
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 the skills and assets of each sector are combined to
12 deliver services to the public, not a privatization of a
13 government function. Both entities share in the risks and
14 rewards of the venture. The partnership provides for a level of
15 public control and oversight of operations not typical of
16 privatization.

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



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

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

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

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



1 procurement of new or unique requirements of the State, new
2 technologies, or to achieve best 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; and
18 (5) Minimizing deviation from sections 103D-302 and 103D-
19 303 for construction contracts, specifically
20 addressing contractor provisions such as subcontractor
21 listing, as applicable.



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

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

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

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



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

3 "§103D-301 **Methods of source selection.** Unless otherwise
4 authorized by law, all contracts shall be awarded pursuant to
5 the following sections, as applicable:

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

13 SECTION 4. (a) The rules for public-private partnerships,
14 adopted pursuant to section 103D- , Hawaii Revised Statutes,
15 shall also address the following:

- 16 (1) A requirement that a public-private partnership
17 contract include a long-term maintenance and
18 operations scope;
- 19 (2) Provisions that require a suitability test wherein a
20 centralized governmental entity with expertise in
21 public-private partnership delivery and financial



1 modeling compares the value of long-term leases to
2 existing project delivery models before issuing any
3 requests for qualifications or proposals, which would
4 be triggered after satisfaction of basic threshold
5 requirements for public-private partnerships;

6 (3) Provisions that require the government to have an
7 independent consultant or in-house expert in
8 facilities planning, design, and construction assess
9 the long-term projected needs of the government before
10 considering the use of a public-private partnership;
11 advise the government prior to solicitation; and
12 continue serving as advisor to the government
13 throughout the planning, design, and construction
14 phases;

15 (4) Comprehensive statutory guidelines that apply to all
16 state entities to provide a uniform, fair process that
17 enables private developers to properly assess the
18 risks and rewards of engagement;

19 (5) Provisions that encourage communication between design
20 professionals and the end user during the request for
21 proposals phase so the government end user is



1 empowered to provide direct, meaningful input to the
2 competitor design teams developing the proposed
3 designs; and

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

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

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

19 The sums appropriated shall be expended by the department
20 of accounting and general services for the purposes of this
21 part.



1 PART II

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

14 Samuel Mahelona Memorial Hospital and Medical Center and
15 Kauai Veterans Memorial Hospital serve the rural communities of
16 Kauai by providing numerous medical services. These services
17 include twenty-four hour emergency medical services;
18 rehabilitation therapies (occupational, physical, and
19 recreational); skilled nursing; intermediate, long-term, and
20 acute care; family birth centers; outpatient clinics; imaging
21 services (x-ray, CT, extremity MRI, stress testing, ultrasound-



1 cardiac, and general); and surgery. While both hospitals
2 provide invaluable services to the rural communities of Kauai,
3 these two facilities are also located in urban cores that are in
4 close proximity to schools, public transportation, retail
5 establishments, and housing. The lands these facilities sit on
6 have tremendous opportunity to provide sites for affordable
7 housing, assisted living facilities, retail establishments, and
8 restaurants. The potential revenue through lease rents of these
9 lands could be used to subsidize the hospitals' operations, ease
10 the burden these hospitals have on the state general fund, and
11 allow valued state workers a means to continue providing
12 services in their communities.

13 The legislature finds that in order for a long-term public-
14 private partnership to work, community input is critical in
15 determining if a project is appropriate. One way to ensure
16 appropriateness is through the use of the Charette process. The
17 Charette process is a design-based, accelerated, and
18 collaborative project management system that spans the entire
19 pre-construction period of a project. In this type of system,
20 members of the community, representatives from state and county
21 government, and various stakeholders would have a voice in



1 determining what is appropriate and viable for the
2 sustainability of both the Samuel Mahelona Memorial Hospital and
3 Medical Center and Kauai Veterans Memorial Hospital, as well as
4 the communities surrounding these facilities. Establishing a
5 master plan for these two facilities and the lands they
6 encompass would further smart growth development while providing
7 a means for a sustainable future for each hospital.

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

17 SECTION 7. There is appropriated out of the general
18 revenues of the State of Hawaii the sum of \$ or so much
19 thereof as may be necessary for fiscal year 2015-2016 and the
20 same sum or so much thereof as may be necessary for fiscal year
21 2016-2017 for the procurement of services to develop a master



1 plan for the design and expansion of Samuel Mahelona Memorial
2 Hospital and the Kauai Veterans Memorial Hospital; provided that
3 the master plan shall be established using a collaborative
4 project management system that spans the entire pre-construction
5 period and involves community input.

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

8 PART III

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

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

14 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 HD3)

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