

# **HB 2581**

## **RELATING TO PUBLIC-PRIVATE PARTNERSHIPS**

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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;



- 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;



- 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, 2018.

11

INTRODUCED BY:

Madame K. Parker

T. Adams  
Linda Chizome  
[Signature]  
Maryanne  
[Signature]  
Bert Kobayashi  
Jake O'm

Dir. 2  
[Signature]  
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Cindy Evans  
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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.

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



**HB 2581**

**TESTIMONY**



**DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT & TOURISM**

DAVID Y. IGE  
GOVERNOR

LUIS P. SALAVERIA  
DIRECTOR

MARY ALICE EVANS  
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813  
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Statement of  
**LUIS P. SALAVERIA**  
**Director**  
Department of Business, Economic Development, and Tourism  
before the  
**HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT**

Thursday, February 1, 2018  
9:00 a.m.  
State Capitol, Conference Room 309

in consideration of

**HB 2581**  
**RELATING TO PUBLIC-PRIVATE PARTNERSHIPS.**

Chair Johanson, Vice Chair Holt, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) supports the intent of HB 2581, which would establish an Office of Public-Private Partnership in the Department of Accounting and General Services and amends Chapter 103D to clarify the allowance of public-private partnerships relative to design-build-finance-operate-maintain contracting arrangements for public projects.

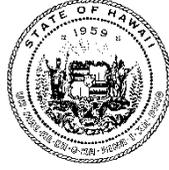
We prefer the Administration's bill, HB2312 – Relating to Alternative Project Delivery. However, if you are so inclined to move this bill forward we would like to recommend amending the measure to alleviate DAGS' concerns.

Measure would require implementation under existing statutes. Chapters 171 and 103D of the HRS may contain provisions that could hinder the delivery of some projects.

There does not appear to be an approval process for the projects.

Thank you for the opportunity to provide comments on this measure.

DAVID Y. IGE  
GOVERNOR



RODERICK K. BECKER  
Comptroller

AUDREY HIDANO  
Deputy Comptroller

**STATE OF HAWAII**  
**DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES**

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

TESIMONY OF  
RODERICK K. BECKER, COMPTROLLER  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
TO THE  
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT  
ON  
THURSDAY, FEBRUARY 1, 2018  
9:00 A.M.  
CONFERENCE ROOM 309

H.B. 2581

RELATING TO PUBLIC-PRIVATE PARTNERSHIPS.

Chair Johanson, Vice Chair Holt, and members of the Committee, thank you for the opportunity to submit testimony on H.B. 2581.

The Department of Accounting and General Services (DAGS) offers the following comments for the committee's consideration.

H.B. 2581 will establish the Office of Public-Private Partnership and the position of State Public-Private Coordinator within DAGS to provide support in contracting for public-private partnerships to deliver and finance public projects theoretically at a lower lifecycle cost and more diversified risk than the traditional delivery processes. While the Department supports the intent of this measure to deliver public projects in a more efficient manner, we would like to highlight some areas of concern:

- The measure would require implementation under existing statutes. Chapters 171 and 103D of the Hawaii Revised Statutes may contain provisions that could hinder the delivery of some projects.
- There does not appear to be an approval process for the projects.

The Administration introduced H.B. 2312 (and companion bill S.B. 2739) Relating to Alternative Project Delivery to provide an alternative method for State government to finance and deliver public projects on time and on budget. H.B. 2312 allows the State to elect alternative method of managing public lands and awarding contracts that is separate and apart from Chapters 171 and 103D of Hawaii Revised Statutes; establishes an alternative project delivery program to assist public entities with the development, solicitation, evaluation, award, and delivery of qualified projects; and maintains oversight by the Director of Finance, the Comptroller, and the Attorney General.

DAGS believes this combination of basic features allows for the most flexible means with which to explore and develop partnerships that would be most advantageous to the State while providing guidance to agencies wishing to engage in alternative project delivery and simultaneously protecting the best interests of the State. Within this framework, all existing and future forms of public-private partnerships may be explored and implemented to finance and deliver public projects on time, on budget, and in compliance with, among other laws, public labor union laws, prevailing wage laws, environmental and historic preservation laws, and all permitting laws.

