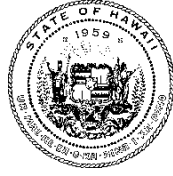


DAVID Y. IGE
GOVERNOR



RODERICK K. BECKER
Comptroller

AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

TESTIMONY OF
RODERICK K. BECKER, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE ON FINANCE
WEDNESDAY, FEBRUARY 28, 2018
11:00 A.M.
CONFERENCE ROOM 308

H.B. 2581, H.D. 1

RELATING TO PUBLIC-PRIVATE PARTNERSHIPS.

Chair Luke, Vice Chair Cullen, and Members of the Committee, thank you for the opportunity to testify on H.B. 2581, H.D. 1.

H.B. 2581, H.D. 1 will establish the Office of Public-Private Partnership and the position of State Public-Private Coordinator within the Department of Accounting and General Services (DAGS) to provide support in contracting for public-private partnerships to deliver and finance public projects theoretically at a lower lifecycle cost and more diversified risk than the traditional delivery processes. While the Department appreciates the intent of this measure to deliver public projects in a more efficient manner, we would like to highlight some areas of serious concerns. DAGS believes its recommendations to address these concerns will provide for a more effective means for the delivery of public-private projects:

- The bill currently does not address or provide for an oversight role within the Executive branch as a final check or review prior to a State department or agency entering into a binding contractual arrangement with a private sector partner. As such arrangements may have significant upfront costs (i.e., planning, design and construction), a portion of which may have to be borne by the State including potentially long term financial commitments by the State in the form of

- maintenance and lease back payments, a final review and approval process should be undertaken to confirm the methodologies utilized to assess the economic benefits net of the costs have been adequately addressed prior to final commitment by the State to such arrangements. DAGS respectfully requests that such review and approval process include the Departments of Budget and Finance, Accounting and General Services and Attorney General.
- The bill does not address a key provision which is the maximum length of leases for public-private partnerships. DAGS believes the bill should include a period not exceeding 99 years to provide potential private sector partners who may be required to commit significant financial resources and bear most of the overall risks of such projects with an adequate investment time horizon to achieve an acceptable financial rate of return to justify the risks that such private partner may undertake in such projects. We note for your consideration that full development of certain types of public-private partnerships in which there are multiple uses including development of housing as well as commercial uses including retail, hospitality and recreational/sports uses are ultimately dictated by market or economic conditions and that full development of such mixed-use projects may occur over prolonged lead times for planning, design and ultimate construction. As previously mentioned, the actual development through construction will be subject to market conditions not only at the time of planning and design but more importantly, based on the forecast of market conditions in the future that may be crucial for being able to secure debt and equity financing for most if not all public-private partnerships. DAGS believes that the extended length of such a lease can be controlled by providing for options for extensions that in total do not exceed 99 years and other mechanisms providing for cancellation of the lease at the option of the public entity for failure of the private partner to meet or comply with development time tables. To accommodate a maximum 99-year lease term, DAGS recommends that public-private partnership arrangements under this measure be exempted from Hawaii Revised Statutes (HRS) 171.

- DAGS respectfully requests that the bill include standards for minimum terms and conditions for public-private partnerships. An example of such minimum standards is the requirement for the terms of the planning, acquisition, financing, development, design, construction, re-construction, rehabilitation, replacement, improvement, maintenance, management, operation, repair, leasing, and ownership of facilities. These conditions are addressed in section 7 – Qualified project agreements; approvals of H.B. 2312.
- DAGS believes that an alternate delivery process would provide for a more effective means for delivering public-private partnership projects that will continue to ensure an open and transparent process for the delivery of public-private projects. Specifically, we refer you to Section 2 – Alternative project program; established; Section 3 – Requests for information; section 4 – Pre-qualification; and Section 5 - Solicitation of alternative proposals of H.B. 2312. For public-private partnership arrangements, DAGS recommends exemption from HRS Chapter 103D.
- DAGS respectfully requests the Committee’s consideration to provide an appropriation for a total of 3 full-time (3.0 FTE) staff positions including the Coordinator to provide the Department with the minimum staffing levels necessary to fulfill its responsibilities under this measure.

The Administration introduced H.B. 2312 (and companion bill S.B. 2739) Relating to Alternative Project Delivery to provide an alternative method for State government to finance and deliver public projects on time and on budget and except for Chapters 171 and 103D, in accordance with existing statutes. H.B. 2312 will:

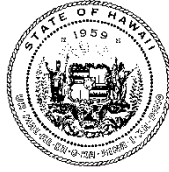
- Allow State government to elect an alternative method of managing public lands and awarding contracts that is separate and apart from Chapters 171 and 103D. This in turn allows agencies to utilize both existing and future forms of project delivery, including public-private partnerships and lease-back options that exceed 65 years.
- Establish an alternative project delivery program within DAGS to assist public entities with the development, solicitation, evaluation, award, and delivery of qualified projects.

- Maintain oversight by the Director of Finance, the Comptroller, and the Attorney General.

DAGS believes this combination of basic features in H.B. 2312 allows for the most flexible means with which to explore and develop partnerships that would be most advantageous to the State. The measure provides guidance to agencies wishing to engage in alternative project delivery while simultaneously protecting the best interests of the State. Within this framework, all existing and future forms of public-private partnerships may be explored and implemented to finance and deliver public projects on time, on budget, and in compliance with, among other laws, public labor union laws, prevailing wage laws, environmental and historic preservation laws, and all permitting laws. We encourage your consideration of H.B. 2312 which is based on a measure enacted by Washington, D.C. in 2015.

Thank you for the opportunity to provide comments on this measure.

DAVID Y. IGE
GOVERNOR



SARAH ALLEN
ADMINISTRATOR
MARA SMITH
ASSISTANT ADMINISTRATOR

**STATE OF HAWAII
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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
FINANCE

February 28, 2018, 11:00 AM

HOUSE BILL 2581 HD1
RELATING TO PUBLIC-PRIVATE PARTNERSHIPS

Chair Luke, Vice Chair Cullen, and members of the committee, thank you for the opportunity to submit comments on HB 2581 HD1.

The State Procurement Office (SPO) supports the intent of this measure. The SPO views the ability to enter into public-private partnerships (P3) as a creative tool for government to contract to deliver and finance State projects. HB 2581 amends various sections within HRS Chapter 103D to add this public-private partnership process. Among public procurement's guiding principles are value and transparency. Value ensures prudent use of taxpayer dollars. Transparency ensures accountability and system integrity, which in turn, fosters public confidence. These guiding principles are built into chapter 103D, our Hawaii State Procurement Code (the Code).

Special innovative procurements, like public-private partnerships, allow the State to procure when unusual or unique circumstances exist that require other than full competition, when standard procurement procedures would be contrary to the public interest. The verbiage in this Bill can be found in the American Bar Association (ABA) 2007 Model Code for Public Infrastructure Procurement (MC PIP), and it is also recommended by The Association for the Improvement of American Infrastructure (AIAI), the leading education and advocacy group focused on rebuilding America's infrastructure through public-private partnerships.

The Procurement Policy Board (PPB) in turn has the authority and responsibility to adopt rules that are consistent with each section of the Code to govern the procurement, management, and control of the goods, services or construction being procured. The SPO will also need to

partner with the Office of public-private partnership to develop policy and procedures, and actively assist in the procurement side of P3s. The SPO therefore requests one exempt FTE be assigned to the SPO for these reasons at approximately \$85,000 per year. We believe the office of public-private partnerships (OPP) should receive a minimum of two exempt FTEs.

