



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

DAVID Y. IGE
GOVERNOR

LUIS P. SALAVERIA
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Statement of
LUIS P. SALAVERIA
Director
Department of Business, Economic Development, and Tourism
before the
**SENATE COMMITTEES ON GOVERNMENT OPERATIONS AND
ECONOMIC DEVELOPMENT, TOURISM AND TECHNOLOGY**

Tuesday, March 20, 2018
3:00 p.m.
State Capitol, Conference Room 224

in consideration of

HB 2581, HD2
RELATING TO PUBLIC-PRIVATE PARTNERSHIPS.

Chairs Kim and Wakai, Vice Chairs Ruderman and Taniguchi, and Members of the Committees.

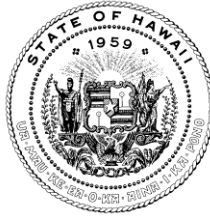
The Department of Business, Economic Development, and Tourism (DBEDT) supports the intent of HB 2581, HD2, which would establish an Office of Public-Private Partnership in the Department of Accounting and General Services (DAGS) and amends Chapter 103D to add public-private partnership project delivery methods and related conditions and requirements.

DBEDT agrees that public-private partnership projects will benefit the State and local governments in providing a more cost-effective and efficient manner to manage capital improvement projects. DBEDT believes that the Office of Public Private Partnerships should remain placed within DAGS as all public-private projects will involve the need for centralized engineering services including planning, design, project and construction management. These resources currently reside within DAGS and would be a critical component in the delivery of projects involving public-private partnerships. DAGS currently serves a number of State agencies who request the centralized engineering services including DBEDT, DOH, PSD, DOD, Libraries and Aloha Stadium.

We defer to the Department of Accounting and General Services for any additional comments.

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

DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
SUZANNE D. CASE
Chairperson

Before the Senate Committees on
GOVERNMENT OPERATIONS
and
ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY

Tuesday, March 20, 2018
3:00 pm
State Capitol, Conference Room 224

In consideration of
HOUSE BILL 2581, HOUSE DRAFT 2
RELATING TO PUBLIC-PRIVATE PARTNERSHIPS

House Bill 2581, House Draft 2 proposes to establish the Office of Public-Private Partnership within the Department of Accounting and General Services (DAGS) to support state and county agencies in the use of best practices in contracting for public-private partnerships, and to appropriate funds for its establishment. The Office of Public-Private Partnership would be headed by a State Public-Private Coordinator position. **The Department of Land and Natural Resources (Department) offers comments on this measure.**

The Department echoes the concerns in testimony submitted by DAGS. The measure does not address a key issue, which is the maximum lease term for public-private partnership projects. The Department agrees with DAGS that the bill should allow a maximum lease term not exceeding 99 years to provide private sector partners who commit significant financial resources and bear most of the risks of a project with adequate time to achieve a financial rate of return commensurate with the risks. As DAGS notes in its testimony, full development of certain types of public-private partnerships, such as mixed use projects that include housing, retail, hospitality and recreational/sports, are ultimately dictated by market or economic conditions. Full development of such mixed-use projects may occur over prolonged lead times for planning, design and ultimate construction. Actual development through construction will be subject to market conditions not only at the time of planning and design but more importantly, based on forecasted market conditions that may be crucial for securing debt and equity financing. The Department concurs with DAGS that the maximum length of such a lease can be controlled through options for extensions that in aggregate 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 timetables. To accommodate a maximum 99-year lease term, the Department agrees with DAGS' recommendation that public-private partnership arrangements under this measure be exempted from Chapter 171, Hawaii Revised Statutes (HRS).

The Department agrees with DAGS that the bill should contain standards for minimum terms and conditions for public-private partnerships. These standards should include the terms and conditions relating to planning, acquisition, financing, development, design, construction, reconstruction, rehabilitation, replacement, improvement, maintenance, management, operation, repair, leasing, and ownership of facilities. These terms and conditions are addressed in Section 7 – “Qualified project agreements; approvals” contained in House Bill 2312, which was introduced by the Administration this legislative session.

The Department shares DAGS' view that the alternate process under House Bill 2312 would provide a more effective means for delivering public-private partnership projects and ensure the continuation of an open and transparent delivery process. See House Bill 2312 at Section 2 – “Alternative project program; established”; Section 3 – “Requests for information”; Section 4 – “Pre-qualification”; and Section 5 – “Solicitation of alternative proposals.”¹ The Department agrees with DAGS that public-private partnerships should be exempted from Chapter 103D, HRS.

The Department joins in DAGS' request to provide an appropriation for a total of three full-time (3.0 FTE) staff positions including the Coordinator to provide DAGS with the minimum staffing levels necessary to fulfill its responsibilities under this measure.

