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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 a great opportunity to  
2 facilitate a more flexible investment structure for state  
3 projects, acknowledges the desire to support innovative private  
4 enterprises, and recognizes the opportunity to introduce private  
5 sector capital and expertise to address the needs of our State  
6 through Public-Private Partnership (P3) programs.

7           The legislature recognizes the benefits that P3 programs  
8 can have, such as an influx of critical capital to fund state  
9 projects, flexibility of arrangements to address innovation  
10 along with State shortcomings, as well as shifting substantial  
11 financial, technical, and operational risks. The legislature  
12 further recognizes the economic opportunities that P3s will  
13 bring to businesses in our state, by privatizing employment and  
14 investment opportunities while providing a transparent process  
15 for greater accountability.

16           The legislature further finds that there are various forms  
17 of P3s throughout our State, and creating a uniform P3 process



1 with oversight into a standardized collaborative process, will  
2 leverage efficiencies of process and contribute to accumulated  
3 knowledge of how our state best works with P3s. By establishing  
4 a uniform P3 process, Hawaii's public sector will have a better  
5 understanding of how to partner with the private sector to  
6 develop, construct, and operate necessary state projects to  
7 accelerate project completions.

8 The purpose of this Act is to:

- 9 (1) Improve public operational efficiency and  
10 environmental performance, promote public safety,  
11 attract private investment to the State, and minimize  
12 governmental liabilities through a transparent P3  
13 process.
- 14 (2) Create an accessible alternative method of P3 source  
15 selection for procurements authorized under chapters  
16 103, 103D, 107, 107D, 109, or 110, and pursuant to  
17 section 103D-102(b)(4)(L).
- 18 (3) Establish a State of Hawaii Public-Private Partnership  
19 (P3) structure to identify and establish public-  
20 private partnerships, approve qualified bidders,



1 review requests for proposals, and provide P3 template  
2 contracts, by establishing the following:

3 (A) A Public-Private Partnership (P3) Committee;

4 (B) A Public-Private Partnership (P3) Finance  
5 Director within the Department of Budget and  
6 Finance; and

7 (C) A Public-Private Partnership (P3) Procurement  
8 Coordinator under the State Procurement Office  
9 Administrator.

10 SECTION 2. Chapter 103, Hawaii Revised Statutes, is  
11 amended by adding a new part VI, entitled "Public-Private  
12 Partnerships," with nine new sections to be appropriately  
13 designated and to read as follows:

14 "§103-A Public-Private Partnerships. This Act may be  
15 cited as the "Public-Private Partnership (P3) Authority Act" for  
16 authorized procurements made pursuant to chapters 103, 103D,  
17 107, 107D, 109, and 110. Procurements made pursuant to chapter  
18 103D may utilize this part's alternative source selection method  
19 of P3 with written determination by the policy board or chief  
20 procurement officer pursuant to section 103D-102(b)(4)(L).



1           §103-B     Definitions.     The following definitions apply in  
2 this part:

3           "Contract" means any purchase and sale agreement, lease,  
4 service agreement, franchise agreement, concession agreement, or  
5 other written agreement entered into under chapters 103, 103D,  
6 107, 107D, 109, and 110, with respect to the provision of a  
7 public service and any project related thereto.

8           "Improvement" means any construction, reconstruction,  
9 rehabilitation, renovation, installation, improvement,  
10 enlargement, or extension of property or improvements to  
11 property.

12           "P3 committee" means the committee established in section  
13 103-C.

14           "Public-Private Partnership" means a contract between the  
15 State or its political subdivisions and affiliations, and  
16 approved private sector entities that involve the State paying,  
17 reimbursing, or transferring a public asset to the private  
18 sector in return for goods or services over a set time period,  
19 providing a specialized source selection process to work with  
20 existing procurement laws.



1       "Private sector entity" means any corporation, whether for  
2 profit or not for profit, limited liability company,  
3 partnership, limited liability partnership, sole proprietorship,  
4 business trust, joint venture or other entity, but shall not  
5 mean the state, a political subdivision of the state, or a  
6 public or governmental entity, agency, or instrumentality of the  
7 state.