The SPO would like to offer the following additional comments specific to the bill verbiage:

1. Section 3, Page 7, Lines 8-16 states: ““Design-build-finance-operate-maintain”” means a project delivery method in which the purchasing agency enters into a single contract for design, construction, financing, maintenance, and operation of an infrastructure facility over a contractually defined period. “Design-build-operate-maintain” means a project delivery method in which the purchasing agency enters into a single contract for design, construction, maintenance, and operation of an infrastructure facility over a contractually defined period.”

The SPO believes that redefining the P3 term of design-build-finance-operate-maintain into flexible terms will give procurement professionals any combination of requirements. Therefore, we recommend the following replace these phrases:

Replace with: “Alternate project delivery” means a project delivery method in which the purchasing agency enters into a single contract for a combination of financing, maintenance, or operation in addition to design-build of an infrastructure facility over a contractually defined period.”

2. Section 3, Page 7, Line 17-20 states: ““Independent peer reviewer services” means additional professional services provided to the purchasing agency in design-build-operate-maintain or design-build-finance-operate-maintain procurements....”

The SPO believes that redefining the P3 term of design-build-finance-operate-maintain into flexible terms will give procurement professionals any combination of requirements. Therefore, we recommend the following replace these phrases:

Replace with: ““Independent peer review services” means additional professional services provided to the purchasing agency in alternate project delivery procurements....”

3. Section 4 of this measure does not include an approval process (pre-, during, and post) for the projects. Therefore, we recommend the following additions to this phrase:

Add in the following definitions “Initial approval” means an approval by the Governor if a state project or the Mayor if a county project of a recommendation from the head of the purchasing agency to proceed with alternate project delivery procurement.

“Final approval” means an approval by the Director of Budget & Finance and the Comptroller if a state project or the Mayor if a county project of a recommendation from the head of the purchasing agency to execute an alternative project delivery agreement.

“Responsible alternate delivery persons” means the persons designated to attend meetings and otherwise stay apprised of important events and decisions related to an alternate project delivery after the initial approval and in anticipation of the final approval of the alternate project delivery, who shall include, at a minimum, representatives from Budget & Finance, the Comptroller, and the Attorney General if a state project or representatives from the Mayor and the Corporation Counsel if a county project.

4. Page 8, Lines 19-21 states: “(i) In addition to any other provisions of this section, construction projects may be solicited through a request for proposals to use the design-build, design-build-operate-maintain, or design-build-finance-operate-maintain project delivery method;”

The SPO believes that redefining the P3 term of design-build-finance-operate-maintain into flexible terms will give procurement professionals any combination of requirements. Therefore, we recommend the following replace these phrases:

Replace with: “(i) In addition to any other provisions of this section, construction projects may be solicited through a request for proposals to use the design-build, or alternate project delivery methods;”

5. Page 9, Lines 19-21 states: “(4) Each request for proposals to use the design-build-operate-maintain or design-build-finance-operate-maintain project delivery method shall:”

The SPO believes that redefining the P3 term of design-build-finance-operate-maintain into flexible terms will give procurement professionals any combination of requirements. Therefore, we recommend the following replace these phrases:

Replace with: “(4) Each request for proposals to use the alternate project delivery method shall:”

6. Page 10, Line 1 states: “(A) State the relative importance of:”

The SPO believes the intent of this statement is to have the resulting list be part of the evaluation criteria as opposed to simply a summary statement in a solicitation that is not attributed to any real value expectation of the offeror’s proposal. Therefore, we recommend the following addition to this phrase:

Replace with: “(A) For evaluation purposes, state the relative importance of:”

7. Page 10, Line 14-19 states: “(iii) In other circumstances identified by the comptroller by rule, to include and identify qualified and competent independent peer reviewer services, which shall be an additional evaluation factor in the award of the contract.”

The SPO is concerned that requiring the offeror to include and identify an independent peer reviewer services may not necessarily be independent. How would this be vetted? It could be perceived as a collusive measure. SPO would recommend this issue be covered under Rules.

In addition, this bill is written for all state departments and political sub-divisions. Each agency will have their own team working on this effort with support from the OPP. The Rules associated with the Procurement Code HRS 103D are developed and approved by the Procurement Policy Board. The Comptroller should not be specifically noted as the identifier for all P3s; instead this should be dependent on the makeup of the team and the final approvers. Therefore, we recommend the following addition to this phrase:

Replace with: "In other circumstances identified by the state or county agency team."

If the intent is to not allow flexibility, but to have viable, additional reasons added to Rules, this should be developed by the OPP in collaboration with the SPO, who will present it to the PPB, of which the Comptroller is a mandated member. Therefore, we would recommend the following addition to this phrase:

Replace with: "In other circumstances identified in Rules."

8. SECTION 4 of this measure does not include guidance on approval process after initial approval is received. Therefore, we recommend the following additions to this phrase:

Add in the following after Page 10, Line 19: "(C) Achieve initial approval and, thereafter, include responsible alternate delivery persons in important communications and meetings regarding the alternate project delivery throughout the procurement process."

9. SECTION 5 of this measure does not include guidance on P3 negotiations. Therefore, we recommend the following additions to this phrase:

Add in the following: "SECTION 5. Section 103D-303, Hawaii Revised Statutes, is amended by adding new subsections (j), (k), and (l) to read as follows:

"(j) In addition to any other provisions of this section, a contract for delivery of a construction project procured using an alternate procurement method:

- (1) Shall not be enforceable until it receives final approval under this section; and
- (2) Shall not be subject to Chapter 171.

(k) Notwithstanding any other provisions of this section to the contrary, the purchasing agency may engage in negotiations with the highest-ranked offeror in an alternative project delivery procurement and may negotiate:

- (1) The statement of work;
- (2) The contract price as it is affected by negotiating the statement of work; and
- (3) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the solicitation of alternate project delivery proposals. Accordingly, offerors shall not submit, and the public entity shall not accept, for negotiation any terms and conditions that are not reasonably related to those expressly authorized for negotiation in the solicitation of alternate project delivery proposals. In conducting negotiations, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(l) Notwithstanding any other provisions of this section to the contrary, a purchasing agency may terminate negotiations with an offeror of an alternate project delivery if such negotiations are not successful and commence negotiations with the next highest scoring offeror, and continue this process until the public entity has:

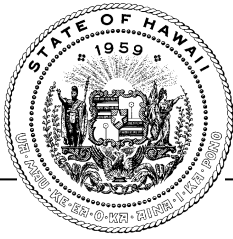
- (1) Determined to award the contract to the offeror with whom it is currently negotiating; or
- (2) Determined to continue negotiations with the offerors; or
- (3) Determined to cancel the solicitation of the alternate project delivery.”

10. Page 11, Lines 16-18 states: “and uninterrupted provision of operations and maintenance services as elements of design-build-operate-maintain or design-build-finance-operate-maintain services:”

The SPO believes that redefining the P3 term of design-build-finance-operate-maintain into flexible terms will give procurement professionals any combination of requirements. Therefore, we recommend the following replace these phrases:

Replace with: “and uninterrupted provision of operations or maintenance services as elements of alternate project delivery procurements:”

Thank you.



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DAVID Y. IGE
GOVERNOR

LEO R. ASUNCION
DIRECTOR
OFFICE OF PLANNING

Statement of
LEO R. ASUNCION
Director, Office of Planning
before the
HOUSE COMMITTEE ON FINANCE
Wednesday, February 28, 2018
11:00 AM
State Capitol, Conference Room 308

in consideration of
HB 2581, HD1
RELATING TO PUBLIC-PRIVATE PARTNERSHIPS.

Chair Luke, Vice Chair Cullen, and Members of the House Committee on Finance.

The Office of Planning (OP) supports HB 2581, HD1, which establishes an Office of Public-Private Partnership in the Department of Accounting and General Services (DAGS) and amends Hawaii Revised Statutes (HRS) Chapter 103D, the State Procurement Code to clarify the allowance of public-private partnerships (P3) relative to design-build-finance-operate-maintain contracting arrangements for public projects. The bill establishes a P3 Coordinator who will support and assist State and county agencies in pursuing best practices for undertaking P3 project delivery.