House Bill 2312 (and companion Senate Bill 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 that are in line with existing statutes, except for exemptions to Chapters 171 and 103D, HRS. House Bill 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, HRS. 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.

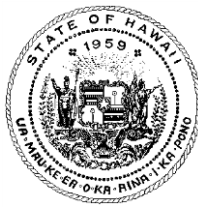
The Department concurs with DAGS that the combination of the basic features in House Bill 2312 allows for the most flexible means with which to explore and develop partnerships that

¹ The Department notes that House Bill 2581, House Draft 2 incorporated the substance of subparagraphs (f) and (g) of Section 5 of House Bill 2312.

would be most advantageous to the State. House Bill 2312 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. The Department joins DAGS in encouraging you to consider the language in House Bill 2312, which is based on a measure enacted by Washington, D.C. in 2015.

Thank you for the opportunity to comment on this measure.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
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NOLAN P. ESPINDA
DIRECTOR

Cathy Ross
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Jodie F. Maesaka-Hirata
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Deputy Director
Law Enforcement

No. _____

WRITTEN TESTIMONY ONLY

TESTIMONY ON HOUSE BILL 2581, HOUSE DRAFT 2
RELATING TO PUBLIC-PRIVATE PARTNERSHIPS

by

Nolan P. Espinda, Director
Department of Public Safety

Senate Committee on Government Operations
Senator Donna Mercado Kim, Chair
Senator Russell E. Ruderman, Vice Chair

Senate Committee on Economic Development, Tourism, and Technology
Senator Glenn Wakai, Chair
Senator Brian T. Taniguchi, Vice Chair

Tuesday, March 20, 2018; 3:00 p.m.
State Capitol, Conference Room 224

Chairs Kim and Wakai, Vice Chairs Ruderman and Taniguchi, and Members of the Committee:

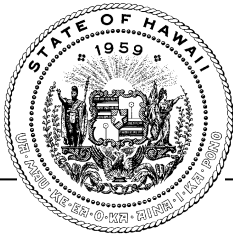
The Department of Public Safety (PSD) **supports the intent** of House Bill (HB) 2581, House Draft (HD) 2, whose purpose is to establish the Office of Public-Private Partnership and the position of the State Office of Public-Private Partnership Coordinator, and respectfully requests that the Committees address the resource requirements of that Office.

As PSD is one of the user agencies of the centralized engineering services provided by the Department of Accounting and General Services (DAGS) and relies on DAGS to deliver these essential services in relation to the development of such challenging projects, PSD would benefit from the resources of the proposed Office of Public-Private Partnership within DAGS.

Testimony on HB 2581, HD 2
Senate Committee on Government Operations
Senate Committee on Economic Development,
Tourism, and Technology
March 20, 2018
Page 2

PSD understands the duties and activities of the Office of Public-Private Partnership would be coordinated with the existing centralized engineering services in DAGS and would assist in the identification, analysis, negotiations, approvals, monitoring, and the ultimate delivery of projects involving public-private partnerships. PSD respectfully encourages the Committees to assure that sufficient resources are provided to the Office of Public-Private Partnership so that potential public-private partnership projects involving PSD and other State agencies are addressed in a timely manner.

Thank you for the opportunity to present this testimony.



OFFICE OF PLANNING STATE OF HAWAII

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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
**SENATE COMMITTEES ON GOVERNMENT OPERATIONS AND ECONOMIC
DEVELOPMENT, TOURISM, AND TECHNOLOGY**

Tuesday, March 20, 2018
3:00 PM

State Capitol, Conference Room 224

in consideration of
HB 2581, HD2
RELATING TO PUBLIC-PRIVATE PARTNERSHIPS.

Chairs Kim and Wakai, Vice Chairs Ruderman and Taniguchi, and Members of the Senate Committee on Government Operations and the Senate Committee on Economic Development, Tourism and Technology.

The Office of Planning (OP) supports HB 2581, HD2, 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.

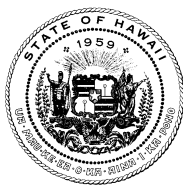
As lead agency for State Transit-Oriented Development (TOD) and co-chair of the Hawaii Interagency Council for Transit-Oriented Development (TOD Council), OP has been actively promoting the use of public-private partnerships through educational and informational workshops and meetings over the past year. Experience with public-private partnerships nationally and internationally shows that using this approach delivers projects on-time, under budget, and exceeds quality expectations. This contracting approach provides the public agency with cost certainty and transfers the risks of cost, schedule and performance to the private sector while maintaining public ownership of the asset.