Thank you for the opportunity to provide comments on this matter.



Testimony by:  
JADE T. BUTAY  
INTERIM DIRECTOR

Deputy Directors  
ROY CATALANI  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN  
DARRELL T. YOUNG

IN REPLY REFER TO:

**STATE OF HAWAII**  
**DEPARTMENT OF TRANSPORTATION**  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

February 1, 2018  
9:00 a.m.  
State Capitol, Room 309

**H.B. 2581**  
**RELATING TO PUBLIC PRIVATE PARTNERSHIPS**

House Committee on Labor and Public Employment

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The Department of Transportation (DOT) **supports** the intent of this bill which proposes to establish the Office of Public-Private Partnership and the position of State Public-Private Partnership Coordinator within the Department of Accounting and General Services (DAGS) as well as add two project delivery methods to the Procurement Code (HRS 103D) under the Competitive Sealed Proposals Method of Procurement.

Procurement challenges and contract administration challenges seem to show the need for a procuring agency to have different options for project delivery. Creating a coordinator and a state office providing the support and guidance to the procuring agency to opt for this method may help in its successful implementation.

This proposed bill should be reviewed together with the proposed Alternative Project Delivery Bills (SB2739 and HB2312) which as proposed, would allow the procuring agency to contract outside of HRS 103D and HRS 171<sup>1</sup> (Conservation and Resources Laws).

Thank you for the opportunity to provide testimony.

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<sup>1</sup> Recommend a revision to proposed bill to delete excepting HRS 171 because it would be too sweeping to include in Procurement Code.

January 31, 2018

In consideration of **HB2581 Relating to Public-Private Partnerships**

Dear Members of the Legislature;

I am writing to urge you to support HB2581, Revisions to Hawaii Statutes which would create an Office of Public-Private Partnerships (PPPs) and allow Design-build-finance-operate-maintain and Design-build-operate-maintain as acceptable means for project delivery. This bill would spur private investment in public building infrastructure. PPPs have been critical as a means of delivering projects on time, on budget, and with greater value to taxpayers over the long-term.

PPP projects such as the Long Beach Courthouse, the Long Beach Civic Center and the expansion of the University of California Merced campus through Project 2020 are strong examples which have not only saved millions of dollars but have moved forward much faster thanks to the PPP delivery approach.

The public-private partnership deal allows for a greater risk transfer to the private sector in the delivery of public infrastructure which creates greater value for the public than traditional delivery methods. By the nature of their long-term contract, PPPs employ lifecycle design principles that preserve asset value for the State because the facilities are returned at a predefined condition which ensures many years of useful life at the end of term. The performance guaranteed contract also allow greater levels of service delivery and response by operations staff. Key risks associated with the availability and quality of space will be transferred to the PPP operator and under terms of the project agreement will face deductions to its monthly payments if it does not meet the performance criteria. It is important to note that the public agency retains ownership throughout the contract, the focus of a PPP is to provide the best value and performance in its delivery of assets and services for the benefit of the general public.

We urge you to pass HB2581 as a new tool for the State to rebuild its critical public infrastructure. Public-private partnerships have proven to deliver projects faster, cheaper, and with greater performance over the long-term.

Sincerely,



Claudio Andreetta  
Director, P3 Business Development  
Johnson Controls



**Testimony to the House Committee on Labor & Public Employment  
Thursday, February 1, 2018  
9:00 am  
State Capitol, Room 309**

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GLADYS MARRONE  
BIA-HAWAII

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CONSTRUCTION CO. INC.

ADDRESS:  
94-487 AKOKI STREET SUITE 213  
WAIPAHU, HAWAII 96797  
P 808.847.4666

**RE: H.B. 2581 – Relating to Public Private Partnerships**

Chair Johanson, Vice-Chair Holt, & members of the Committee:

My name is Gladys Quinto Marrone, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii supports the intent of H.B 2581, which proposes to establish the Office of Public-Private Partnership and the position of State Public-Private Partnership Coordinator. The bill would add design-build-operate-maintain and design-build-finance-operate-maintain project delivery methods to the Procurement Code and related conditions and requirements.