While the Office of Planning supports this measure, we prefer the language provided in the Administration's Bill relating to Alternative Project Delivery – HB 2312 and its companion bill, SB 2739, which was drafted to address concerns of executive branch departments. If this committee is inclined to move the subject bill forward, we recommend amending this measure to alleviate DAGS' concerns that:

- The measure would require implementation under existing statutes. HRS Chapters 171 and 103D may contain provisions that could hinder the delivery of some projects; and
- There does not appear to be an approval process for the projects.

Thank you for this opportunity to testify.

HB-2581-HD-1

Submitted on: 2/26/2018 10:18:52 PM

Testimony for FIN on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Ho'omanapono Political Action Committee (HPAC)	Support	Yes

Comments:

We continue to STRONGLY SUPPORT this GREAT UNION BUSTING BILL. We COMMEND the 21 SIGNATORIES who are taking a stand to break the stronghold of UNION DOMINANCE in Hawaii that arbitrarily raises the cost of doing business in Hawaii! Mahalo.

HB-2581-HD-1

Submitted on: 2/26/2018 10:23:17 PM

Testimony for FIN on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Ho`omana Pono, LLC	Support	Yes

Comments:

In STRONG SUPPORT.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Finance
Wednesday, February 28 2018 at 11:00 A.M.
Conference Room 308, State Capitol**

RE: HOUSE BILL 2581 HD1 RELATING TO PUBLIC PRIVATE PARTNERSHIPS

Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") supports the intent of HB 2581 HD1, which proposes to establish the Office of Public-Private Partnership and the position of State Public-Private Partnership Coordinator. The bill would add design-build-operate-maintain and design-build-finance-operate-maintain project delivery methods to the Procurement Code and related conditions and requirements.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

As we understand it, Public-Private-Partnerships (P3's) come in a variety of different delivery methods. For example, the state currently engages in energy performance contracts which are procured under section 103 HRS. There are other leases, lease-like, and concession arrangements such as:

- Lease-Develop-Operate: the private party leases an existing facility from a public agency; invests its own capital to renovate, modernize, and/or expand the facility; and then operates it under a lease contract with the public agency.
- Lease Lease-backs: Public agency leases real property to a private partner for a stipulated price and the private partner then must design, build, finance and/or maintain improvements on the property, for which the public partner will make ongoing lease payments (capital lease purchase).
- Design-Build-Finance-Operate-Maintain: With the Design-Build-Finance-Operate-Maintain (DBFOM) approach, responsibilities for designing, building, financing, operating and maintaining are bundled together and transferred to private sector partners. Repayment is typically in the form of an availability payment.
- Concession arrangements can vary and may also include a lease. May be applied to both greenfield and existing facilities. Examples include:
 - DBFM: A single contract is awarded for the design, construction and maintenance of a capital improvement. Title to the facility remains with the public sector
 - DBFO: A single contract is awarded for the design, construction, and operation of a capital improvement. Title to the facility remains with the public sector



Chamber of Commerce HAWAII

The Voice of Business

- **Design-Build-Finance-Operate-Maintain:** A single contract is awarded for the design, construction, financing, operation and maintenance of a capital improvement. Title usually remains with the public sector. Repayment is in the form of an availability payment or on the basis of user fees.

We believe the bill needs to include language that would allow for the lease or concession of state owned facilities and/or infrastructure and also include land.

The current version of the bill makes amendments to Chapter 103D, the State Procurement Code. We understand that P3's are effectively a hybrid between the procurement of services (i.e. Chapter 103D HRS) and the leasing of real property (i.e. Chapter 171 HRS), we believe a new section of the law should be created rather than amend either 103D or 171 HRS. However, if the preferred method is to amend 103D, we suggest that appropriate language be added to allow for leasing, lease-back, and concessions involving State owned lands and facilities. It is unclear at this time if 103D will allow for the leasing of state owned lands and facilities as a part of a public-private-partnership arrangement.

We support the intent of H.B. 2581, H.D. 1, but would suggest that language that would specifically allow for leases, lease-back, and concession arrangements be added to the bill.

Thank you for the opportunity to testify.



Email: communications@ulupono.com

HOUSE COMMITTEE ON FINANCE
Wednesday, February 28, 2018 — 11:00 a.m. — Room 308

Ulupono Initiative Strongly Supports HB 2581 HD 1, Relating to Public-Private Partnerships

Dear Chair Luke, Vice Chair Cullen, and Members of the Committee:

My name is Murray Clay and I am Managing Partner of the Ulupono Initiative, a Hawai'i-based impact investment firm that strives to improve the quality of life for the people of Hawai'i by working toward solutions that create more locally produced food; increase affordable, clean, renewable energy; and better management of waste and fresh water. Ulupono believes that self-sufficiency is essential to our future prosperity and will help shape a future where economic progress and mission-focused impact can work hand in hand.

Ulupono strongly supports HB 2581 HD 1, which establishes the Office of Public-Private Partnership (P3), the Coordinator position, and establishes new delivery methods, because it aligns with our goals of developing infrastructure more efficiently and affordably.

The State of Hawai'i has many infrastructure needs, yet often finds itself faced with complex projects that are over budget, not on time, or not built or maintained in a quality manner. One solution is to work with the private sector on planning, building, financing, operating, and maintaining projects. Yet, these complex deals require expertise in bridging workable and financially appropriate structures for the benefit of all parties. The funding for an Office of Public-Private Partnership and staff is vital if Hawai'i wants to participate in public-private partnerships.

At conferences and thru our consultants, we have heard that private sector financiers often want to work with a local dedicated P3 office that can assist them in navigating that locale's needs, laws, and politics. Dedicated staff would provide an important liaison in attracting private sector financing interest while also encouraging consistent out of the box thinking from within the government bureaucracy.

In late 2016, Ulupono became interested in P3s as federal funding for the rail project was threatened to be revoked. We learned more about public-private partnerships and subsequently commissioned a study conducted by Jones Lang LaSalle to look for alternative

Investing in a Sustainable Hawai'i

financing solutions for the rail project. After reviewing the analysis, we became a proponent of P3 structures as being a more effective way to conduct business for certain large-scale government infrastructure projects. For example, we believe if the Honolulu rail project used a P3 structure such as design-build-finance-operate-maintain at the project's beginnings, the City and County of Honolulu would have significantly reduced its financial exposure and likely improved project delivery and accountability. In addition, according to the study's findings, the total cost for the rail project increases by \$114 million for every year of delay. The City would have been able to lock in many of their costs, which greatly assists lawmakers for future budget planning purposes. Currently, the Honolulu Area for Rapid Transit board is supportive of P3s and has hired Ernst and Young to further look into P3 solutions for the rail project.

As costs in Hawai'i continue to rise at a rapid rate, existing infrastructure continues to age, and government's expensive long-term obligations continue to grow, it seems logical that State government would want to setup structures and personnel to support alternative delivery methods such as P3. Furthermore, under the current Trump administration, it appears federal funding for infrastructure projects might favor projects that incorporate private sector funding. Without building up internal State government P3 expertise and experience, Hawai'i could risk losing a large amount of federal funding over the coming years.

From the rail study, we also discovered that it would be helpful for lawmakers to establish in statute or administrative rules that the State is able to use P3 structures such as design-build-operate-maintain and design-build-finance-operate-maintain. Without a definitive ruling, there appears to be varied opinions amongst key stakeholders, about what P3 structures are currently allowed.

Given the complex issues involving P3s, UluPono would be happy to make our rail P3 consultant Jill Jamieson of Jones Lang LaSalle in Washington D.C. available for a call to answer any technical questions you may have.

