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# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 PART I

2 SECTION 1. The legislature finds that creative problem  
3 solving is necessary to address growing concerns arising from  
4 the State's fiscal deficit. Hawaii is responsible for unfunded  
5 liabilities totaling billions of dollars. Like many states,  
6 Hawaii must balance its budget while managing the demands of  
7 infrastructure maintenance and public service needs. Budget  
8 shortfalls result in postponed maintenance and reduced social  
9 services despite a growing population driving the demand for  
10 services and adding stress to the public infrastructure.

11 The legislature finds that the State's process of acquiring  
12 goods and services must be flexible to accommodate circumstances  
13 where other than full competition is necessary to address a  
14 unique need, such as local food purchasing, or where  
15 nontraditional procurement practices, such as public-private  
16 partnerships, can help government maintain infrastructure,  
17 provide services, and operate more efficiently.



1           A public-private partnership is a contractual agreement  
2 between a public agency and a private sector entity where skills  
3 and assets of each sector are combined to deliver services to  
4 the public. Both entities share in the risks and rewards of the  
5 venture. A public-private partnership is not privatization of a  
6 government function. The partnership provides for a level of  
7 public control and oversight of operations not typical of  
8 privatization.

9           While public-private partnerships are widely employed  
10 around the world, only five states have adopted comprehensive  
11 legislation authorizing governmental entities to contract with  
12 private partners to design, build, finance, operate, and  
13 maintain public facilities. Public-private partnerships have  
14 been created to address social infrastructure, transportation,  
15 water treatment, energy, and financial management concerns. The  
16 private sector contributes management efficiency, technology,  
17 cash flow management, and personnel development to complement  
18 the government's legal authority, capital resources, procurement  
19 policies, and broad perspective.

20           The purpose of this part is to provide the State greater  
21 flexibility in procurement by establishing a process for special



1 innovative procurement and generating a framework for public-  
2 private partnerships in Hawaii.

3 SECTION 2. Chapter 103D, Hawaii Revised Statutes, is  
4 amended by adding a new section to be appropriately designated  
5 and to read as follows:

6 "§103D- Special innovative procurement. (a) Contracts  
7 for supplies, services, professional services, or construction  
8 may be awarded with other than full competition using a special  
9 innovative procurement process in accordance with this section  
10 and procedures set forth in rules adopted by the procurement  
11 policy board. The special innovative procurement process  
12 authorized by this section shall only be used when the chief  
13 procurement officer determines in writing that it is  
14 advantageous to the State to use the process for procurement of  
15 new or unique requirements of the State, new technologies, or to  
16 achieve best value.

17 (b) The head of the purchasing agency shall submit a  
18 procurement plan developed pursuant to this section to the  
19 attorney general for review and approval as to form before  
20 issuing the notice required under subsection (c).

1        (c) Notice of the invitation for bids shall be given in  
2 the same manner as provided in section 103D-302(c).

3        (d) Nothing in this section shall preclude the adoption of  
4 rules providing for the use of bonuses instead of preferences in  
5 a procurement of construction.

6        (e) A written determination of the basis for the  
7 procurement and for the selection of the particular contractor  
8 shall be included by the head of the purchasing agency in the  
9 contract file, and a report shall be made by the head of the  
10 purchasing agency at least annually describing all  
11 determinations made since the last annual report. The report  
12 shall be transmitted to the administrator of the state  
13 procurement office who shall make the report publicly  
14 available."

15        SECTION 3. Section 103D-301, Hawaii Revised Statutes, is  
16 amended to read as follows:

17        "§103D-301 Methods of source selection. Unless otherwise  
18 authorized by law, all contracts shall be awarded pursuant to  
19 the following sections, as applicable:

- 20        (1) Section 103D-302 (Competitive sealed bids);  
21        (2) Section 103D-303 (Competitive sealed proposals);



- 1 (3) Section 103D-304 (Professional services procurement);
- 2 (4) Section 103D-305 (Small purchases);
- 3 (5) Section 103D-306 (Sole source procurement); [and]
- 4 (6) Section 103D-307 (Emergency procurements) [-]; and
- 5 (7) Section 103D- (Special innovative procurement)."

6 SECTION 4. (a) The procurement policy board shall draft  
7 rules for special innovative procurements, including but not  
8 limited to public-private partnership contracts.

9 (b) The rules for public-private partnerships shall  
10 include but not be limited to the following:

- 11 (1) A requirement that a public-private partnership  
12 contract include a long-term maintenance and  
13 operations scope;
- 14 (2) Provisions that require a suitability test wherein a  
15 centralized governmental entity with expertise in  
16 public-private partnership delivery and financial  
17 modeling compares the value of long-term leases to  
18 existing project delivery models before issuing any  
19 requests for qualifications or proposals, which would  
20 be triggered after satisfaction of basic threshold  
21 requirements for public-private partnerships;

- 1 (3) Provisions that require the government to have an  
2 independent consultant or in-house expert in  
3 facilities planning, design, and construction assess  
4 the long-term projected needs of the government before  
5 considering the use of a public-private partnership;  
6 advise the government prior to solicitation; and  
7 continue serving as advisor to the government  
8 throughout the planning, design, and construction  
9 phases;
- 10 (4) Comprehensive statutory guidelines that apply to all  
11 state entities to provide a uniform, fair process that  
12 enables private developers to properly assess the  
13 risks and rewards of engagement;
- 14 (5) Provisions that encourage communication between design  
15 professionals and the end user during the request for  
16 proposals phase so the government end user is  
17 empowered to provide direct, meaningful input to the  
18 competitor design teams developing the proposed  
19 designs; and
- 20 (6) Provisions that enable small businesses to compete.