In the TOD Council's *State TOD Strategic Plan* of December 2017, actions items recommended to improve TOD implementation include "Support legislation and funding to establish a Public-Private Partnership Office", and authorize standards of practice for P3 or alternative or innovative financing delivery systems.

While the Office of Planning supports this measure, we prefer 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
- The maximum period of leases should be extended for up to 99 years to facilitate private sector investments in P3 projects.

Thank you for this opportunity to testify.



DAVID Y. IGE
GOVERNOR

STACIE A. ALDRICH
STATE LIBRARIAN

STATE OF HAWAII
HAWAII STATE PUBLIC LIBRARY SYSTEM
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**SENATE COMMITTEE ON GOVERNMENT OPERATIONS
and
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM
AND TECHNOLOGY**

**Tuesday, March 20, 2018
3:00 p.m.
Conference Room 224
State Capitol**

**By
Stacey A. Aldrich
State Librarian**

H.B. 2581, H.D.2 – Relating to Public-Private Partnerships

To: Chair Kim, Vice-Chair Ruderman and Members of the Committee on
Government Operations

Chair Wakai, Vice-Chair Taniguchi and Members of the Committee on
Economic Development, Tourism and Technology

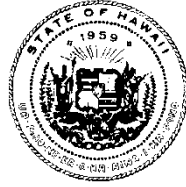
The Hawaii State Public Library System (HSPLS) supports the intent of H.B. 2581 H.D.2, which establishes an Office of Public-Private Partnership, a position of State Office of Public-Private Partnership Coordinator, and provides alternative project delivery methods to the Procurement Code. As a user agency which relies on the Department of Accounting and General Services (DAGS) Public Works Division to implement its projects, HSPL respectfully offers comments for the Committees' consideration.

With 50 public library branches and two administrative support facilities in our statewide system, the staff of DAGS' Public Works Division has been an invaluable partner in our effort to renovate and construct public libraries throughout the State. While HSPLS believes that it will benefit from the establishment of an Office of Public-Private Partnership within DAGS, as a user agency of the centralized

engineering services provided by DAGS, we are concerned that our potential public-private partnership projects may not be adequately addressed in a timely manner if the Office of Public-Private Partnership is not provided with adequate resources to assist us in such projects.

Thank you for the opportunity to comment on this measure.

DAVID Y. IGE
GOVERNOR



HAKIM OUANSAFI
EXECUTIVE DIRECTOR

BARBARA E. ARASHIRO
EXECUTIVE ASSISTANT

STATE OF HAWAII
HAWAII PUBLIC HOUSING AUTHORITY
1002 NORTH SCHOOL STREET
POST OFFICE BOX 17907
HONOLULU, HAWAII 96817

Statement of
Hakim Ouansafi
Hawaii Public Housing Authority
Before the

**SENATE COMMITTEE ON GOVERNMENT OPERATIONS
AND
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY**

**Tuesday, March 20, 2018
3:00 PM
Room 224, Hawaii State Capitol**

In consideration of
**HB 2581, HD2
RELATING TO PUBLIC-PRIVATE PARTNERSHIPS**

Honorable Chair Kim, Honorable Chair Wakai, and Members of the Senate Committee on Government Operations, and Senate Committee on Economic Development, Tourism, and Technology, thank you for the opportunity to provide testimony concerning House Bill 2581, HD2, relating to public-private partnerships.

The Hawaii Public Housing Authority (HPHA) **offers comments with strong concerns** for HB 2581, HD2, which establishes the Office of Public-Private Partnership and the position of State Office of Public-Private Partnership Coordinator within the Department of Accounting and General Services. Adds public-private partnership project delivery methods to the Procurement Code and related conditions and requirements.

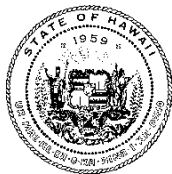
Pursuant to federal law and the Annual Contributions Contract (ACC) with the U.S. Department of Housing and Urban Development (HUD), the execution of contracts on federal public housing projects are vested in the HPHA's Board of Directors.

Section 5 of the ACC states that "the Housing Authority (HA) shall at all times develop and operate all projects covered by this ACC in compliance with all the provisions of this ACC and all applicable statues, executive orders and regulations issued by HUD, as they shall be amended from time to time, including but not limited to these regulations promulgated by HUD at Title 24 of the Code of Federal Regulations, which are hereby incorporated into this ACC by reference as if fully set forth herein, and as such regulations shall be amended from time to time".

In addition, procurement under the federal public housing program is limited to members of the Board, HPHA's Executive staff and other staff serving in official positions at the housing authority. HPHA's properties are under a Declaration of Trust with HUD and all negotiation and subsequent contracting documents are subject to HUD approval.

