional delivery methods. In a public-private  
16 partnership project, the public agency retains ownership and  
17 substantial control but transfers responsibility to the private



1 partner under a single contract, which often is a long-term  
2 contract involving lifecycle cost risk. The focus of a public-  
3 private partnership is to provide the best value and performance  
4 in its delivery of assets and services for the benefit of the  
5 general public.

6 The purpose of this Act is to:

- 7 (1) Establish the office of public-private partnerships to  
8 reform state agencies with the use of best practices  
9 in contracting for public-private partnerships;
- 10 (2) Clarify that the intent of a public-private  
11 partnership is not to dilute or circumnavigate the  
12 home rule of any county or community oversight over  
13 its traditional functions; and
- 14 (3) Add design-build-finance-maintain, design-build-  
15 operate-maintain, and design-build-finance-operate-  
16 maintain project delivery methods to the procurement  
17 code and related conditions and requirements.

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



1           **"PART . OFFICE OF PUBLIC-PRIVATE PARTNERSHIP**

2           **§103- Office of public-private partnership;**

3           **established; state public-private partnership coordinator.**

4           There is established within the department of accounting and  
5           general services an office of public-private partnership to  
6           support state 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 exempt 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 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 who 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 agencies to  
12 analyze the value of potential public-private  
13 partnership delivery over other delivery methods  
14 permitted in chapter 103D and other needs and goals of  
15 the state 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 agencies, and their respective purchasing
- 17          agencies, that have an interest in public-private
- 18          partnership projects with the legal authority to
- 19          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; and

9 (8) Assist state agencies in formulating specific program  
10 and procurement documents to solicit public-private  
11 partnerships.

12 **§103- Public hearing.** The office of public-private  
13 partnership shall hold a public hearing on all proposed public-  
14 private partnerships, public notice of which shall be given no  
15 less than twenty days before the date of the hearing and prior  
16 to the approval of any public-private partnership agreement.

17 **§103- Intent of public-private partnership.** Nothing in  
18 this part shall be construed to dilute or circumnavigate the  
19 home rule of any county or community oversight over its  
20 traditional functions."



1 SECTION 3. Section 103D-104, Hawaii Revised Statutes, is  
2 amended by adding six new definitions to be appropriately  
3 inserted and to read as follows:

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

8 "Design-build-finance-operate-maintain" means a project  
9 delivery method in which the purchasing agency enters into a  
10 single contract for design, construction, financing, operation,  
11 and maintenance of an infrastructure facility over a  
12 contractually defined period. No purchasing agency funds shall  
13 be appropriated to pay for any part of the services provided by  
14 the contractor during the contract 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, operation, and maintenance of  
18 an infrastructure facility over a contractually defined period.  
19 All or a portion of the funds required to pay for the services  
20 provided by the contractor during the contract period shall  
21 either be appropriated by the purchasing agency prior to award



1 of the contract or secured by the purchasing agency through  
2 fare, toll, or user charges.

3 "Independent peer reviewer services" means additional  
4 architectural and engineering services provided to the  
5 purchasing agency in design-build-finance-maintain, design-  
6 build-operate-maintain, or design-build-finance-operate-maintain  
7 procurements to confirm that the key elements of the  
8 professional engineering and architectural design provided by  
9 the contractor conform to the applicable standard of care.

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



1 "Infrastructure facility" also means vertical and horizontal  
2 public infrastructure, including but not limited to stadiums,  
3 convention centers, entertainment districts, and similar  
4 facilities publicly owned and operated, and that contribute to  
5 the network of essential facilities and systems that facilitate  
6 the economy and enhance the surrounding affected community's  
7 standard of living."

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

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

15 (1) A request for proposals is issued to prequalify  
16 offerors to select a short list of no more than three  
17 responsible offerors, prior to the submittal of  
18 proposals; provided that the number of offerors to be  
19 selected for the short list shall be stated in the  
20 request for proposals and prompt notice is given to



1 all offerors as to which offerors have been short-  
2 listed;

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

7 (3) The criteria for pre-qualification of offerors, design  
8 requirements, development documents, proposal  
9 evaluation criteria, terms of the payment of a  
10 conceptual design fee, or any other pertinent  
11 information shall be stated in the request for  
12 proposals.

13 (4) Each request for proposal to use the design-build,  
14 design-build-finance-maintain, design-build-operate-  
15 maintain, or design-build-finance-operate-maintain  
16 project delivery method shall describe the essential  
17 features of each project, including anticipated  
18 schedule, and estimated budget for design,  
19 construction, operation, and maintenance."

20 SECTION 5. There is appropriated out of the general  
21 revenues of the State of Hawaii the sum of \$ or so



1 much thereof as may be necessary for fiscal year 2021-2022 and  
2 the same sum or so much thereof as may be necessary for fiscal  
3 year 2022-2023 to:

- 4 (1) Establish and operate the office of public-private  
5 partnership;
- 6 (2) Establish and fill the state public-private  
7 partnership coordinator position; provided that the  
8 position may be added to the position count for the  
9 department of accounting and general services and  
10 shall be appointed by the comptroller and exempt from  
11 chapter 76, Hawaii Revised Statutes, to carry out the  
12 purposes of this Act; and
- 13 (3) Establish and fill positions subordinate to  
14 the state public-private coordinator; provided that  
15 the position may be added to the position count for  
16 the department of accounting and general services and  
17 shall be exempt from chapter 76, Hawaii Revised  
18 Statutes, to assist the state public-private  
19 partnership coordinator in carrying out the purposes  
20 of this Act.



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

3           SECTION 6. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5           SECTION 7. This Act shall take effect on July 1, 2112.



H.B. NO. 1212  
H.D. 1

**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-finance-maintain, design-build-operate-maintain, and design-build-finance-operate-maintain project delivery methods to the state procurement code and related conditions and requirements. Appropriates funds. Effective 7/1/2112. (HD1)

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