As we understand it, Public-Private-Partnerships (P3's) come in a variety of different delivery methods. For example, the state currently engages in energy performance contracts which are procured under section 103 HRS. There are other leases, lease-like, and concession arrangements such as:

- Lease-Develop-Operate: the private party leases an existing facility from a public agency; invests its own capital to renovate, modernize, and/or expand the facility; and then operates it under a lease contract with the public agency.
- Lease Lease-backs: Public agency leases real property to a private partner for a stipulated price and the private partner then must design, build, finance and/or maintain improvements on the property, for which the public partner will make ongoing lease payments (capital lease purchase).
- Design-Build-Finance-Operate-Maintain: With the Design-Build-Finance-Operate-Maintain (DBFOM) approach, responsibilities for designing, building, financing, operating and maintaining are bundled together and transferred to private sector partners. Repayment is typically in the form of an availability payment.
- Concession arrangements can vary and may also include a lease. May be applied to both greenfield and existing facilities. Examples include:
- DBFM: A single contract is awarded for the design, construction and maintenance of a capital improvement. Title to the facility remains with the public sector
- DBFO: A single contract is awarded for the design, construction, and operation of a capital improvement. Title to the facility remains with the public sector
- Design-Build-Finance-Operate-Maintain: A single contract is awarded for the design, construction, financing, operation and maintenance of a capital improvement. Title usually remains with the public sector. Repayment is in the form of an availability payment or on the basis of



We believe the bill also needs to include language that would allow for the lease or concession of state owned facilities and/or infrastructure and also include land.

We understand that P3's are effectively a hybrid between the procurement of services (i.e. Chapter 103D HRS) and the leasing of real property (i.e. Chapter 171 HRS), we believe a new section of the law should be created rather than amend either 103D or 171 HRS.

We support the intent of H.B. 2581, but would suggest that language that would allow for leases, lease-like, and concession arrangements be added to the bill.

We appreciate the opportunity to express our views on this matter.



**Testimony to the House Committee on Labor & Public Employment  
Thursday, February 1, 2018 at 9:00 A.M.  
Conference Room 309, State Capitol**

**RE: HOUSE BILL 2581 RELATING TO PUBLIC PRIVATE PARTNERSHIPS**

Chair Johanson, Vice Chair Holt, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") supports the intent of HB 2581, which proposes to establish the Office of Public-Private Partnership and the position of State Public-Private Partnership Coordinator. The bill would add design-build-operate-maintain and design-build-finance-operate-maintain project delivery methods to the Procurement Code and related conditions and requirements.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

As we understand it, Public-Private-Partnerships (P3s) come in a variety of different delivery methods. For example, the state currently engages in energy performance contracts which are procured under section 103 HRS. There are other leases, lease-like, and concession arrangements such as:

- Lease-Develop-Operate: the private party leases an existing facility from a public agency; invests its own capital to renovate, modernize, and/or expand the facility; and then operates it under a lease contract with the public agency;
- Lease-Leasebacks: a public agency leases real property to a private partner for a stipulated price and the private partner then must design, build, finance and/or maintain improvements on the property, for which the public partner will make ongoing lease payments (capital lease purchase); and
- Design-Build-Finance-Operate-Maintain: With the Design-Build-Finance-Operate-Maintain (DBFOM) approach, responsibilities for designing, building, financing, operating and maintaining are bundled together and transferred to private sector partners. Repayment is typically in the form of an availability payment.

We believe the bill also needs to include language that would allow for the lease or concession of state owned facilities and/or infrastructure and include land.



# Chamber *of* Commerce HAWAII

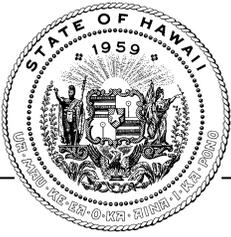
*The Voice of Business*

We understand that P3s are effectively a hybrid between the procurement of services (i.e. Chapter 103D HRS) and the leasing of real property (i.e. Chapter 171 HRS), we believe a new section of the law should be created rather than amend either 103D or 171 HRS.