8       "Project" means real or personal property, or both, and  
9 improvements thereto or in support thereof, including undivided  
10 and other interests therein, used for or in the provision of a  
11 public service.

12       "Proposer" means a private sector entity, a local or  
13 regional public entity or agency, or any group or combination  
14 thereof, submitting qualifications or a proposal for a public-  
15 private partnership contract.

16       "Public service" means a service provided for a public  
17 purpose of the responsible state agency and identified in an  
18 invitation for qualifications or proposals under chapters 103,  
19 103D, 107, 107D, 109, and 110.

20       "Responsible state agency" means the agency, department,  
21 commission, authority, or other instrumentality of the state



1 responsible for the provision of the public service which is or  
2 is proposed to be the subject of a contract.

3 §103-C P3 Committee. (a) There is established a P3  
4 committee that shall:

- 5 (1) Identify potential public-private partnerships;
- 6 (2) Consider and accept unsolicited proposals;
- 7 (3) Approve a short-list of qualified bidders;
- 8 (4) Approve P3 requests for proposals; and
- 9 (5) Approve template contracts before they are sent to  
10 bidders. The P3 committee shall operate with the  
11 assistance of the P3 finance director and the P3  
12 procurement coordinator.

13 (b) The P3 committee shall be comprised of members  
14 appointed, without regard to section 26-34, as follows:

- 15 (1) Two members nominated by the president of the senate;
- 16 (2) Two members nominated by the speaker of the house;
- 17 (3) Two members appointed by the governor;
- 18 (4) Two representatives of each responsible governmental  
19 agency involved in the project at issue;
- 20 (5) The comptroller;



1       (6) A representative from the department of the attorney  
2           general;

3       (7) The P3 procurement coordinator, established in section  
4           103-E; and

5       (8) The P3 finance director, established in section 103-D;  
6           who shall serve as the chair of the P3 committee.

7       The members appointed under paragraphs (1), (2), and (3) shall  
8       not be currently employed by the State or any county.

9       (c) The P3 committee shall be administratively placed in  
10       the department of budget and finance. The P3 Finance director  
11       shall initiate the organization of and provide staff support for  
12       the P3 committee.

13       (d) Non-government employee members of the P3 Committee  
14       shall serve without compensation, but shall be reimbursed for  
15       necessary expenses incurred during the performance of their  
16       duties. The reimbursements shall be made by the department of  
17       budget and finance, who shall submit a request to the  
18       legislature for an appropriation equal to the reimbursements  
19       made and expected to be made. The P3 finance director shall  
20       submit the requests for inclusion in the legislative budget acts  
21       each year.



1       (e) The P3 committee shall act only upon a decision of a  
2 majority of its members.

3       §103-D       P3 Finance Director.       (a) There shall be  
4 established within the department of budget and finance, a P3  
5 finance director, as designated by the director of finance.

6       (b) The P3 finance director shall evaluate and direct  
7 financing compliance with applicable statutes and regulations.

8       (c) The P3 finance director shall have the authority to  
9 charge fees for services it shall render as part of the  
10 procedures to establish Partnerships, as approved by the P3  
11 committee established in section 103-B, and to receive money on  
12 loan to cover its operating expenses and to accomplish the  
13 purposes of chapters 103, 103D, 107, 107D, 109, and 110.

14       §103-E       P3 Procurement Coordinator       (a) There shall be  
15 established within the state procurement office, a P3  
16 procurement coordinator, as a P3 procurement specialist, as  
17 designated by the state procurement office administrator.

18       (b) The P3 procurement coordinator shall coordinate the  
19 procurement logistics to ensure compliance with current laws and  
20 regulations governing procurement.





1        (c) The P3 coordinator shall have the authority to charge  
2 fees for services it shall render as part of the procedures to  
3 establish Partnerships, as approved by the P3 committee  
4 established in section 103-B, and to receive money on loan to  
5 cover its operating expenses and to accomplish the purposes of  
6 chapters 103, 103D, 107, 107D, 109, and 110.