If the Committees decide to move this bill forward, the HPHA humbly requests an exemption from the measure so that there are no future conflicts with Federal requirements.

The HPHA appreciates the opportunity to provide the Senate Committees with the HPHA's comments regarding HB 2581, HD2. We thank you very much for your dedicated support.



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
SENATE COMMITTEES ON GOVERNMENT OPERATIONS
AND
ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY
TUESDAY, MARCH 20, 2018
3:00 P.M.
CONFERENCE ROOM 224

H.B. 2581, H.D. 2

RELATING TO PUBLIC-PRIVATE PARTNERSHIPS.

Chairs Kim and Wakai, Vice Chairs Ruderman and Taniguchi, and Members of the Committees, thank you for the opportunity to testify on H.B. 2581, H.D. 2.

H.B. 2581, H.D. 2 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 bill, we would like to offer comments to ensure public-private partnerships are delivered in an efficient and effective manner. These comments are as follows:

- 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. This and other requirements 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 position to provide the Department with the minimum staffing levels necessary to fulfill its responsibilities under this measure.

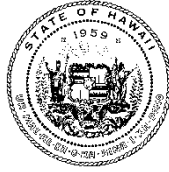
The Administration introduced H.B. 2312 (and companion bill S.B. 2739) Relating to Alternative Project Delivery to provide an alternative method for State government to finance and deliver public projects on time and on budget and except for Chapters 171 and 103D, in accordance with existing statutes.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

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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON
GOVERNMENT OPERATIONS
AND
ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY

March 20, 2018, 3:00 PM

HOUSE BILL 2581 HD2
RELATING TO PUBLIC-PRIVATE PARTNERSHIPS

Chairs Kim and Wakai, Vice Chairs Ruderman and Taniguchi, and members of the committee, thank you for the opportunity to submit comments on HB 2581 HD2.

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 HD2 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. Page 8, Line 10 states: "...in addition to design-build of an infrastructure facility.."

Design-Build construction definition, code, rules and policy already exists within HRS103D. To include design-build into a P3 state, nullifies the existing preface for this action and adds layers of burdensome requirements to an existing construction type. Therefore, SPO recommends deleting the use of design-build within this definition.

2. Page 8, Lines 12-21 states: ""Responsible public-private partnership persons" means the persons designated to attend meetings and otherwise stay apprised of important events and decisions related to a public-private partnership after the initial approval and in anticipation of the final approval of the public-private partnership, who shall include, a t a minimum, representatives from the department of budget and finance, the comptroller, and the attorney general in the case of a state project, or representatives from the mayor and the corporation counsel of the county in the case of a county project."

Approvals and stakeholder guidance should be added in rules. Therefore, SPO recommends the definition of "Responsible public-private partnership persons" be deleted.

3. Page 12, Lines 3-5 states: "(4) Each request for proposals to use any combination of the design-build or public-private partnership methods shall."

Design-Build construction projects should not be included in the P3 RFP requirements. Therefore, SPO recommends the following replace these phrases:

Replace with: "(4) Public-private partnership request for proposals shall:"

4. Page 12, Line 6 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, SPO recommends the following addition to this phrase:

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

5. Page 12, Lines 19-20 to Page 13, Lines 1-4 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.”

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 Chief Procurement Officer for each jurisdiction is responsible for procurement decision-making. All final decisions in any procurement roll up to that respective CPO. 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 procurement team and the final approver, the CPO. Therefore, we recommend the following addition to this phrase:

Replace with: “In other circumstances identified by the respective agency’s Chief Procurement Officer.”

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.”

In addition, 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 recommends this issue be covered under Rules.

6. Page 13, Lines 10-13 states: “thereafter, include responsible public-private partnership persons in important communications and meetings regarding the public-private partnership throughout the procurement process;”

The SPO believes that a procurement during the evaluation stage is deemed confidential so Stateholder guidance can be added in rules or in a specific procurement’s strategy plan. Therefore, SPO recommends the phrases be deleted.

7. Page 13, Lines 15-20 states: “Achieve final approval from the director of finance and the comptroller, in the case of a state project, or the mayor, in the case of a county project, of a recommendation from the head of the purchasing agency to execute a public-private partnership contract.”

The SPO believes that final approvals for procurements fall under the CPO authority purview and therefore, SPO recommends the phrases be deleted.

8. Page 14, Lines 4-5 states: “(1) Shall not be enforceable until it receives final approval under this section;”

The SPO believes that final approvals for procurements fall under the CPO authority purview and therefore, SPO recommends the phrases be deleted.