Thank you for this opportunity to testify.

Respectfully,

Murray Clay
Managing Partner



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Testimony to the House Committee on Finance
Wednesday, February 28, 2018
11:00 am
State Capitol, Room 308

RE: H.B. 2581, H.D. 1, – Relating to Public Private Partnerships

Chair Luke, Chair, Vice-Chair Cullen & members of the Committee:

My name is Gladys Quinto-Marrone, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii supports the intent of H.B 2581, H.D. 1, which proposes to establish the Office of Public-Private Partnership and the position of State Public-Private Partnership Coordinator. The bill would add design-build-operate-maintain and design-build-finance-operate-maintain project delivery methods to the Procurement Code and related conditions and requirements.

As we understand it, Public-Private-Partnerships (P3's) come in a variety of different delivery methods. For example, the state currently engages in energy performance contracts which are procured under section 103 HRS. There are other leases, lease-like, and concession arrangements such as:

- Lease-Develop-Operate: the private party leases an existing facility from a public agency; invests its own capital to renovate, modernize, and/or expand the facility; and then operates it under a lease contract with the public agency.
- Lease Lease-backs: Public agency leases real property to a private partner for a stipulated price and the private partner then must design, build, finance and/or maintain improvements on the property, for which the public partner will make ongoing lease payments (capital lease purchase).
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- DBFM: A single contract is awarded for the design, construction and maintenance of a capital improvement. Title to the facility remains with the public sector.
- DBFO: A single contract is awarded for the design, construction, and operation of a capital improvement. Title to the facility remains with the public sector.
- Design-Build-Finance-Operate-Maintain: A single contract is awarded for the design, construction, financing, operation and maintenance of a capital improvement. Title usually remains with the public sector. Repayment is in the form of an availability payment or on the basis of user fees.



We believe the bill also needs to include language that would allow for the lease or concession of state owned facilities and/or infrastructure and also include land.

The current version of the bill makes amendments to Chapter 103D, the State Procurement Code. We understand that P3's are effectively a hybrid between the procurement of services (i.e. Chapter 103D HRS) and the leasing of real property (i.e. Chapter 171 HRS), we believe a new section of the law should be created rather than amend either 103D or 171 HRS. However, if the preferred method is to amend 103D, we suggest that appropriate language be added to allow for leasing, lease-back, and concessions involving State owned lands and facilities. It is unclear at this time if 103D will allow for the leasing of state owned lands and facilities as a part of a public-private-partnership arrangement.

We support the intent of H.B. 2581, H.D. 1, but would suggest that language that would specifically allow for leases, lease-back, and concession arrangements be added to the bill. We appreciate the opportunity to express our views on this matter.

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/E-Mail: (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair

Rep. Ty Cullen, Vice Chair

Wednesday, February 28, 2018

11:00 am - FIN #1

Room 308

STRONG OPPOSITION TO HB 2581 HD1 - PRIVATIZING HAWAII

Aloha Chair Luke, Vice Chair Cullen and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the families of **ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE** as well as the approximately 5,500 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that approximately 1,600 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

HB 2581 HD1 establishes the Office of Public-Private Partnership and the position of State Public-Private Partnership Coordinator. Adds design-build-operate-maintain and **design-build-finance-operate-maintain project delivery** methods to the Procurement Code and related conditions and requirements. Requires an annual report.

Community Alliance on Prisons is deeply concerned about this bill and we are getting more concerned as we see Hawai'i starting to mimic some of the bad policies pushed by the United States government. The current federal administration is working hard to destroy regulations and privatize public assets for the benefit of the 1%.

With the corporate prison profiteers circling Hawai'i like buzzards, bills like this make it painfully clear to the community that the state is willing to sell off the **PUBLIC ASSETS WE PAID FOR TO THE PRIVATE SECTOR**. This is yet another insult to the public whose hard-earned tax dollars are being squandered for the benefit of the few instead of for the benefit of the many. This is shameful.

A June 2017 article¹ published by In The Public Interest asserts: *"This plan would encourage shortsighted Wall Street deals, not rebuild America."*

¹ Pence Pushes Infrastructure Public-Private Partnerships Amid Failure in Indiana, This plan would encourage shortsighted Wall Street deals, not rebuild America, Donald Cohen, Contributor - Executive Director, In the Public Interest, 06/08/2017. http://www.huffingtonpost.com/entry/infrastructure-public-private-partnership-pushed_by_us_5939d950e4b0b65670e5690a

The article is very instructive, especially in light of our current RAIL FAIL, where the rail cars were purchased by a company going out of business and HART is now looking into P3s for money. This article highlights how Pence "helped" the state of Indiana:

*"The state of Indiana announced it would take control of a troubled highway construction project, Interstate 69, between Bloomington and Martinsville. **The contractor, the Spanish firm Insolux Corsan, is facing bankruptcy and had been missing deadlines for months.** (Doesn't this sound eerily familiar???)*

*Who brought Insolux Corsan to the state? Pence. As governor, he signed a 35-year public-private partnership with the firm in 2014 to finance, construct, and maintain a section of the highway. Pence said it would provide "**better value for taxpayers**" than if the state used the traditional - and cheaper - method of public financing. **But with only half the project completed and taxpayers left cleaning up the mess, one wonders what he'd say now.**"*

Public-private partnerships are far more expensive than public financing and — without very strong protections — can hand control of infrastructure to private investors.

Community Alliance on Prisons' concerns stem from the dreams of this administration to build more correctional facilities to hide away our social challenges, instead of addressing them, so they don't impact tourism.

"Outsourcing of public services is a big business. Some experts estimate that \$1 trillion out of the \$6 trillion the federal government, together with state and local governments, spend annually are handed over to private contractors."²

The following information is from A GUIDE TO UNDERSTANDING AND EVALUATING - Infrastructure Public-Private Partnerships³:

WHAT ISSUES DO PUBLIC-PRIVATE PARTNERSHIPS RAISE?

While P3s have received much attention as a way to combat our country's infrastructure woes, **they are no panacea**. A closer examination raises issues that warrant careful consideration for decision makers looking to undertake a P3.

- Loss of Democratic Control Over Public Policy and Decisions
- Profitable Projects Drive Public Decisions About What Gets Built
- Reduced Labor Standards
- Limited Access and Affordability from Increased Shift to Fee-Based Infrastructure
- Public Information Becomes Confidential and Proprietary (**Hawai`i already has this problem**)

KEY QUESTIONS TO ASK:

- Is there a thorough understanding of the asset?
- How is the project selected?

² <http://www.theatlantic.com/politics/archive/2014/04/city-state-governments-privatization-contracting-backlash/361016/>

³ **Pay to Prey** Governors Facilitate the Predatory Outsourcing of America's Public Services, PR Watch Admin on October 15, 2014. <https://www.prwatch.org/news/2014/10/12620/pay-to-prey-governors-facilitate-the-predatory-outsourcing-of-america-public-services>

- Has the governmental entity examined all options?
- How will the asset be financed?
- What is the long-term impact on the government budget?
- What is the impact on the workforce?
- What are the costs to the public?
- Is there full transparency?
- Are there potential conflicts of interest?

A 2014 report⁴ shines a new light on the real costs of outsourcing public responsibilities to the private sector. The study argues that governments should pursue broader analysis of contracting out, much like how cities and states have been requiring environmental impact studies ahead of major policymaking and financial decisions.

Report author, Daphne T. Greenwood, professor, Department of Economics, University of Colorado, explains that **“there is a wealth of evidence that outsourcing public jobs often diminishes quality without substantial cost reduction.”** But broader social and economic effects “are often forgotten when considering the cost effectiveness of a contract. Since local and state governments are major employers in many communities, their decisions about how to deliver services are important to economic development.”