7        **§103-F**        **Coordination.**    (a) The director of budget and  
8 finance, the state procurement administrator, and the authorized  
9 representative of a responsible state agency shall coordinate  
10 with the P3 finance director and the P3 procurement coordinator  
11 to jointly take any action and execute any contract for the  
12 provision of a public service in order to more efficiently and  
13 effectively provide public services, including by generating  
14 additional resources in support of those public services and  
15 related projects.

16        (b) The P3 finance director and P3 procurement coordinator  
17 shall jointly coordinate with the P3 committee, the state  
18 procurement administrator, as well as the director of finance,  
19 and in consultation with the responsible state agencies, may  
20 retain or contract for the services of commercial appraisers,  
21 engineers, investment bankers, financial advisers, accounting



1 experts, and other consultants, independent contractors or  
2 providers of professional services as are necessary in the  
3 judgment of the P3 finance director to carry out the P3 finance  
4 director's powers and duties established in section 103-D,  
5 including the identification of public services and any related  
6 projects to be subject to invitations for qualifications or  
7 proposals the procurement code, the development of those  
8 invitations and related evaluation criteria, the evaluation of  
9 those invitations, and negotiation of any contract under  
10 chapters 103, 103D, 107, 107D, 109, and 110.

11 **§103-G Project Selection.** (a) Any proposer or  
12 responsible state agency may submit to the P3 committee one or  
13 more proposals for partnership projects in connection with any  
14 public service. The P3 committee shall identify potential  
15 projects and public services for which a public-private  
16 partnership may be appropriate from those received from a  
17 proposer, a responsible state agency, or those identified by the  
18 P3 committee itself. The P3 committee shall select such  
19 projects based on the partnership's potential to improve public  
20 operational efficiencies, improve environmental performance,



1 promote public safety, attract private investment in the state,  
2 and minimize governmental liabilities.

3 (b) After the P3 committee identifies a potential  
4 partnership for a public project or public service, the P3  
5 finance director shall conduct a public-sector comparative study  
6 of the potential partnership. The P3 committee shall determine  
7 the scope of each public comparative study, the scope of which  
8 shall depend on the type of proposed partnership and the nature  
9 of the public service under consideration for the partnership.  
10 The following issues shall be considered as components of a  
11 public sector comparative study:

12 (1) The definition of the need served by the proposed  
13 partnership;

14 (2) The cost required to meet the public need served by  
15 the public service under traditional procurements or  
16 traditional state agency operations;

17 (3) An analysis of alternative methods for providing the  
18 public services under consideration, including but not  
19 limited to design-build, design-build-finance, design-  
20 build-finance-operate-maintain, service contracts, or



1           leases, and how the alternative method(s) would meet  
2           the need served by the public service; and,

3           (4) An evaluation of the cost-benefit of using an  
4           alternative method or public-private partnership to  
5           render a public service, which cost-benefit analysis  
6           shall include:

7           (A) The potential cost of utilizing an alternative  
8           method;

9           (B) The operational and technological risks involved  
10           in utilizing an alternative method;

11           (C) A comparative analysis of rendering the public  
12           service by allowing the responsible state agency  
13           to utilize traditional methods;

14           (D) The financial impact the partnership will have on  
15           the responsible state agency; and

16           (E) The impact a partnership would have on job  
17           formation, economic growth, and the community in  
18           which the public service is to be rendered.

19           (c) The P3 committee shall use the results of the public  
20           sector comparative study to determine which public services and  
21           projects are appropriate for partnership. The P3 procurement



1 director shall publish on its website the public sector  
2 comparative study for each project to provide a public service  
3 for which a request for qualifications is initiated.

4 (d) The P3 coordinator shall publish notice of the intent  
5 to enter into a contract for a partnership for public service or  
6 related project and shall prepare a request for qualifications  
7 for private sector entities interested in serving as proposers  
8 for the partnership. The notice shall notify interested parties  
9 of the opportunity to submit their qualifications for  
10 consideration and shall be published at least thirty days prior  
11 to the deadline for submitting those qualifications. The P3  
12 coordinator also may advertise the information contained in the  
13 notice in appropriate trade journals and otherwise notify  
14 parties believed to be interested in providing the public  
15 service and in any related project.

