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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.

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;
- 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; and
- 10          (11) Establish requirements for public entities intending
- 11                   to conduct a request for information, pre-
- 12                   qualification, or solicitation of public-private
- 13                   partnerships using the public-private partnership
- 14                   procurement process to notify the office of public
- 15                   private partnership and department of accounting and
- 16                   general services to ensure appropriate application of
- 17                   the provisions of this part.

18           **§103- Annual report.** The department of accounting and  
19 general services, in coordination with the office of public-  
20 private partnership, shall submit a report to the legislature no



1 later than twenty days prior to the convening of each regular  
2 session, that shall include but not be limited to:

3 (1) The process developed by the office of public-private  
4 partnership to support state and county agencies in  
5 the use of best practices in contracting for public-  
6 private partnerships;

7 (2) A detailed description of any public-private  
8 partnerships entered into, including a cost-benefit  
9 analysis of the public-private partnership in  
10 comparison to the traditional means of financing and  
11 delivering public contracts; and

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

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

19 "Independent peer reviewer services" means additional  
20 professional services provided to the purchasing agency in  
21 public-private partnership procurements to confirm that the key



1 elements of the professional engineering and architectural  
2 design provided by the contractor conform to the applicable  
3 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, including government office buildings; public  
8 schools; courthouses; public hospitals; water treatment plants,  
9 distribution systems, and pumping stations; wastewater treatment  
10 plants, collection systems, and pumping stations; solid waste  
11 disposal plants, incinerators, landfills, and related  
12 facilities; public roads and streets; highways; public parking  
13 facilities; public transportation systems, terminals, and  
14 rolling stock; and rail, air, and water port structures,  
15 terminals, and equipment.

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





1       "Responsible public-private partnership persons" means the  
2 persons designated to attend meetings and otherwise stay  
3 apprised of important events and decisions related to a public-  
4 private partnership after the initial approval and in  
5 anticipation of the final approval of the public-private  
6 partnership, who shall include, at a minimum, representatives  
7 from the department of budget and finance, the comptroller, and  
8 the attorney general in the case of a state project, or  
9 representatives from the mayor and the corporation counsel of  
10 the county in the case of a county project."

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

13       "**§103D-303 Competitive sealed proposals.** (a) Competitive  
14 sealed proposals may be used to procure goods, services, or  
15 construction that are either not practicable or not advantageous  
16 to the State to procure by competitive sealed bidding.

17       (b) Proposals shall be solicited through a request for  
18 proposals.

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



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

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

7 (f) Discussions may be conducted with responsible offerors  
8 who submit proposals determined to be reasonably likely to be  
9 selected for a contract award for the purpose of clarification  
10 to assure full understanding of, and responsiveness to, the  
11 solicitation requirements. Offerors shall be accorded fair and  
12 equal treatment with respect to any opportunity for discussion  
13 and revision of proposals, and revisions may be permitted after  
14 submissions and prior to award for the purpose of obtaining best  
15 and final offers. In conducting discussions, there shall be no  
16 disclosure of any information derived from proposals submitted  
17 by competing offerors.

18 (g) Award shall be made to the responsible offeror whose  
19 proposal is determined in writing to be the most advantageous,  
20 taking into consideration price and the evaluation factors set  
21 forth in the request for proposals. No other factors or



1 criteria shall be used in the evaluation. The contract file  
2 shall contain the basis on which the award is made.

3 (h) In cases of awards made under this section, non-  
4 selected offerors may submit a written request for debriefing to  
5 the procurement officer within three working days after the  
6 posting of the award of the contract. Thereafter, the  
7 procurement officer shall provide the non-selected offeror a  
8 prompt debriefing. Any protest by the non-selected offeror  
9 pursuant to section 103D-701 following debriefing shall be filed  
10 in writing with the procurement officer within five working days  
11 after the date upon which the debriefing is completed.

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

16 (1) A request for proposals is issued to prequalify  
17 offerors to select a short list of no more than three  
18 responsible offerors, prior to the submittal of  
19 proposals; provided that the number of offerors to be  
20 selected for the short list shall be stated in the  
21 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 [-]; and
- 13 (4) Each request for proposals to use any combination of  
14 the design-build or public-private partnership methods  
15 shall:
- 16 (A) State the relative importance of:
- 17 (i) Demonstrated compliance with the design  
18 requirements;
- 19 (ii) Offeror qualifications;
- 20 (iii) Financial capacity;
- 21 (iv) Project schedule;



