
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,



1 provide services, and operate more efficiently to achieve the
2 best value while giving effect to state policy goals.

3 The Legislature further finds that public-private
4 partnerships are utilized successfully throughout the nation,
5 and although Hawaii has specifically authorized a select number
6 of such partnerships, a more effective approach of addressing
7 public-private partnership procurements is in the best interest
8 of effective utilization of taxpayer money with increased
9 transparency. A public-private partnership is a contractual
10 agreement between a public agency and a private sector entity
11 where skills and assets of each sector are combined to deliver
12 services to the public, not a privatization of a government
13 function. Both entities share in the risks and rewards of the
14 venture. The partnership provides for a level of public control
15 and oversight of operations not typical of privatization.

16 While public-private partnerships are widely employed
17 around the world, only five states have adopted comprehensive
18 legislation authorizing governmental entities to contract with
19 private partners to design, build, finance, operate, and
20 maintain public facilities. Public-private partnerships have
21 been created to address social infrastructure, transportation,



1 water treatment, energy, and financial management concerns. The
2 private sector contributes management efficiency, technology,
3 cash flow management, and personnel development to complement
4 the government's legal authority, capital resources, procurement
5 policies, and broad perspective.

6 The purpose of this part is to provide the State greater
7 flexibility in procurement by establishing a process for special
8 innovative procurement and generating a framework for public-
9 private partnerships in Hawaii.

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

13 "§103D- Special innovative procurement. (a) Contracts
14 for supplies, services, or professional services may be awarded
15 with other than full competition using a special innovative
16 procurement process in accordance with this section and
17 procedures set forth in rules adopted by the procurement policy
18 board. The special innovative procurement process authorized by
19 this section shall only be used when the chief procurement
20 officer determines in writing that it is advantageous to the
21 State to use the process for procurement of new or unique



1 requirements of the State, new technologies, or to achieve best
2 value.

3 (b) All special innovative procurements shall include, to
4 the extent possible, provisions and processes to ensure taxpayer
5 accountability, transparency of innovative process for
6 evaluation, communication of innovation for future duplication,
7 and clear cause for deviation from other standard methods of
8 source selection in section 103D-301. Administrative rules
9 shall be adopted by the policy board pursuant to chapter 91 and
10 shall address the following:

- 11 (1) Compliance with local, State, and federal laws;
- 12 (2) Attaining the maximum level of competition to achieve
13 the best value;
- 14 (3) Adherence to purchasing ethics to protect the public
15 trust, as codified in the administrative rules;
- 16 (4) Specific procedures for addressing public-private
17 partnerships;
- 18 (5) Minimizing deviation from section 103D-302 and 103D-
19 303 for construction contracts, specifically
20 addressing contractor provisions such as subcontractor
21 listing, as applicable; and



1 (6) Minimizing deviation from section 103D-304 provisions
2 for professional services, as applicable.

3 (c) The head of the purchasing agency shall submit a
4 procurement plan developed pursuant to this section and rules
5 adopted by the board to the attorney general for review and
6 approval as to form before issuing the notice required under
7 subsection (d).

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

10 (e) Nothing in this section shall preclude the adoption of
11 rules providing for the use of bonuses instead of preferences or
12 requiring subcontractor provisions in a procurement of
13 construction.

14 (f) A written determination of the basis for the
15 procurement and for the selection of the particular contractor
16 shall be included by the head of the purchasing agency in the
17 contract file, and a report shall be made by the head of the
18 purchasing agency at least annually describing all
19 determinations made since the last annual report, pursuant to
20 procedures directed by the administrator of the state
21 procurement office. The report shall be transmitted to the



1 administrator of the state procurement office who shall make the
2 report publicly available."

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

5 "**§103D-301 Methods of source selection.** Unless otherwise
6 authorized by law, all contracts shall be awarded pursuant to
7 the following sections, as applicable:

- 8 (1) Section 103D-302 (Competitive sealed bids);
- 9 (2) Section 103D-303 (Competitive sealed proposals);
- 10 (3) Section 103D-304 (Professional services procurement);
- 11 (4) Section 103D-305 (Small purchases);
- 12 (5) Section 103D-306 (Sole source procurement); [and]
- 13 (6) Section 103D-307 (Emergency procurements) [-]; and
- 14 (7) Section 103D- (Special innovative procurement)."