The study, released by the at the University of Colorado, Colorado Springs, and funded by Jobs With Justice Education Fund, found government outsourcing can lead to a host of negative consequences, including:

- Reduced accountability and transparency in government services
- Fewer whistleblower protections
- Frequent conflicts of interest and nepotism
- Reduced worker wages and benefits, which leads to reduced spending in local communities as well as potential health and safety issues, fewer opportunities for middle-class jobs and upward mobility, lowered job standards and opportunities for women and people of color and increased use of public assistance
- Varied cost savings, which often diminished over time
- Frequent problems with quality of service delivery

To help leaders assess the full impacts of outsourcing decisions on their own communities, the report includes a guide for calculating the social and economic consequences to a state or community. Examples of statutes that address broader economic and social issues are also included.

An article⁵ about the report uncovering the real costs of outsourcing public services argues that governments should pursue broader analysis of contracting out, much like how cities and states have been requiring environmental impact studies ahead of major policymaking and financial decisions.

⁴“The Decision to Contract Out: Understanding the Full Economic and Social Impacts,” University of Colorado, Department of Economics, March 2014. <https://mail.google.com/mail/?shva=1#inbox/1345769b04c6b4bb>

⁵ New Report Uncovers the Real Costs of Outsourcing Public Services, Erin Johansson, March 11, 2014, <http://www.jwj.org/new-report-uncovers-the-real-costs-of-outsourcing-public-services>

Where the Money Goes: An Example of Private Contracting vs. Public Provision



NOTE: Overhead increases when services are contracted out, sometimes by large margins. Numbers are taken from the example outlined in Table 2 and will vary across specific contracts.

The study, released by the Colorado Center for Policy Studies based at the University of Colorado, Colorado Springs, and funded by Jobs With Justice Education Fund, found government outsourcing can lead to a host of negative consequences, including:

- Reduced accountability and transparency in government services
- Fewer whistleblower protections
- Frequent conflicts of interest and nepotism
- Reduced worker wages and benefits, which leads to reduced spending in local communities as well as potential health and safety issues, fewer opportunities for middle-class jobs and upward mobility, lowered job standards and opportunities for women and people of color and increased use of public assistance
- Varied cost savings, which often diminished over time
- Frequent problems with quality of service delivery

Community Alliance on Prisons urges the committee to consider the experiences of many other states, where the taxpayers are ending up with huge liabilities for shoddy work, missed deadlines, among many other problems. PLEASE DON'T PRIVATIZE HAWAII. We respectfully ask that you hold this bill.

"Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men."

John Adams



COMMITTEE ON FINANCE
Rep. Sylvia Luke, Chair
Rep. Ty J.K. Cullen, Vice Chair
Wednesday, February 28, 2018
11:00 A.M.
Conference Room 308

RE: OPPOSITION TO HB 2581, HD1 RELATING TO PUBLIC-PRIVATE PARTNERSHIPS

Dear Chair Luke, Vice Chair Cullen and Committee Members:

Hawai'i Justice Coalition is comprised of organizations and individuals united in our work to reduce the number of people incarcerated in Hawai'i's jails and prisons. We seek to shift the state's spending priorities away from mass criminalization and incarceration towards rehabilitation, education, restorative justice, health and human services. We believe that comprehensive criminal justice reform promotes public safety, makes responsible use of our resources, and builds healthy communities.

HB 2581, HD1 would establish the Office of Public-Private Partnership and the position of State Public-Private Partnership Coordinator. Adds design-build-operate-maintain and design-build-finance-operate-maintain project delivery methods to the Procurement Code and related conditions and requirements.

We oppose this proposed measure as it would open the door for private prison corporations like Core Civic (formerly known as Corrections Corporation of America) and GEO Group, to enter into contracts with Hawaii to design-build-operate-maintain and design-build-finance-operate-maintain projects - namely NEW JAILS and PRISONS.

Although this bill does NOT specifically mention jails or prisons, Governor David Ige, and the Department of Public Safety are pushing for public-private partnerships

to build a new jail to replace O’ahu Community Correctional Center. A review of the Draft Environmental Impact Statement to replace OCCC clearly demonstrates that the State is leaning towards new jail construction to deal with overcrowding, rather than investing in comprehensive criminal justice reform that would significantly reduce the imprisoned population and alleviate overcrowding.

Who is really pushing for public-private partnerships to build new jails and prisons?

Governmental entities have traditionally used public debt to finance correctional facility construction. However, the two biggest private prison corporations, CoreCivic and GEO Group, are actively pushing governments to consider the use of private financing, known as “public-private partnerships,” to build new facilities.

As demand for additional jail and prison capacity increases due to changing federal immigration and criminal policies, and state and local governments look to expand capacity or replace aging facilities, **CoreCivic (formerly Corrections Corporation of America) and GEO Group both view public-private partnerships as an increasingly important aspect of their business. CoreCivic boasts of its “full-service real estate group,” GEO Group describes itself as a “national leader in the finance, design, construction and management of correctional, detention and community reentry facilities.”**

Through a public-private partnership, CoreCivic and GEO Group designs, builds, and finances the construction of a new facility to the government’s specifications. Upon completion of the construction, the corporation provides maintenance and either operates the facility or allows public sector to handle operation. The corporation owns the facility for the life of the long-term contract and possibly beyond, depending on contract terms.

It should be noted that the emphasis on real estate is in large part related to CoreCivic’s and GEO Group’s conversions to **Real Estate Investment Trusts (REITs) in 2013 and 2012, respectively. This status incentivizes facility ownership over operation.** As REITs, the corporations pay a fraction of the income tax they would otherwise pay. In 2016, GEO Group paid \$2.3 million in federal income taxes and \$972,000 in state income taxes while receiving a **\$41.5 million** REIT tax benefit.

Why should we oppose Public-Private Partnerships specifically with regard to jails and prisons?

- While we understand that governmental entities are looking for

“creative”ways to finance infrastructure and governmental operations, providing financial INCENTIVES AND PROFITS will expand the prison industrial complex, rather than implementing comprehensive Criminal Justice Reform policies that will REDUCE the incarcerated population, and ultimately save taxpayer dollars.

“For P3s to be effective, two conditions must be met: the profit motive has to be consistent with the public good, and service quality must be contractible (Engel, Fischer, and Galetovic 2014). That is, service quality should be easily specified in a contract, so it can be observed and enforced. **Maximizing profits by constraining costs may make sense for road maintenance, for example, but it could lead to disastrous consequences for schools or prisons, where cost minimization and the public interest may not align. Service quality can be measured for roads (potholes are obvious); it is more difficult to do so for school or prison maintenance.** Without “contractible quality,” the monopoly provider will simply boost its profits by cutting costs and reducing service quality.” Economic Policy Institute Report.

“P3s are an increasingly popular mode of financing. In theory, they can be effective—but they provide no free lunches. Funding must still be found for the projects—and ordinary households will end up paying the costs through taxes or user fees. **In addition, the details of contract construction and oversight are daunting and require a competent, democratically accountable government to manage them.** In short, P3s do not allow for simple outsourcing because they do not bypass the need to fund in frastructure or the need for competent public management.” Economic Policy Institute Report.

“**P3s do seem to reduce construction costs, but they do so largely because they ignore the Davis-Bacon Act, which requires the payment of prevailing wage rates to all workers on federal or federally assisted construction contracts.** This apparent advantage thus does not represent a gain in economic efficiency but merely a redistribution of funds away from construction workers.” Economic Policy Institute Report.

Private prison construction deals embed private interests in the criminal justice system, perpetuating mass incarceration.