- 1                    (v) Price or lifecycle price; and
- 2                    (vi) Other factors, if any;
- 3                    (B) Require each offeror, for a project:
- 4                    (i) With a contract price estimated to exceed
- 5                    \$10,000,000;
- 6                    (ii) With a contract period of operations and
- 7                    maintenance of at least ten years; or
- 8                    (iii) In other circumstances identified by the
- 9                    comptroller by rule,
- 10                   to include and identify qualified and competent
- 11                   independent peer reviewer services, which shall
- 12                   be an additional evaluation factor in the award
- 13                   of the contract;
- 14                   (C) Achieve initial approval from the governor, in
- 15                   the case of a state project, or the mayor, in the
- 16                   case of a county project, of a recommendation
- 17                   from the head of the purchasing agency to proceed
- 18                   with a public-private partnership and,
- 19                   thereafter, include responsible public-private
- 20                   partnership persons in important communications
- 21                   and meetings regarding the public-private



1                   partnership throughout the procurement process;  
2                   and  
3                   (D) Achieve final approval from the director of  
4                   finance and the comptroller, in the case of a  
5                   state project, or the mayor, in the case of a  
6                   county project, of a recommendation from the head  
7                   of the purchasing agency to execute a public-  
8                   private partnership contract.  
9                   (j) In addition to any other provisions of this section, a  
10                   contract for delivery of a construction project procured using a  
11                   public-private partnership method:  
12                   (1) Shall not be enforceable until it receives final  
13                   approval under this section;  
14                   (2) Shall require, if an operational phase is part of the  
15                   project delivery, the use of public worker union  
16                   positions customarily and historically used for such  
17                   operation; and  
18                   (3) Shall not be used for the design, maintenance, or  
19                   operation of community correctional centers, high  
20                   security correctional facilities, or youth



1           correctional facilities that provide public safety  
2           services.

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

7           (1) The statement of work;

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

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

13          Accordingly, offerors shall not submit, and the public  
14          entity shall not accept, for negotiation any terms and  
15          conditions that are not reasonably related to those

16          expressly authorized for negotiation in the  
17          solicitation of public-private partnership proposals.

18          In conducting negotiations, there shall be no  
19          disclosure of any information derived from proposals  
20          submitted by competing offerors.



1        (1) Notwithstanding any other provisions of this section  
2 to the contrary, a purchasing agency may terminate negotiations  
3 with an offeror of a public-private partnership if such  
4 negotiations are not successful and commence negotiations with  
5 the next highest scoring offeror, and continue this process  
6 until the public entity has:

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

9        (2) Determined to continue negotiations with the offerors;  
10       or

11       (3) Determined to cancel the solicitation of the public-  
12       private partnership."

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

15       "(a) Unless the policy board determines otherwise by  
16 rules, bid security shall be required only for construction  
17 contracts to be awarded pursuant to sections 103D-302 and 103D-  
18 303 and when the price of the contract is estimated by the  
19 procurement officer to exceed \$25,000 or, if the contract is for  
20 goods or services, the purchasing agency secures the approval of  
21 the chief procurement officer. Bid security shall be a bond



1 provided by a surety company authorized to do business in the  
2 State, or the equivalent in cash, or otherwise supplied in a  
3 form specified in rules[-] and shall be in an amount equal to at  
4 least five per cent of the amount of the bid.

5 (b) [~~Bid security shall be in an amount equal to at least~~  
6 ~~five per cent of the amount of the bid.~~] In addition to other  
7 requirements of this section, one or more of the following forms  
8 of security shall be required to assure the timely, faithful,  
9 and uninterrupted provision of operations or maintenance  
10 services as elements of public-private partnership procurements:

- 11 (1) Operations period surety bonds that secure the  
12 performance of the contractor's operations and  
13 maintenance obligations;
- 14 (2) Letters of credit in an amount appropriate to cover  
15 the cost to the purchasing agency of preventing  
16 infrastructure service interruptions for a period up  
17 to twelve months; and
- 18 (3) Appropriate written guarantees from the contractor or  
19 depending upon the circumstances, from the  
20 contractor's parent corporation, to secure the  
21 recovery of re-procurement costs to the purchasing



1           agency in the event of a default in performance by the  
2           contractor."

3           SECTION 6. This Act is not intended to modify and shall  
4 not be construed to expand or limit any rights and duties of any  
5 laws relating to the subject of this Act, unless expressly  
6 stated herein.

7           SECTION 7. There is appropriated out of the general  
8 revenues of the State of Hawaii the sum of \$           or so much  
9 thereof as may be necessary for fiscal year 2018-2019 to:

- 10           (1) Establish and operate the office of public-private  
11           partnership; and
- 12           (2) Establish and fill the state public-private  
13           partnership coordinator position and one additional  
14           position; provided that these positions may be added  
15           to the position count for the department of accounting  
16           and general services and shall be appointed by the  
17           comptroller and exempt from chapter 76, Hawaii Revised  
18           Statutes, to carry out the purposes of this Act.

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



1 SECTION 8. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 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. (SB2705 HD1)

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