9. Section 4 of the measure does not include any reference to the Piggybacking Rule pursuant to HAR section 3-128-2(d). The SPO believes that thorough acquisition planning must take place so that all departments/agencies wanting to be part of a P3 must sign a cooperative agreement at the start to be compliant with our Piggybacking Rule. Department/Agencies will not be authorized to enter into an already standing P3 agreement after the solicitation phase. Therefore, we recommend the following additions to this section:

“Pursuant to HAR section 3-128-2, prior written approval of the chief procurement officer is required before entering into a cooperative purchasing agreement.

Agencies shall not enter into or “piggyback” on an existing cooperative purchasing agreement, including contracts issued by federal government or other state or local government. The term “piggyback” is defined as procuring goods, services, or construction using another agency contract without prior public notice and intent to participate.”

The SPO refers the committee to the language in SB2739 for consideration and recommends this proposed bill should be reviewed together with the proposed Alternate Project Delivery Bills (SB2739 and HB2312) which would create a new chapter in the Hawaii Revised Statutes (HRS) and allows for the most flexible means with which to explore and develop partnerships that would be most advantageous to the State.

Thank you.



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**Testimony to the Senate Committees on Government Operations; and
Economic Development, Tourism, & Technology
Tuesday, March 20, 2018
3:00 pm
State Capitol, Room 224**

RE: H.B. 2581, H.D. 2, – Relating to Public Private Partnerships

Chairs Kim and Wakai, Vice-Chairs Ruderman and Taniguchi and members of the Committees:

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. 2, 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).
- **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

- 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. Chapter 103D-104 defines Contracts as follows:

"Contract" means all types of agreements, regardless of what they may be called, for the procurement or disposal of goods or services, or for construction.

We would suggest that this definition be amended to include leases, lease-back, and concession agreements to allow for flexibility in the P3 delivery methods.

We support the intent of H.B. 2581, H.D. 2, 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.



Senate Committee on Government Operations and
Senate Committee on Economic Development, Tourism, and Technology
Chair Donna Mercado Kim, Chair Glenn Wakai

03/20/2018 3:00 PM Room 224
HB2581 HD2 – Relating to Public-Private Partnerships

TESTIMONY / OPPOSE
Corie Tanida, Executive Director, Common Cause Hawaii

Dear Chair Kim, Chair Wakai, and members of the committees:

Common Cause Hawaii opposes HB2581 HD2 which would establish an Office of Public-Private Partnerships (P3) with one coordinator position.

The purpose of HB 2581 is “to assist the State and county governments in undertaking certain capital improvement projects in a more cost-effective and efficient manner.”

However, we offer the caution that, in general, public-private partnerships have not been found to be cost effective, but are more expensive than the traditional way of funding public infrastructure projects through municipal bonds. Typical public-private partnership contracts are structured to allow the private, for-profit business to recoup its initial outlay and earn a profit by charging fees or leasing facilities back to the municipality, usually on terms that are not to the advantage of the public.

Although the private sector may be more efficient, that efficiency is achieved by such means as not holding meetings to solicit public input, not paying union wages, being exempt from environmental impact statements, and being exempt from state laws that ensure that contracts are handled an equitable and transparent way. In addition, municipalities across the country have found that public-private partnership contracts have left them with large unanticipated expenses when a contractor defaults or goes bankrupt or when the terms of the contract are later found to restrict other public activities.

Establishing a P3 office and coordinator position appears to be a pre-mature commitment by the State to this means of funding and managing public projects.

While there may be public-private partnership agreements that would be worth considering, this bill does not suggest the areas in which that might be the case. Until there is considerably more investigation of these possibilities and public discussion of the costs and benefits of this approach to funding public projects, Common Cause Hawaii urges you to defer this bill.

Thank you for the opportunity to testify in opposition to **HB2581 HD2**.

HB-2581-HD-2

Submitted on: 3/16/2018 6:18:36 PM

Testimony for GVO on 3/20/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	Testifying for LGBT Caucus of the Democratic Party of Hawaii	Oppose	Yes

Comments:

This bill is in direct violation of the Democratic Party of Hawaii's Platform and multiple resolutions.