Construction deals perpetuate the control and influence of private prison corporations in permanent ways. Collectively, CoreCivic and GEO Group **have spent more than** \$10 million in campaign contributions and nearly \$25 million on

Lobbying since 1989. And what they lobby for ensures that facilities are FILLED! They've donated to politicians that support laws such as California's [three-strikes](#)

[law](#) and Arizona's highly controversial anti-immigrant law, [SB 1070](#). They've also [lobbied for funding](#) for Immigration and Customs Enforcement (ICE), to increase the number of detainees. In the Public Interest, 2017.

- Private prison contracts can contain perverse incentives to FILL as many beds as possible, regardless of whether they include operation. Especially when the corporation finances the construction of a new facility, it is important that beds are filled to ensure a steady and long-term stream of lease payments. These contracts contain either explicit "bed guarantees" or minimum monthly payments that ensure the corporation gets paid regardless of how the government uses the facility. In The Public Interest, 2017.

Public-private partnerships result in higher financing costs for the public.

- In the past few years, interest rates for tax-exempt municipal bonds have hovered around [3 to 4 percent](#), representing a period of historically low borrowing

rates. When a private entity finances construction, interest rates are usually higher than they would be for municipal bonds because the private entity may not have the same creditworthiness as the government, and their debt is not tax-exempt. While this debt does not show up on the government's balance sheet as municipal bonds do, the higher cost of financing is passed on to the government through high, contractually obligated lease payments. In the Public Interest, 2017.

In summary, opening the door to public-private partnerships to build jails and prisons in Hawai'i is a dangerous precedent! Please hold this bill.

Sincerely,

Carrie Ann Shirota, JD
Hawai'i Justice Coalition
cashirota808@gmail.com
www.hijustice.org



Aloha Chair Luke, Vice Chair Cullen, and members of the House Finance Committee,

On behalf of the nearly 600 registered members of the Young Progressives Demanding Action – Hawai‘i, I would like to express **opposition** for HB2581 with suggestions. Public-Private Partnerships (P3s) are not inherently bad things, and we appreciate that the legislature is attempting to find creative ways to finance infrastructure upgrades and key Capital Improvement Projects, but we have serious concerns that this bill, and its companion, will open up the door for P3 development of certain core competencies of the public sphere. In other words, there are some things that absolutely must remain fully public, with no allowance for privatization that could allow corporations to turn key public goods into wealth-extraction points. At the top of this list, we would place educational institutions, healthcare and the criminal justice system.

Given that the governor and the Department of Public Safety have been pushing for some form of P3 in the development of a new incarceration facility for O‘ahu (P3s were outlined in the Draft Environmental Impact Statement for a facility to replace OCCC), we are especially concerned that this bill will open up a pathway for private entities such as CoreCivic and GEO Group to insert themselves within Hawai‘i’s correctional facilities and criminal justice system. We are adamantly opposed to the involvement of such entities in this system. Entities that seek to make money off of the backs of unfortunate, poor and often minority people who are incarcerated have no place in Hawai‘i. None.

Governmental entities have traditionally used public debt to finance correctional facility construction. However, the two biggest private prison corporations, CoreCivic and GEO Group, are actively pushing governments to consider the use of P3s to build new facilities. As demand for additional jail and prison capacity increases due to short-sighted federal immigration and criminal policies, and as state and local governments look to expand capacity or replace aging facilities, CoreCivic (formerly Corrections Corporation of America) and GEO Group both view P3s as an increasingly important aspect of their business. CoreCivic boasts of its “full-service real estate group,” CoreCivic Properties, in the corporation’s 2016 rebranding report. GEO Group describes itself as a “national leader in the finance,

design, construction and management of correctional, detention and community reentry facilities.”

Through a public-private partnership, CoreCivic and GEO Group designs, builds and finances the construction of a new facility to the government’s specifications. Upon completion of the construction, the corporation provides maintenance and either operates the facility or allows public sector to handle operation. The corporation owns the facility for the life of the long-term contract and possibly beyond, depending on contract terms.

It should be noted that the emphasis on real estate is in large part related to CoreCivic’s and GEO Group’s conversions to Real Estate Investment Trusts (REITs) in 2013 and 2012, respectively. This status incentivizes facility ownership over operation. As REITs, the corporations pay a fraction of the income tax they would otherwise pay. In 2016, GEO Group paid \$2.3 million in federal income taxes and \$972,000 in state income taxes while receiving a \$41.5 million REIT tax benefit.

Why should we oppose Public Private Partnerships when it comes to the criminal justice system, healthcare and education? Because providing financial incentives and the opportunity for profits will only expand the prison-industrial complex, preventing the implementation of comprehensive criminal justice reform policies that will reduce the incarcerated population, and ultimately save taxpayer dollars.

“For P3s to be effective, two conditions must be met: the profit motive has to be consistent with the public good, and service quality must be contractible (Engel, Fischer, and Galetovic 2014). That is, service quality should be easily specified in a contract, so it can be observed and enforced. Maximizing profits by constraining costs may make sense for road maintenance, for example, **but it could lead to disastrous consequences for schools or prisons**, where cost minimization and the public interest may not align. Service quality can be measured for roads (potholes are obvious); it is more difficult to do so for school or prison maintenance. Without “contractible quality,” the monopoly provider will simply boost its profits by cutting costs and reducing service quality.” Economic Policy Institute Report.

“P3s are an increasingly popular mode of financing. In theory, they can be effective—but they provide no free lunches. Funding must still be found for the projects—and ordinary households will end up paying the costs through taxes or user fees. In addition, the details of contract construction and oversight are daunting and require a competent, democratically accountable government to manage them. In short, P3s do not allow for simple outsourcing because they do not bypass the need to fund infrastructure or the need for competent public management.” Economic Policy Institute Report.

“P3s do seem to reduce construction costs, but they do so largely because they ignore the Davis-Bacon Act, which requires the payment of prevailing wage rates to all workers on federal or federally assisted construction contracts. This apparent advantage thus does not represent a gain in economic efficiency but merely a redistribution of funds away from construction workers.” Economic Policy Institute Report.

Collectively, CoreCivic and GEO Group have spent more than \$10 million in campaign contributions and nearly \$25 million on lobbying since 1989. They’ve donated to politicians that support laws such as California’s three-strikes law and Arizona’s highly controversial anti-immigrant law, SB 1070. They’ve also lobbied for funding for Immigration and Customs Enforcement (ICE), to increase the number of detainees.

Public-private partnerships result in higher financing costs for the public. In the past few years, interest

rates for tax-exempt municipal bonds have hovered around 3 to 4 percent, representing a period of historically low borrowing rates. When a private entity finances construction, interest rates are usually higher than they would be for municipal bonds because the private entity may not have the same creditworthiness as the government, and their debt is not tax-exempt. While this debt does not show up on the government's balance sheet as municipal bonds do, the higher cost of financing is passed on to the government through high, contractually obligated lease payments.

Private prison construction deals embed private interests in the criminal justice system, perpetuating mass incarceration. Construction deals perpetuate the control and influence of private prison corporations in permanent ways. If this bill must be passed, we ask that language be included to specifically exempt projects dealing with healthcare, education and the criminal justice system from being considered for P3 development. These public goods—health, education and corrections—must remain in the hands of the public and must never become privatized. To do so would be to hand democracy over to corporate control.

Mahalo,

Will Caron
Social Justice Action Committee Chair
Young Progressives Demanding Action – Hawai'i

HB-2581-HD-1

Submitted on: 2/27/2018 8:06:33 AM

Testimony for FIN on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	OCC Legislative Priorities Committee, Democratic Party of Hawai'i	Oppose	No

Comments:

HB-2581-HD-1

Submitted on: 2/27/2018 9:18:32 AM

Testimony for FIN on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ronald S. Fujiyoshi	Ohana Ho`opakele	Oppose	No

Comments:

Ohana Ho`opakele, a non-profit organization that has been in existence for at least 18 years and promotes healing over punishment, strongly opposes this bill!

