A BILL FOR AN ACT

RELATING TO INNOVATIVE PROJECT DELIVERY GUIDELINES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that there is a public need for timely design, construction, improvement, renovation, expansion, modernization, equipping, maintenance, operation, implementation, and installation of public infrastructure and state government facilities, as existing public procurement methods are not wholly satisfying this need.

The legislature further finds that when considering current and expected fiscal constraints, measures must be taken to ensure that Hawaii's immediate and long-term public infrastructure needs are addressed in a timely and cost-effective manner.

The legislature also finds that enabling innovative project delivery modalities that allow state agencies to leverage limited resources with private sector capital and expertise may benefit public safety and welfare.

The legislature additionally finds that according to the attorney general, the state procurement code does not preclude
the use of innovative project delivery models, including design-build-finance-operate-maintain contracts by state agencies. While well-structured innovative project delivery approaches can benefit state and local communities by optimizing risk transfer, accelerating delivery, incentivizing innovation, and ensuring life-cycle asset management at prescribed service levels, the legislature recognizes that these arrangements may also involve long-term, direct, and contingent obligations to the State. Consequently, the application and use of innovative project delivery requires additional consideration by the legislature.

The purpose of this Act is to establish adequate safeguards, procedures, and protocols for innovative project delivery arrangements for public infrastructure.

SECTION 2. (a) The purpose of this Act is to establish requirements for the development of guidelines and procedures that will enable state agencies to enter into innovative project delivery arrangements for qualified public infrastructure projects.

(b) This Act shall only apply to contractual arrangements in which state agencies undertake to engage a delivery partner
pursuant to chapter 103D, Hawaii Revised Statutes, for the
design, construction, operation, or maintenance of a facility or
infrastructure project that serves a public purpose, with the
delivery partner assuming all or a substantial part of the risks
associated with the financing, delivery, and operation of the
project.

(c) This Act shall not apply to:

(1) Budget-neutral contracting approaches for the design,
construction, financing, operation, and maintenance of
building improvements that reduce energy and increase
operational efficiency; or

(2) Facility or infrastructure projects serving a public
purpose that have a capital cost of less than
$10,000,000.

SECTION 3. For purposes of this Act:

"Delivery partner" means a private entity that has entered
into a qualified innovative project delivery agreement with a
public entity.

"Innovative project delivery" means a contractual
arrangement under which a delivery partner carries out the
design, rehabilitation, construction, financing, operation, or
maintenance of a public facility or infrastructure project over
a contractually defined period while assuming all or a
substantial part of the risks associated with the delivery and
performance of the public purpose facility or infrastructure
project. Innovative project delivery may involve any of the
following activities or any combination thereof:

(1) Design, construction, financing, maintenance, or
operation of new infrastructure facilities;

(2) Rehabilitation, modernization, financing, expansion,
maintenance, and operation of existing infrastructure
facilities; and

(3) Administration, management, operation, maintenance, or
other services pertaining to new or existing
infrastructure facilities.

The term "innovative project delivery" shall only apply when the
delivery partner assumes significant economic risk and the
public sector retains ownership of the public purpose
infrastructure asset. The term "innovative project delivery"
shall not apply to ground leases on public properties when the
development on the property is primarily or materially for
private or non-public use.
"Private entity" means a natural person, corporation, limited liability company, partnership, joint venture, or other private business entity.

"Public entity" means any department, commission, council, board, bureau, authority, committee, institution, legislative body, agency, government corporation, or other establishment or office of the executive, legislative, or judicial branch of the State, including the office of Hawaiian affairs.

SECTION 4. (a) There is created the innovative project delivery guidelines task force within the department of accounting and general services to establish guidelines to institute safeguards, procedures, and protocols around the use of innovative project delivery arrangements for public infrastructure, in protection of the public interest.

(b) The innovative project delivery guidelines task force shall be composed of the following eight members:

(1) The comptroller or the comptroller's designee, who shall serve as chair of the innovative project delivery guidelines task force;

(2) The director of finance, or the director's designee;
(3) The director of business, economic development, and
tourism, or the director's designee;

(4) The administrator of the state procurement office, or
the administrator's designee;

(5) Two members to be appointed by the governor, as
follows:

(A) One representative of the business community; and

(B) One professional or expert with extensive private
or public sector advisory experience relating to
innovative project delivery of public purpose
infrastructure involving private financing;

(6) One member to be appointed by the president of the
senate; and

(7) One member to be appointed by the speaker of the house
of representatives.

(c) In reviewing and developing innovative project
delivery guidelines, the innovative project delivery guidelines
task force shall consider, at a minimum, the following:

(1) Scope of application;

(2) Allowable contract modalities;
(3) Ineligible public purpose projects and other exclusions;
(4) Asset ownership considerations;
(5) Contract term requirements;
(6) Financial rights and interests;
(7) Conditions for the use of private or blended financing for public purpose projects;
(8) Funding requirements and disclosures;
(9) Allowable compensation structures;
(10) Screening and approval processes;
(11) Allowable procurement procedures;
(12) Requirements of the innovative project delivery agreement;
(13) Requirements and procedures for the financial review and analysis of innovative project delivery projects, including but not limited to:
(A) Public needs assessment;
(B) Financing and delivery options analysis;
(C) Public benefits analysis;
(D) Value for money assessment; and
(E) Consideration of the results of all other feasibility studies and analyses related to the proposed innovative project delivery project;

(14) Institutional framework and tools to support state agencies to identify, implement, and oversee innovative project delivery arrangements;

(15) Governance and oversight considerations, including the management of contingent liabilities deriving from innovative project delivery agreements;

(16) Statutorily established reporting requirements; and

(17) Internal and external audit requirements for innovative project delivery arrangements.

(d) The department of accounting and general services shall provide technical and administrative support to the innovative project delivery guidelines task force.

(e) The innovative project delivery guidelines task force shall solicit public feedback on innovative project delivery guidelines as part of its deliberations.

(f) The innovative project delivery guidelines task force shall submit its final recommendations to the legislature no later than twenty days prior to the convening of the regular
session of 2020, at which time the innovative project delivery
guidelines task force shall be dissolved.

(g) The department of accounting and general services
shall adopt rules pursuant to chapter 91, Hawaii Revised
Statutes, based on the recommendations of the innovative project
delivery guidelines task force for the use of innovative project
delivery approaches by state agencies.

SECTION 5. There is appropriated out of the general
revenues of the State of Hawaii the sum of $ or so much
thereof as may be necessary for fiscal year 2019-2020 for the
procurement, hiring, or securing of experts and professional
advisory services, and training of task force members to assist
in the implementation of this Act.

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

SECTION 6. This Act shall take effect on July 1, 2050.
Report Title:
DAGS; Innovative Project Delivery Guidelines Task Force; Public Infrastructure; Procurement; Appropriation

Description:
Establishes the Innovative Project Delivery Guidelines Task Force to establish guidelines for the use of innovative project delivery arrangements for public infrastructure. Requires DAGS to adopt rules. Requires task force to submit report to the 2020 Legislature. Appropriates moneys. (SB1003 HD1)

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