We support the intent of HB 2581, but would suggest that language that would allow for leases, lease-like, and concession arrangements be added to the bill. Thank you for the opportunity to testify.

**HB 2581**

**LATE  
TESTIMONY**



# OFFICE OF PLANNING STATE OF HAWAII

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DAVID Y. IGE  
GOVERNOR

LEO R. ASUNCION  
DIRECTOR  
OFFICE OF PLANNING

**LATE**

Statement of  
**LEO R. ASUNCION**  
Director, Office of Planning  
before the  
**HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT**  
Thursday, February 1, 2018  
9:00 AM  
State Capitol, Conference Room 309

in consideration of  
**HB 2581**  
**RELATING TO PUBLIC-PRIVATE PARTNERSHIPS.**

Chair Ling Johanson, Vice Chair Holt, and Members of the House Committee on Labor & Public Employment.

The Office of Planning (OP) supports HB 2581, which establishes an Office of Public-Private Partnership in the Department of Accounting and General Services and amends Chapter 103D, the State Procurement Code to clarify the allowance of public-private partnerships (P3) relative to design-build-finance-operate-maintain contracting arrangements for public projects. The bill establishes a P3 Coordinator who will support and assist State and county agencies in pursuing best practices for undertaking P3 project delivery.

As lead agency for State Transit-Oriented Development (TOD) and co-chair of the Hawaii Interagency Council for Transit-Oriented Development (TOD Council), OP has been actively promoting the use of public-private partnerships through educational and informational workshops and meetings over the past year. Experience with public-private partnerships nationally and internationally shows that using this approach delivers projects on-time, under budget, and exceeds quality expectations. This contracting approach provides the public agency with cost certainty and transfers the risks of cost, schedule and performance to the private sector while maintaining public ownership of the asset.

In the TOD Council's *State TOD Strategic Plan* of December 2017, actions items recommended to improve TOD implementation include "Support legislation and funding to establish a Public-Private Partnership Office", and authorize standards of practice for P3 or alternative or innovative financing delivery systems. This bill does just that.

Accordingly, we support this measure and urge your favorable consideration. Thank you for this opportunity to testify.

DAVID Y. IGE  
GOVERNOR



SARAH ALLEN  
ADMINISTRATOR  
MARA SMITH  
ASSISTANT ADMINISTRATOR



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TESTIMONY  
OF  
SARAH ALLEN, ADMINISTRATOR  
STATE PROCUREMENT OFFICE  
  
TO THE HOUSE COMMITTEE  
ON  
LABOR & PUBLIC EMPLOYMENT  
February 1, 2018, 9:00 AM

HOUSE BILL 2581  
RELATING TO PUBLIC-PRIVATE PARTNERSHIPS

Chair Johanson, Vice Chair Holt, and members of the committee, thank you for the opportunity to submit comments on HB 2581.

The State Procurement Office (SPO) supports the intent of this measure. The SPO views the ability to enter into public-private partnerships (P3) as a creative tool for government to contract to deliver and finance State projects. HB 2581 amends various sections within HRS Chapter 103D to add this public-private partnership process. Among public procurement's guiding principles are value and transparency. Value ensures prudent use of taxpayer dollars. Transparency ensures accountability and system integrity, which in turn, fosters public confidence. These guiding principles are built into chapter 103D, our Hawaii State Procurement Code (the Code).

Special innovative procurements, like public-private partnerships, allow the State to procure when unusual or unique circumstances exist that require other than full competition, when standard procurement procedures would be contrary to the public interest. The verbiage in this Bill can be found in the American Bar Association (ABA) 2007 Model Code for Public Infrastructure Procurement (MC PIP), and it is also recommended by The Association for the Improvement of American Infrastructure (AIAI), the leading education and advocacy group focused on rebuilding America's infrastructure through public-private partnerships.