If you build more prisons, you will fill them! Stop the waste of the public's money by building more prisons! CCA or now, Core Civic, has not been a good steward for our pa`ahao (incarcerated). Just look at the violations at Saguaro Correctional Center in Eloy, AZ! Stop the lobbyists from milking money from the public in Hawai`i!

We strongly oppose this bill!

Mahalo for allowing us to send in testimony!

HB-2581-HD-1

Submitted on: 2/26/2018 2:47:11 PM

Testimony for FIN on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
John Parkinson	Individual	Support	No

Comments:

Having testified with respect to HB 2581 before the EBD committee, the AIAI, on behalf of the P3 industry, is of the view that best practice is that the government employee union concerns vary substantially from project to project and, therefore, should be addressed through guiding principles in the preamble declaring legislative intent. This was the approach taken by the District of Columbia.

The District's reference to First Source agreements in its preamble below takes into consideration existing statutory, contractual, and judicial precedent for workforce employment and should comply with those agreements and give preference to and be reflective of the local population and draw upon locally available technical skills, rather than endorse union membership directly.

"To establish the Office of Public-Private Partnerships ("Office") to facilitate the procurement and administration of public-private partnerships in the District of Columbia, to establish the authority to hire professional staff and consultants, to budget for operations of the Office, and to adopt rules and regulations with regard to public-private partnerships, to create the Public-Private Partnership Administration Fund, to create primary authority in the Office to facilitate public-private partnerships, to establish requirements for the procurement of public-private partnerships, the issuance of requests for information, a pre-qualification process, the issuance of solicitations for public-private partnerships, the consideration of unsolicited proposals for public-private partnerships, the Council review of solicitations for public-private partnerships, the entering into of public-private partnership agreements, the terms that shall, may, and cannot be included in public-private partnership agreements, the legal rights of parties to a public-private partnership agreement, the dispute resolution process for public-private partnership agreements, the requirement to consult relevant District government agencies, the requirement to comply with District laws regarding First Source agreements, fair wages, small, local and minority-owned business hiring, and other procurement rules, and requirements to ensure transparency, to make certain conforming amendments, and to provide transition provisions."

Additionally, the references to local hiring, and workforce preservation or opportunity to incorporate locally available resources can be addressed through the implementation guidelines.

February 27, 2018

**TESTIMONY IN OPPOSITION TO HB2581 HD1
Relating to Public-Private Partnerships**

Hearing: February 28, 2018, 11:00am, Room 308

TO: Rep. Luke, Chair and Rep. Cullen, Vice Chair and
Members of the House Committee on Finance

FROM: Barbara Polk

I am testifying as an individual to **strongly oppose** HB 2581, HD1 and am appalled to see this bill to permit and, indeed, encourage, public-private partnerships progressing through a Democratic legislature, when the idea has been pushed for decades by the most conservative groups and individuals in our society through the American Legislative Exchange Council (ALEC). All research shows that using municipal bonds is much cheaper for public infrastructure projects. The state has an excellent bond rating and low interest rates at present. Why is there any consideration at this time of jumping into these "partnerships"?

Unfortunately, the public, and apparently many politicians of all stripes, have been led to believe that businesses are better at doing things than government. Sometimes they are and sometimes they aren't--and which case is not predictable in advance. Businesses often fail, with bankruptcies leaving municipalities holding the bag with much greater expense. (Even our current US President has had several bankruptcies!) In addition, the purpose of business is not the public interest, but to make a profit. In P3s, this often means squeezing wages and benefits of workers, and by-passing procedures government has set up to help ensure honesty and integrity in contracting, protections for the environment, and public input.

I am not claiming that businesses are bad, only that they have a different purpose that is not compatible with the public interest in public projects. Though there may be some, very limited, ways in which a P3 might be useful for the government, those ways are rare and have not been considered or spelled out in what appears to be a rush to turn the public sector over to private entities.

It is especially problematic to permit partnerships that include "operate and maintain", since such agreements substantially reduce government flexibility to deal with changing times and situations.

I strongly urge you to not pass HB 2581 HD1.

Thank you for the opportunity to testify.

HB-2581-HD-1

Submitted on: 2/27/2018 5:40:55 AM

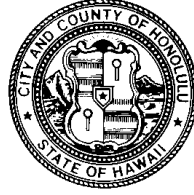
Testimony for FIN on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
ChalÃ© Turner	Individual	Oppose	No

Comments:

LATE

KIRK CALDWELL
MAYOR



NELSON H. KOYANAGI, JR.
DIRECTOR

MANUEL T. VALBUENA
DEPUTY DIRECTOR

TESTIMONY OF NELSON H. KOYANAGI, JR.
DIRECTOR OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
February 28, 2018, Conference Room 308

House Bill HB 2581, "Relating To Public-Private Partnerships"

Position: IN SUPPORT

TO: The Honorable Representative Sylvia Luke, Chair
and the Members of the Committee on Finance

The Department of Budget and Fiscal Services (BFS), City and County of Honolulu, **supports** House Bill No. HB2581, Relating to Public-Private Partnerships.

BFS is in **support** of this bill that will amend Section 103D-4 Hawaii Revised Statutes to add Public-Private Partnerships (P3) procurement avenues in providing the framework for public-private partnerships in the Hawaii Public Procurement Code, HRS Chapter 103D. This bill will do much to encourage and foster future public-private partnerships that will provide the best value and performance in the delivery of assets and services for the benefit of the general public.

However, we do have some concerns over the requirement under SECTION 3 (third paragraph) "to include and identify qualified and competent independent peer reviewer services, which shall be an additional evaluation factor in the award of the contract." It may not be practical to expect that an Offeror would provide truly independent peer review services or that the peer review services proposed by an Offeror could be evaluated because these peer review services would be paid for by the Offeror.

Mahalo for the opportunity to testify on this bill. Should you have any questions or concerns, please feel free to contact the Department of Budget and Fiscal Services' Division of Purchasing at (808) 768-5535 or bfspurchasing@honolulu.gov.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Ninth Legislature, State of Hawaii
House of Representatives
Committee on Finance

LATE

Testimony by
Hawaii Government Employees Association

February 28, 2018

H.B. 2581, H.D. 1 – RELATING TO PUBLIC-PRIVATE PARTNERSHIPS

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO would like to provide comments over the intent of H.B. 2581, H.D. 1 which establishes and appropriates funding for the Office of Public-Private Partnership within the Department of Accounting and General Services to plan and coordinate collaboration amongst state and county agencies to develop and implement public-private partnership projects and adds “design-build-operate-maintain” and “design-build-finance-operate-maintain” project delivery methods to the Procurement Code.

While we acknowledge that there can be benefit to certain public-private partnerships (P3s) in securing and leveraging private funds for the public’s use, there are also many examples of inefficiencies, failures and negative impacts to public assets and the public’s trust in government as a result of P3s. As currently drafted, we respectfully raise concerns over the unintended consequences of establishing any office that has carte blanche authority over its own objectives, goals, criteria, and measurements of efficacy. In order to ensure the public’s trust, there must be accountability and oversight for every agency that expends tax payer dollars, independent of political shifts or the whims of a new Administration. Additionally, we raise concerns over the implications of adding overly broad definitions to the Procurement Code which could enable the state to privately operate any and all of its facilities, including public schools, prisons, hospitals, water treatment plants, collection systems, landfills, public roads, parking lots, airports, and highways, among others.

While H.B. 2581, H.D. 1 can be well intended, this current version is overly broad and all encompassing. We prefer policy that strictly limits the scope of P3s to securing a fusion of private sector funding.