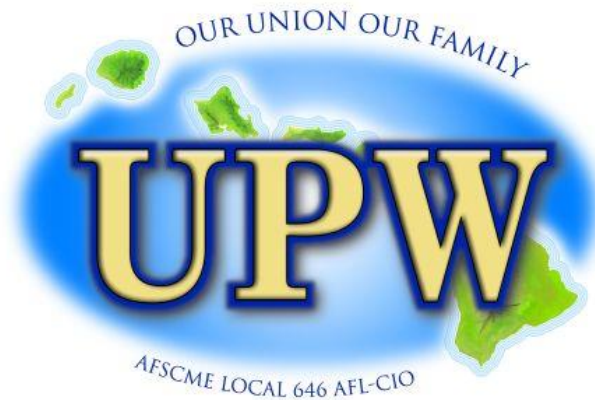
HB-2581-HD-2

Submitted on: 3/16/2018 6:41:23 PM

Testimony for GVO on 3/20/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Field	Testifying for Planned Parenthood Votes Northwest and Hawaii	Oppose	No

Comments:



THE HAWAII STATE SENATE
The Twenty-Ninth Legislature
Regular Session of 2018

COMMITTEE ON GOVERNMENT OPERATIONS **UPW**
Senator Donna Mercado Kim, Chair
Senator Russell E. Ruderman., Vice Chair

COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY
Senator Glenn Wakai, Chair
Senator Brian T. Taniguchi, Vice Chair

DATE OF HEARING: Tuesday, March 20, 2018
TIME OF HEARING: 3:00 p.m.
PLACE OF HEARING: State Capitol
415 South Beretania Street
Conference Room 224

TESTIMONY ON HOUSE BILL HB2581, HD2
RELATING TO PUBLIC PRIVATE PARTNERSHIPS

By DAYTON M. NAKANELUA,
State Director of the United Public Workers (UPW),
AFSCME Local 646, AFL-CIO

My name is Dayton M. Nakanelua, State Director of the United Public Workers (UPW), AFSCME, Local 646, AFL-CIO. The UPW is the exclusive bargaining representative for approximately 12,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

The UPW appreciates the State's effort to innovate its project delivery methods for large CIP projects. The UPW however, is **strongly opposed** to the outsourcing or privatizing of work historically and customarily performed by civil service workers. We also provide the following comments:

- a) State government employees should be provided employment and training opportunities including University students in Hawaii on large CIP projects to enable our workforce in Hawaii to acquire new skills, knowledge and abilities.
- b) At least 60% or more of the new project expenditures should be for Hawaii products, services and personnel.
- c) State government employees should be trained to operate and maintain projects to build capacity for the long run.

Thank you for the opportunity to submit this testimony.



HAWAII

AMERICANS FOR DEMOCRATIC ACTION

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Karin Gill, Secretary	Chuck Huxel	Doug Pyle		

March 16 , 2018

TO: Honorable Chairs & and Members of the GVO & ETT Committees

RE: HB 2581 HD2 Relating to Public-Private Partnerships

.

Opposition for hearing on March 20

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We oppose HB 2581 HD2 as it opens the door for profit-seeking companies to use public enterprises to enhance their income. Public interests are usually better served by public servants on the public payroll and not by private profit seekers. Do you remember how poorly the private book buying company was for our library system? Or the private police speed ticketing company fiasco? These are but two examples of how public private partnerships of gone poorly. We just don't need to encourage private intrusion—especially if this involves prisons. The experiment with mainland private prison has not worked.

Thank you for your favorable consideration.

Sincerely,

John Bickel
President

HB-2581-HD-2

Submitted on: 3/18/2018 7:42:00 AM

Testimony for GVO on 3/20/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Henry Curtis	Testifying for Life of the Land	Oppose	No

Comments:

COMMUNITY ALLIANCE ON PRISONS

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

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



COMMITTEE ON GOVERNMENT OPERATIONS

Sen. Donna Kim, Chair

Sen. Russell Ruderman, Vice Chair

COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM AND TECHNOLOGY

Sen. Glenn Wakai, Chair

Sen. Brian Taniguchi, Vice Chair

Tuesday, March 20, 2018

3:00 pm

Room 224

STRONG OPPOSITION TO HB 2581 HD2 - P - CAVEAT EMPTOR!

Aloha Chairs Kim & Wakai, Vice Chairs Ruderman & Taniguchi and Members of the Committees!

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.

Community Alliance on Prisons is in strong opposition to HB 2581 HD2. We have been researching P3s for several years and have read about communities bankrupted when the private sector decides the development "doesn't pencil out" or "our corporate strategy has changed" and the community is left with a half-built structure or a deteriorating facility AND a huge balloon payment. Caveat emptor *Let the buyer beware*. There is no such thing as a free lunch.