15 SECTION 4. (a) The rules for public-private partnerships,
16 adopted pursuant to section 103D- shall also address the
17 following:

- 18 (1) A requirement that a public-private partnership
19 contract include a long-term maintenance and
20 operations scope;



- 1 (2) Provisions that require a suitability test wherein a
2 centralized governmental entity with expertise in
3 public-private partnership delivery and financial
4 modeling compares the value of long-term leases to
5 existing project delivery models before issuing any
6 requests for qualifications or proposals, which would
7 be triggered after satisfaction of basic threshold
8 requirements for public-private partnerships;
- 9 (3) Provisions that require the government to have an
10 independent consultant or in-house expert in
11 facilities planning, design, and construction assess
12 the long-term projected needs of the government before
13 considering the use of a public-private partnership;
14 advise the government prior to solicitation; and
15 continue serving as advisor to the government
16 throughout the planning, design, and construction
17 phases;
- 18 (4) Comprehensive statutory guidelines that apply to all
19 state entities to provide a uniform, fair process that
20 enables private developers to properly assess the
21 risks and rewards of engagement;



1 (5) Provisions that encourage communication between design
 2 professionals and the end user during the request for
 3 proposals phase so the government end user is
 4 empowered to provide direct, meaningful input to the
 5 competitor design teams developing the proposed
 6 designs; and

7 (6) Provisions that enable small businesses to compete.

8 (b) The procurement policy board shall submit a report on
 9 its draft rules for public-private partnerships and any proposed
 10 legislation to the legislature no later than twenty days prior
 11 to the convening of the regular session of 2017.

12 SECTION 5. There is appropriated out of the general
 13 revenues of the State of Hawaii the sum of \$65,000 or so much
 14 thereof as may be necessary for fiscal year 2015-2016 and the
 15 same sum or so much thereof as may be necessary for fiscal year
 16 2016-2017 for a temporary position within the department of
 17 accounting and general services, not to exceed two years from
 18 the effective date of this Act, with duties to include but not
 19 be limited to assisting the procurement policy board in the
 20 research and development of special innovative procurements and
 21 public-private partnership rules.



1 The sums appropriated shall be expended by the department
2 of accounting and general services for the purposes of this
3 part.

4 PART II

5 SECTION 6. The legislature finds that the Hawaii health
6 systems corporation provides critical quality of life services
7 that are integral to the public health and safety of our
8 communities. However, as currently operated, Hawaii health
9 systems corporation faces dire financial realities that continue
10 to escalate, placing an ever increasing burden on our state
11 revenues. One possible solution to the long-term financial
12 sustainability of Hawaii health systems corporation would be
13 through the establishment of a long-term public-private
14 partnership that would provide it with financial security while
15 allowing for the continuation of services provided by these
16 hospitals and medical centers.

17 Samuel Mahelona Memorial Hospital and Medical Center and
18 Kauai Veterans Memorial Hospital serve the rural communities of
19 Kauai by providing numerous medical services. These services
20 include twenty-four hour emergency medical services;
21 rehabilitation therapies (occupational, physical, and



1 recreational); skilled nursing; intermediate, long-term, and
2 acute care; family birth centers; outpatient clinics; imaging
3 services (x-ray, CT, extremity MRI, stress testing, ultrasound-
4 cardiac, and general); and surgery. While both hospitals
5 provide invaluable services to the rural communities of Kauai,
6 these two facilities are also located in urban cores that are in
7 close proximity to schools, public transportation, retail
8 establishments, and housing. The lands these facilities sit on
9 have tremendous opportunity to provide sites for affordable
10 housing, assisted living facilities, retail establishments, and
11 restaurants. The potential revenue through lease rents of these
12 lands could be used to subsidize the hospitals' operations, ease
13 the burden these hospitals have on the state general fund, and
14 allow valued state workers a means to continue providing
15 services in their communities.

16 The legislature finds that in order for a long-term public-
17 private partnership to work, community input is critical in
18 determining if a project is appropriate. One way to ensure
19 appropriateness is through the use of the Charette process. The
20 Charette process is a design-based, accelerated, and
21 collaborative project management system that spans the entire



1 pre-construction period of a project. In this type of system,
2 members of the community, representatives from state and county
3 government, and various stakeholders would have a voice in
4 determining what is appropriate and viable for the
5 sustainability of both the Samuel Mahelona Memorial Hospital and
6 Medical Center and Kauai Veterans Memorial Hospital, as well as
7 the communities surrounding these facilities. Establishing a
8 master plan for these two facilities and the lands they
9 encompass would further smart growth development while providing
10 a means for a sustainable future for each hospital.

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

20 SECTION 7. There is appropriated out of the general
21 revenues of the State of Hawaii the sum of \$750,000 or so much



1 thereof as may be necessary for fiscal year 2015-2016 and the
2 same sum or so much thereof as may be necessary for fiscal year
3 2016-2017 for the procurement of services to develop a master
4 plan for the design and expansion of Samuel Mahelona Memorial
5 Hospital and the Kauai Veterans Memorial Hospital; provided that
6 the master plan shall be established using a collaborative
7 project management system that spans the entire pre-construction
8 period and involves community input.

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

11 PART III

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

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

17 SECTION 10. This Act shall take effect on July 1, 2112.



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 HD2)

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