16 (e) After inviting qualifications, the P3 committee shall  
17 evaluate the qualifications submitted and may hold discussions  
18 with proposers to further explore their qualifications.  
19 Following this evaluation, the P3 committee may determine a list  
20 of qualified proposers based on criteria in the invitation, and  
21 invite only those proposers to submit a proposal.



1       (f) The P3 coordinator shall prepare a request for  
2 proposal and the proposed partnership contract, both of which  
3 shall be approved by the P3 committee. After the P3 committee's  
4 approval of the request for proposal and the partnership  
5 contract, the project shall be deemed an approved partnership  
6 procurement.

7       (g) Partnership contracts may contain the terms and  
8 conditions to effect the purposes of chapters 103, 103D, 107,  
9 107D, 109, and 110, including the duration of the contract,  
10 which shall not exceed seventy-five years, rates or fees for the  
11 public services to be provided or methods or procedures for the  
12 determination of such rates or fees, standards for the public  
13 services to be provided, responsibilities and standards for  
14 operation and maintenance of any related project, required  
15 financial assurances, financial and other data reporting  
16 requirements, bases and procedures for termination of the  
17 contract and retaking of possession or title to the project, and  
18 events of default and remedies upon default, including mandamus,  
19 a suit in equity, an action at law, or any combination of those  
20 remedial actions.



1       (h) After proposals are received, using the criteria  
2 established in the request for proposal by the P3 committee,

3       (1) The P3 finance director shall evaluate the proposals  
4 submitted for financial stability; and

5       (2) The P3 procurement coordinator shall evaluate the  
6 proposals submitted for proposal suitability and  
7 compliance; then

8       (3) The P3 committee shall select and rank no fewer than  
9 three proposers that the P3 committee considers to be  
10 the most qualified to enter into the contract, except  
11 when the P3 committee determines that fewer than three  
12 qualified proposers are available, in which case the  
13 P3 committee shall select and rank them.

14 The P3 committee may hold discussions with proposers to further  
15 explore their proposals, the scope and nature of the public  
16 service(s) they would provide, and the various technical  
17 approaches they may take regarding the public service and any  
18 related project.

19       (i) After the proposers have been ranked by the P3  
20 committee, the director of finance and the authorized  
21 representative of the responsible state agency shall negotiate



1 the contract with the proposer ranked most qualified to provide  
2 the public service at a compensation determined in writing to be  
3 fair and reasonable, and to purchase, lease or otherwise take a  
4 legal interest in the project.

5 (1) Upon failure to negotiate a contract with the proposer  
6 ranked most qualified, the director of finance shall  
7 inform the proposer in writing of the termination of  
8 negotiations and may enter, with the responsible state  
9 agency, into negotiations with the proposer ranked  
10 next most qualified. If negotiations again fail, the  
11 same procedure may be followed with each next most  
12 qualified proposer selected and ranked, in order of  
13 ranking, until a contract is negotiated and executed.

14 (2) If the director of finance and the authorized  
15 representative of the responsible state agency fail to  
16 negotiate a contract with any of the ranked proposers,  
17 the P3 finance director, in consultation with the  
18 responsible state agency, may terminate the process or  
19 select and rank additional proposers, based on their  
20 qualifications or proposals, and negotiations shall





1 continue with the proposers selected and ranked  
2 initially until a contract is negotiated.

3 (3) The P3 finance director and the authorized  
4 representative of the responsible state agency may  
5 jointly reject any and all submissions of  
6 qualifications or proposals, and may jointly terminate  
7 the procurement process at any point.

8 (4) The director of finance and the authorized  
9 representative of the responsible state agency shall  
10 have the authority to make commercially reasonable  
11 changes to the partnership contract approved by the P3  
12 procurement coordinator and the P3 committee. Any  
13 such contract may contain the terms and conditions to  
14 effect the purposes of chapters 103, 103D, 107, 107D,  
15 109, and 110.