A 2015 report, "**Why Public-Private Partnerships (PPPs) don't work**" explores the importance of public investment. It is the culmination of thirty years' experience with and assessment of privatisation, in countries both rich and poor. **It demystifies the shadowy PPP processes, most of which hide behind confidential negotiations to protect commercial secrecy. There are no public consultations, lots of false promises, and incredibly complex contracts, all designed to protect corporate profits.** There is also a fair amount of bribery, as privatisation contracts can be extremely valuable. The report concludes that PPPs are an expensive and inefficient way of financing infrastructure and services. PPPs are used to conceal public borrowing, while providing long-term state guarantees for profits to private companies. Private sector corporations must maximise profits if they are to survive. This is fundamentally incompatible with protecting the environment and ensuring universal access to quality public services. ¹

¹ WHY PUBLIC-PRIVATE PARTNERSHIPS DON'T WORK The many advantages of the public alternative, BY DAVID HALL, Public Services International Research Unit, University of Greenwich, UK, February 2015. www.psir.org

A June 2017 article² published by In The Public Interest asserts: ***“This plan would encourage shortsighted Wall Street deals, not rebuild America.”*** 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.”***

“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.”³

WHAT ISSUES DO PUBLIC-PRIVATE PARTNERSHIPS RAISE?⁴

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)**

An article⁵ about a report by Colorado Center for Policy Studies based at the University of Colorado uncovering the real costs of outsourcing public services is a clear illustration of P3s.

² 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

³ <http://www.theatlantic.com/politics/archive/2014/04/city-state-governments-privatization-contracting-backlash/361016/>

⁴ **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-americas-public-services>

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 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 places, where the taxpayers are ending up with huge liabilities for shoddy work, missed deadlines, among many other problems. PLEASE DON'T OPEN THE DOOR TO THE PRIVATIZATION OF PUBLIC ASSETS IN HAWAII. Learn from the Maui Hospital debacle. We respectfully ask that you hold this bill. Mahalo for this opportunity to testify. Government services should NOT be privatized!

PPPs are used to conceal public borrowing, while providing long-term state guarantees for profits to private companies. Private sector corporations must maximise profits if they are to survive. This is fundamentally incompatible with protecting the environment and ensuring universal access to quality public services.⁶

⁶ FN 1, page 3.

HB-2581-HD-2

Submitted on: 3/18/2018 8:49:25 PM

Testimony for GVO on 3/20/2018 3:00:00 PM

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

Comments:

Ohana Ho`opakele strongly opposes this bill for the following reasons:

1. We oppose any bill that opens the door for organizations like CoreCivic (previously CCA) from building a prison or jail in Hawai`i. Their record is supervising our pa`ahao (incarcerated me) at the Saguaro Correctional Center is bad. Isn't there a case at present where a Hawaiian inmate is being charged with the death penalty under Arizona law? (And this when the death penalty is not legal here in Hawaii?)
2. Already the cost of living here in Hawai`i is one the highest of the other states in North America. We oppose the encouragement of private-public partnerships to build prisons, jails and other facilities when the private corporations main goal is to make as much profit as possible.
3. Clearly exclude the building of prisons and jails from this bill, at the least.

Mahalo for the opportunity to testify!



Hawai'i

Committee: Senate Committees on Government Operations and on Economic Development, Tourism, and Technology
Hearing Date/Time: Tuesday, March 20, 2018, 3 p.m.
Place: Conference Room 224
Re: *Testimony of the ACLU of Hawai'i in opposition to H.B. 2581, H.D. 2, Relating to Public-Private Partnerships*

Dear Chair Mercado Kim, Chair Wakai, and Committee Members:

The American Civil Liberties Union of Hawai'i writes in opposition to H.B. 2581, H.D. 2, 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 finance, design, build, operate, and maintain infrastructure facilities, including jails, prisons, and others building used for public safety services, without necessarily obtaining approval from the Legislature.

While public-private partnerships in of themselves do not raise civil rights concerns, such partnerships are particularly problematic in the context of law enforcement and corrections, areas which should remain free from for-profit motive, but which are explicitly contemplated as the subject of public-private partnerships under this bill.¹ The experience of Hawai'i and other states amply shows that handing over control of corrections to for-profit corporations is a recipe for civil liberties violations including abuse, neglect, and misconduct:

- In 2010, the Hawai'i State Auditor issued a scathing report, finding that the state's Department of Public Safety "repeatedly misled policymakers and the public by reporting inaccurate incarceration costs."² In justifying the decision to send prisoners to private prisons in Arizona, rather than publicly operated prisons in Hawai'i, the Department used a "flawed methodology," "provide[d] artificial inmate costs," and engaged in "skewed cost reporting."
- Private, for-profit prisons have little incentive to rehabilitate prisoners; in fact, crime is good for private, for-profit prisons because the more prisoners there are, the more money private prisons make. Unsurprisingly, private prisons often violate their government contracts, especially in areas of staffing and programming. For example, in 2010, the ACLU sued CCA/CoreCivic over the

¹ H.B., H.D. 2, § 3 ("Infrastructure facility" means a building, a structure, or networks of buildings, structures, pipes, controls, and equipment that provide . . . public safety services, including . . . jails; prisons; [etc.]").