The Procurement Policy Board (PPB) in turn has the authority and responsibility to adopt rules that are consistent with each section of the Code to govern the procurement, management, and control of the goods, services or construction being procured. The SPO will also need to partner with the Office of public-private partnership to develop policy and procedures, and

actively assist in the procurement side of P3s. The SPO therefore requests one exempt FTE be assigned to the SPO for these reasons at approximately \$85,000 per year. We believe the office of public-private partnerships (OPP) should receive a minimum of two exempt FTEs.

The SPO would like to offer the following additional comments specific to the bill verbiage:

1. Page 8, Line 20 states: "(A) State the relative importance of:"

The SPO believes the intent of this statement is to have the resulting list be part of the evaluation criteria as opposed to simply a summary statement in a solicitation that is not attributed to any real value expectation of the offeror's proposal. Therefore, we recommend the following addition to this phrase:

Replace with: "(A) For evaluation purposes, state the relative important of:"

2. Page 9, Line13-18 states: "(iii) In other circumstances identified by the comptroller by rule, to include and identify qualified and competent independent peer reviewer services, which shall be an additional evaluation factor in the award of the contract."

The SPO is concerned that requiring the offeror to include and identify an independent peer reviewer services may not necessarily be independent. How would this be vetted? It could be perceived as a collusive measure. SPO would recommend this issue be covered under Rules.

In addition, this bill is written for all state departments and political sub-divisions. Each agency will have their own team working on this effort with support from the OPP. The Rules associated with the Procurement Code HRS 103D are developed and approved by the Procurement Policy Board. The Comptroller should not be specifically noted as the identifier for all P3s; instead this should be dependent on the makeup of the team and the final approvers. Therefore, we recommend the following addition to this phrase:

Replace with: "In other circumstances identified by the state or county agency team."

If the intent is to not allow flexibility, but to have viable, additional reasons added to Rules, this should be developed by the OPP in collaboration with the SPO, who will present it to the PPB, of which the Comptroller is a mandated member. Therefore, we would recommend the following addition to this phrase:

Replace with: "In other circumstances identified in Rules."

Thank you.



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
AFSCME Local 152, AFL-CIO

**RANDY PERREIRA**, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Ninth Legislature, State of Hawaii  
House of Representatives  
Committee on Labor and Public Employment

**LATE**

Testimony by  
Hawaii Government Employees Association

February 1, 2017

H.B. 2581 – RELATING TO PUBLIC-PRIVATE PARTNERSHIPS

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO raises strong concerns over the intent of H.B. 2581 which establishes and appropriates funding for the Office of Public-Private Partnership within the Department of Accounting and General Services to plan and coordinate collaboration amongst state and county agencies to develop and implement public-private partnership projects and adds “design-build-operate-maintain” and “design-build-finance-operate-maintain” project delivery methods to the Procurement Code.

While we acknowledge that there can be benefit to certain public-private partnerships (P3s) in securing and leveraging private funds for the public’s use, there are also many examples of inefficiencies, failures and negative impacts to public assets and the public’s trust in government as a result of P3s. The privatization of the Maui Region of the Hawaii Health Systems Corporation was advertised as a necessary public-private partnership that would benefit everyone, yet it not only continues to drastically disrupt working families statewide but will also cost tax payers hundreds of millions of dollars to implement and operate.

As drafted, we respectfully raise strong concerns over the unintended consequences of establishing any office that has carte blanche authority over its own objectives, goals, criteria, and measurements of efficacy. In order to ensure the public’s trust, there must be accountability and oversight for every agency that expends tax payer dollars, independent of political shifts or the whims of a new Administration. Additionally, we raise strong concerns over the implications of adding the definitions of “design-build-operate-maintain” and “design-build-finance-operate-maintain,” which will enable the state to privately operate any and all of its facilities, including public schools, prisons, hospitals, water treatment plants, collection systems, landfills, public roads, parking lots, airports, and highways, among others. H.B. 2581 is overly broad and all encompassing, and we prefer policy that strictly limits the scope of P3s to securing a fusion of private sector funding.

Before we consider committing funds and state agency efforts for another “new fix,” we respectfully suggest the Legislature prioritize its efforts in determining areas where government inefficiency is resulting in lost resources and revenues, as well as rely on the expertise and suggestions of its workforce.

Thank you for the opportunity to raise concerns on the broad scope of H.B. 2581.