16 **§103-H Partnership Contracts.** (a) Partnership  
17 contracts shall be signed by both the director of finance and  
18 the authorized representative of the responsible state agency to  
19 which the public service at issue in the contract relates.

20 (b) The director of finance is authorized to receive and  
21 deposit any money received under the contract. Any such



1 contract shall be sufficient to effect its purpose  
2 notwithstanding any lawful provision to the contrary, including  
3 other laws governing the sale, lease or other disposition of  
4 property or interests therein, service contracts, or financial  
5 transactions by or for the state.

6 (c) The P3 procurement coordinator, with the assistance of  
7 the P3 director of finance, shall provide a report to the  
8 speaker of the house and the president of the senate explaining  
9 the value of the contract to the state and describing the  
10 procurement process by which the contract was reached.

11 §103-I Ownership. (a) The exercise of the powers  
12 granted by chapters 103, 103D, 107, 107D, 109, and 110, will be  
13 for the benefit of the people of Hawaii and shall be liberally  
14 construed to effect the purposes thereof. As the performance of  
15 public services will constitute the performance of essential  
16 government functions, any project or part thereof owned by the  
17 state and used for performing any public service pursuant to a  
18 contract entered into under chapters 103, 103D, 107, 107D, 109,  
19 and 110, that would be exempt from taxation or assessments in  
20 the absence of such contract shall remain exempt from taxation  
21 and assessments levied by the state and its subdivisions to the



1 same extent as if not subject to that contract. The gross  
2 receipts and income of a successful proposer derived from  
3 providing public services contract through a project owned by  
4 the state shall be exempt from taxation levied by the state and  
5 its political subdivisions. Any transfer or lease between a  
6 proposer and the State, of a project or part thereof, or item  
7 included or to be included in the project, shall be exempt from  
8 the taxes levied, as available, if the state is retaining  
9 ownership of the project or part thereof that is being  
10 transferred or leased."

11 SECTION 3. New statutory material is underscored.

12 SECTION 4. In codifying the new sections added by section  
13 2 of this Act, the revisor of statutes shall substitute  
14 appropriate section numbers for the letters used in designating  
15 the new sections in this Act.

16 SECTION 5. There is appropriated out of the general funds  
17 of the State of Hawaii the sum of \$ \_\_\_\_\_ or so much thereof as  
18 may be necessary for fiscal year 2015-2016 and the same sum or  
19 so much thereof as may be necessary for fiscal year 2016-2017 to  
20 carry out the purposes of this Act, including the hiring of  
21 necessary staff.

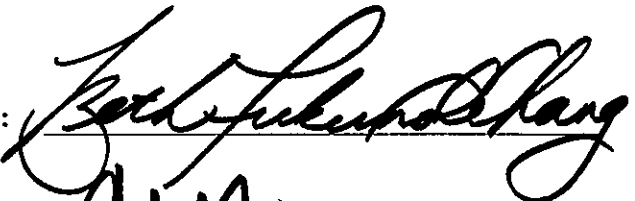
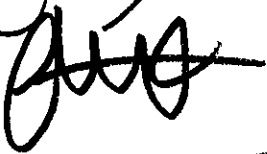
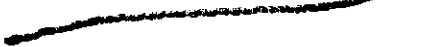


1           The sums appropriated shall be expended jointly by the  
2 department of budget and finance and the department of  
3 accounting and general services, as necessary to carry out the  
4 purpose of this Act.

5           SECTION 6. This Act shall take effect upon its approval;  
6 provided that section 5 shall take effect on July 1, 2015.

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8

INTRODUCED BY:

JAN 29 2015



# H.B. NO. 1483

**Report Title:**

Procurement; Public-Private Partnerships.

**Description:**

Establishes a public-private partnership (P3) approval process for public procurements in chapters 103, 103D, 107, 107D, 109, and 110, Hawaii Revised Statutes. Creates a P3 committee, establishes a P3 finance director, and a P3 procurement coordinator. Effective upon approval.

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