Thank you for the opportunity to provide comments on the broad scope of H.B. 2581, H.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director



LATE

Committee: House Committee on Finance
Hearing Date/Time: Wednesday, February 28, 2018, 11 a.m.
Place: Conference Room 308
Re: Testimony of the ACLU of Hawai'i with comments on H.B. 2581, H.D. 1, Relating to Public-Private Partnerships

Dear Chair Luke, Vice Chair Cullen, and Committee Members:

The American Civil Liberties Union of Hawai'i writes with comments on H.B. 2581, H.D. 1, which creates an Office of Public-Private Partnerships tasked with exploring, formulating, coordinating, and implementing plans for public-private partnerships in Hawai'i. The bill also gives state agencies the power to enter into arrangements with private partners to design, build, operate, and maintain infrastructure facilities, including jails, prisons, and public safety services, **without necessarily first obtaining approval from the Legislature or any elected official.**

While public-private partnerships in of themselves do not necessarily raise civil rights concerns, such partnerships are extremely problematic in the context of law enforcement and corrections, areas which should remain free from for-profit motive.

The experience of other states show that handing over control of prisons to for-profit companies is a recipe for abuse, neglect, and misconduct. For-profit prison companies essentially admit that their business model depends on high rates of incarceration. For example, the Corrections Corporation of America's (now CoreCivic) 2013 annual report specifically identifies drug law reform, immigration reform, reductions in mandatory minimum sentences for non-violent crimes, and lower crime rates as "risk factors" that could hurt its bottom line. Relatedly, private prisons have little incentive to rehabilitate prisoners; in fact, crime is good for private prisons because the more prisoners they are, the more money private prisons make.

Accordingly, the ACLU of Hawai'i requests that H.B. 2581, H.D. 1, be amended to strike out jails, prisons, and public safety services from the definition of infrastructure facility. Such amendment is particularly important, because under the bill, such partnerships can be entered without any public input or debate even though these arrangements could determine the future of criminal justice in Hawai'i for the next 65 years or more.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
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Thank you for the opportunity to testify.

Sincerely,



Mateo Caballero
Legal Director
ACLU of Hawai'i

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for 50 years.

LATE

HB-2581-HD-1

Submitted on: 2/27/2018 9:03:00 PM

Testimony for FIN on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
kevin landers	Individual	Oppose	No

Comments:

Profit motive has no place in the criminal justice system, especially one that is as severely flawed as ours. The war on drugs has failed so many of our daughters and sons. Please do the right thing and reject this measure!

Jim Richardson, PhD & Lorenn Walker, JD, MPH

COMMITTEE ON FINANCE
Rep. Sylvia Luke, Chair
Rep. Ty J.K. Cullen, Vice Chair

LATE

HEARING DATE: Wednesday, February 28, 2018
TIME: 11:00 A.M.
PLACE: Conference Room 308

OPPOSITON TO HB 2581, HD1 RELATING TO PUBLIC-PRIVATE PARTNERSHIPS

Dear Honorable Committee members:

We oppose to this bill to create opportunities for the state to pursue private public partnerships to provide necessary government services to the people of Hawai'i.

We are Jim Richardson, PhD, a business professor at the Shidler College of Business, University of Hawai'i, for almost 30 years, with a PhD from Wharton and a masters degree from MIT. Lorenn Walker, JD, MPH, is an adjunct assistant professor for the public health department, University of Hawai'i and long time social justice advocate.

While the state enjoys the immediate benefits of private funds to support the government's work, in the long term it is the investors of the private entities that provide the funding, who gain the greater benefits of public private partnerships.

It is surprising how this legislation is being promoted in Hawai'i, which is consistent with the Trump administration's policies (Cohen, 2017, *Pence Pushes Infrastructure Public Private Partnerships Admit Failure in Indiana* https://www.huffingtonpost.com/entry/infrastructure-public-private-partnership-pushed-by_us_5939d950e4b0b65670e5690a).

Unfortunately, the public does not have the lobbyists that the private entities backing this legislation have to support their financial interests, but we believe it is your job as legislators to do what is best for the public.

Please do not support this measure and instead do what is right for our state in the long term.

Thank you for your time public service.

Aloha,

Jim Richardson, PhD, & Lorenn Walker, JD, MPH

LATE

HB-2581-HD-1

Submitted on: 2/28/2018 8:46:15 AM

Testimony for FIN on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kathryn Kaknes	Individual	Oppose	No

Comments:

I am opposed to this partnership and to all for-profit private prisons. Please consider criminal justice reforms instead.

Thank you!

LATE

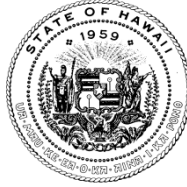
HB-2581-HD-1

Submitted on: 2/28/2018 8:58:46 AM

Testimony for FIN on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Megan Bent	Individual	Oppose	No

Comments:



Testimony by:
JADE T. BUTAY
INTERIM DIRECTOR

Deputy Directors
ROY CATALANI
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 28, 2018
11:00 a.m.
State Capitol, Room 308

**H.B. 2581 H.D. 1
RELATING TO PUBLIC PRIVATE PARTNERSHIPS**

House Committee on Finance

The Department of Transportation (DOT) **supports** this bill which proposes to establish the Office of Public-Private Partnership and the position of State Public-Private Partnership Coordinator within the Department of Accounting and General Services (DAGS) as well as add two project delivery methods to the Procurement Code (HRS 103D) under the Competitive Sealed Proposals Method of Procurement.

Procurement, budgeting, fiscal and contract administration challenges seems to show the need for a procuring agency to have different options for project delivery. Creating a coordinator and a state office providing the support and guidance to the procuring agency to opt for this method may help in its successful implementation.

The DOT comments that this bill and S.B. 2705 S.D.1 should be reviewed together. Both this bill and S.B. 2705 S.D.1 proposes the establishment of an office of public-private partnership within DAGS. S.B. 2705 S.D.1 creates five positions within DAGS to assist in coordinating, managing and providing oversight to agencies entering into public-private partnerships. It would be beneficial for one office to collaborate and facilitate with agencies and private businesses.

The DOT prefers the proposed language in this bill, however as state agencies are all very different in its mission and priorities, and this proposed language appears to create a public-private partnership office with a more advisory role, to provide best practices and guidance, rather than management and oversight. This approach allows each agency entering into public-private partnerships greater autonomy in furthering its mission.

This proposed bill should be reviewed together with the proposed Alternative Project Delivery Bills (SB2739 and HB2312) which as proposed, would create a new chapter in the Hawaii Revised Statutes (HRS) allowing the procuring agency to contract outside of HRS 103D and HRS 171(Conservation and Resources Laws).

Thank you for the opportunity to provide testimony.

LATE

HB-2581-HD-1

Submitted on: 2/28/2018 9:46:13 AM

Testimony for FIN on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Wendy Gibson	Individual	Oppose	No

Comments:

Public-Private Partnerships for building and maintenance of jails/prisons usually requires that a certain "OCCUPANCY RATE" is maintained. If it is NOT, the state must pay a penalty. This is counter-productive to efforts to keep non-violent offenders out of jail/prison in the first place. The USA makes up about 5% of the entire world population, yet we MASS incarcerate our people more than any other country, locking up 25% of the world's prisoners. If efforts to stop MASS incarceration (with bail reform and alternatives to incarceration such as increased diversion into social services) are successful, then these Public-Private partnerships are doomed to fail, financially and contractually.

LATE

HB-2581-HD-1

Submitted on: 2/28/2018 10:58:25 AM

Testimony for FIN on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Raelyn Reyno Yeomans	Individual	Oppose	No

Comments:

To FIN committe-

I strongly oppose HB2581 HD1.

Thank you-

Raelyn Reyno Yeomans