Respectfully submitted,

Randy Perreira  
Executive Director



**LATE**

Email: [communications@ulupono.com](mailto:communications@ulupono.com)

HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT  
Thursday, February 1, 2018 — 9:00 a.m. — Room 309

**Ulupono Initiative Strongly Supports HB 2581, Relating to Public-Private Partnerships**

Dear Chair Johanson, Vice Chair Holt, and Members of the Committee:

My name is Murray Clay and I am Managing Partner of the Ulupono Initiative, a Hawai'i-based impact investment firm that strives to improve the quality of life for the people of Hawai'i by working toward solutions that create more locally produced food; increase affordable, clean, renewable energy; and better management of waste and fresh water. Ulupono believes that self-sufficiency is essential to our future prosperity and will help shape a future where economic progress and mission-focused impact can work hand in hand.

**Ulupono strongly supports HB 2581**, which establishes the Office of Public-Private Partnership (P3), the Coordinator position, and establishes new delivery methods, because it aligns with our goals.

The State of Hawai'i has many infrastructure needs, yet often finds itself faced with complex projects that are over budget, not on time, or not built or maintained in a quality manner. One solution is to work with the private sector on planning, building, financing, operating, and maintaining projects. Yet, these complex deals require expertise in bridging workable and financially appropriate structures for the benefit of all parties. The funding for an Office of Public-Private Partnership and staff is vital if Hawai'i wants to participate in public-private partnerships.

At conferences and thru our consultants, we have heard that private sector financiers often want to work with a local dedicated P3 office that can assist them in navigating that locale's needs, laws, and politics. Dedicated staff would provide an important liaison in attracting private sector financing interest while also encouraging consistent out of the box thinking from within the government bureaucracy.

In late 2016, Ulupono became interested in P3s as federal funding for the rail project was threatened to be revoked. As we learned more about public-private partnerships and subsequently commissioned a study conducted by Jones Lang LaSalle to look for alternative

*Investing in a Sustainable Hawai'i*

financing solutions for the rail project. After reviewing the analysis, we became a proponent of P3 structures as being a more effective way to conduct business for certain large-scale government infrastructure projects. For example, we believe if the Honolulu rail project used a P3 structure such as design-build-finance-operate-maintain at the project's beginnings, the City and County of Honolulu would have significantly reduced its financial exposure and likely improved project delivery and accountability. In addition, according to the study's findings, the total cost for the rail project increases by \$114 million for every year of delay. The City would have been able to lock in many of their costs, which greatly assists lawmakers for future budget planning purposes. Currently, the Honolulu Area for Rapid Transit board is supportive of P3s and has hired Ernst and Young to further look into P3 solutions for the rail project.

As costs in Hawai'i continue to rise at a rapid rate, existing infrastructure continues to age, and government needing to meet expensive long-term obligations, it seems logical that State government would want to setup structures and personnel support alternative delivery methods such as P3. Furthermore, under the current Trump administration, it appears federal funding for infrastructure projects might favor projects that incorporate private sector funding. Without building up internal State government P3 expertise and experience, Hawai'i could risk losing large amounts of federal funding over the coming years.

From the rail study, we also discovered that it would be helpful for lawmakers to establish in statute or administrative rules that the State is able to use P3 structures such as design-build-operate-maintain and design-build-finance-operate-maintain. To some stakeholders, there appears to be a gray area if these two P3 structures are currently allowed.

Thank you for this opportunity to testify.

Respectfully,

Murray Clay  
Managing Partner

**LATE**

**LATE** TESTIMONY for Measure: 2581

<b>Committee</b>	LAB
<b>Committee Referrals</b>	LAB, EOB, FIN
<b>Date of Hearing</b>	01 FEB 2018
<b>Organization</b>	UPW
<b>Name of Testifier</b>	Al Lardizabal
<b>Job Title of Testifier</b>	
<b>Position – Circle One</b>	Support / Oppose / Comments
<b>Category – Circle One</b>	Fed Govt. / State Govt. / County Govt. <u>/ Industry</u> / Private
<b>Notes:</b>	