1 (c) The procurement policy board shall submit a report on  
2 its draft rules for public-private partnerships and any proposed  
3 legislation to the legislature no later than twenty days prior  
4 to the convening of the regular session of 2017.

5 SECTION 5. There is appropriated out of the general  
6 revenues of the State of Hawaii the sum of \$65,000 or so much  
7 thereof as may be necessary for fiscal year 2015-2016 and the  
8 same sum or so much thereof as may be necessary for fiscal year  
9 2016-2017 for a temporary position within the department of  
10 accounting and general services, not to exceed two years from  
11 the effective date of this Act, with duties to include but not  
12 be limited to assisting the procurement policy board in the  
13 research and development of special innovative procurements and  
14 public-private partnership rules.

15 The sums appropriated shall be expended by the department  
16 of accounting and general services for the purposes of this  
17 part.

18 PART II

19 SECTION 6. The legislature finds that the Hawaii health  
20 systems corporation provides critical quality of life services  
21 that are integral to the public health and safety of our



1 communities. However, as currently operated, Hawaii health  
2 systems corporation faces dire financial realities that continue  
3 to escalate, placing an ever increasing burden on our state  
4 revenues. One possible solution to the long-term financial  
5 sustainability of Hawaii health systems corporation would be  
6 through the establishment of a long-term public-private  
7 partnership that would provide it with financial security while  
8 allowing for the continuation of services provided by these  
9 hospitals and medical centers.

10 Samuel Mahelona Memorial Hospital and Medical Center and  
11 Kauai Veterans Memorial Hospital serve the rural communities of  
12 Kauai by providing numerous medical services. These services  
13 include twenty-four hour emergency medical services;  
14 rehabilitation therapies (occupational, physical, and  
15 recreational); skilled nursing; intermediate, long-term, and  
16 acute care; family birth centers; outpatient clinics; imaging  
17 services (x-ray, CT, extremity MRI, stress testing, ultrasound-  
18 cardiac, and general); and surgery. While both hospitals  
19 provide invaluable services to the rural communities of Kauai,  
20 these two facilities are also located in urban cores that are in  
21 close proximity to schools, public transportation, retail





1 establishments, and housing. The lands these facilities sit on  
2 have tremendous opportunity to provide sites for affordable  
3 housing, assisted living facilities, retail establishments, and  
4 restaurants. The potential revenue through lease rents of these  
5 lands could be used to subsidize the hospitals' operations, ease  
6 the burden these hospitals have on the state general fund, and  
7 allow valued state workers a means to continue providing  
8 services in their communities.

9 The legislature finds that in order for a long-term public-  
10 private partnership to work, community input is critical in  
11 determining if a project is appropriate. One way to ensure  
12 appropriateness is through the use of the Charette process. The  
13 Charette process is a design-based, accelerated, and  
14 collaborative project management system that spans the entire  
15 pre-construction period of a project. In this type of system,  
16 members of the community, representatives from state and county  
17 government, and various stakeholders would have a voice in  
18 determining what is appropriate and viable for the  
19 sustainability of both the Samuel Mahelona Memorial Hospital and  
20 Medical Center and Kauai Veterans Memorial Hospital, as well as  
21 the communities surrounding these facilities. Establishing a



1 master plan for these two facilities and the lands they  
2 encompass would further smart growth development while providing  
3 a means for a sustainable future for each hospital.

4 However, the legislature also finds that development of a  
5 master plan, particularly through the use of the Charette  
6 system, requires specialized knowledge, and these services need  
7 to be procured. Accordingly, the purpose of this part is to  
8 appropriate funds for the Hawaii Health Systems Corporation to  
9 procure professional services to develop a master plan for the  
10 facilities and lands under the jurisdiction of the Samuel  
11 Mahelona Memorial Hospital and Medical Center and Kauai Veterans  
12 Memorial Hospital.

13 SECTION 7. There is appropriated out of the general  
14 revenues of the State of Hawaii the sum of \$750,000 or so much  
15 thereof as may be necessary for fiscal year 2015-2016 and the  
16 same sum or so much thereof as may be necessary for fiscal year  
17 2016-2017 for the procurement of services to develop a master  
18 plan for the design and expansion of Samuel Mahelona Memorial  
19 Hospital and the Kauai Veterans Memorial Hospital; provided that  
20 the master plan shall be established using a collaborative



1 project management system that spans the entire pre-construction  
2 period and involves community input.

3 The sums appropriated shall be expended by the Hawaii  
4 health systems corporation for the purposes of this part.

5 PART III

6 SECTION 8. This Act does not affect rights and duties that  
7 matured, penalties that were incurred, and proceedings that were  
8 begun before its effective date.

9 SECTION 9. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 10. This Act shall take effect on July 1, 2050;  
12 provided that sections 5 and 7 shall take effect on July 1,  
13 2050.



**Report Title:**

State Procurement Office; Special Innovative Procurement;  
Public-private Partnerships; Procurement Policy Board; Rules;  
Appropriation

**Description:**

Establishes a process for special innovative procurement and generates a framework for public-private partnership in Hawaii. Appropriates funds for a temporary position to assist the Procurement Policy Board. Appropriates funds for the Hawaii Health Systems Corporation to procure services to develop a master plan for the Samuel Mahelona Memorial Hospital and Kauai Veterans Memorial Hospital. (SB1228 HD1)

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