² State of Hawai'i Auditor, *Management Audit of the Department of Public Safety's Contracting for Prison Beds and Services* (Dec. 2010), available at <http://files.hawaii.gov/auditor/Reports/2010/10-10.pdf>.

American Civil Liberties Union of Hawai'i
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Tuesday, March 20, 2018, 3 p.m.

H.B. 2581, H.D. 2

Page 2 of 2

extraordinary level of violence at its Idaho Correctional Center, which prisoners nicknamed “Gladiator School.”³ After a settlement that required CCA/CoreCivic to hire and maintain additional security staff, it became clear that company officials had falsified thousands of hours of records to look like they were actually staffing security posts that remained empty. In response, the federal court in Idaho sanctioned the company.

- CCA-CoreCivic admits that sentencing reform and immigration reform could harm them by reducing demand for prisons. In fact, many private prison contracts include occupancy guarantees, sometimes referred to as “lockup quotas.”⁴ These require the government to either provide a certain number of prisoners on a daily basis or pay as if the empty prison beds were filled. As a direct result, private prisons spend millions of dollars in influence-peddling to expand contracts and avoid accountability.⁵

Accordingly, the ACLU of Hawai‘i respectfully requests that your Committees defer H.B. 2581, H.D. 2. Alternatively, we ask that your Committee amended the bill to clarify that the Office of Public-Private Partnerships and other state agencies may not explore or enter into plans for public-private partnerships for corrections or law enforcement purposes in Hawai‘i. Such protection is particularly important, because under the bill, public-private partnerships can be entered without legislative and public input⁶ even though these arrangements could determine the future of criminal justice in Hawai‘i for the foreseeable future.

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.

³ ACLU of Idaho, *Kelly v. Wengler*, available at <https://www.acluidaho.org/en/cases/kelly-v-wengler>.

⁴ CoreCivic, Inc., *2016 Form 10-K*, available at <https://www.sec.gov/Archives/edgar/data/1070985/000119312517053982/d310578d10k.htm>.

⁵ Michael Cohen, *How for-profit prisons have become the biggest lobby no one is talking about*, Washington Post (Apr. 28, 2015), available at https://www.washingtonpost.com/posteverything/wp/2015/04/28/how-for-profit-prisons-have-become-the-biggest-lobby-no-one-is-talking-about/?utm_term=.a9936534d870.

⁶ Presently, the Department of Public Safety is required to “develop and implement a community partnering process to be incorporated into the request for proposal” for new prison facilities, including “a community hearing for the purpose of soliciting community input.” See H.R.S. § 353-16.37. This is not, however, a substitute for holding legislative hearing during the appropriations process necessary for building new correctional facilities.

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**Testimony to the Senate Committees on Government Operations and
Economic Development, Tourism and Technology
Tuesday, March 20 2018 at 3:00 P.M.
Conference Room 224, State Capitol**

RE: HOUSE BILL 2581 HD2 RELATING TO PUBLIC PRIVATE PARTNERSHIPS

Chairs Mercado Kim and Wakai, Vice Chairs Ruderman and Taniguchi, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports the intent** of HB 2581 HD2, 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
- 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. Chapter 103D-104 defines Contracts as all types of agreements, regardless of what they may be called, for the procurement or disposal of goods or services, or for construction. We would suggest that this definition be amended to include leases, lease-back, and concession agreements to allow for flexibility in the P3 delivery methods.

We support the intent of H.B. 2581, H.D. 2, 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.



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TO: Senate Committees on Government Operations & Economic Development, Tourism, and Technology

FROM: Carl Bergquist, Executive Director

HEARING DATE: 20 March 2018, 3PM

RE: HB2581 HD2, RELATING TO PUBLIC-PRIVATE PARTNERSHIPS, **OPPOSE**

Dear Chairs Kim & Wakai, Vice Chairs Ruderman & Taniguchi, Committee Members:

We suggest that the public-private partnerships (P3s) contemplated in this bill explicitly *not* be extended to any form of partnering with the private prison industry. The corporations who profit from incarceration have a telling track record of writing or supporting legislation that criminalizes vulnerable communities, particular from minority populations. In particular, we are concerned by their role in championing anti-immigrant and draconian drug laws in order to fill up their detention centers and prisons. [A 2005 report from one of these companies](#), the then Corrections Corporation of America (now CoreCivic) stated plainly:

The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction and sentencing practices or through the decriminalization of certain activities that are currently proscribed by our criminal laws. For instance, any changes with respect to drugs and controlled substances or illegal immigration could affect the number of persons arrested, convicted, and sentenced, thereby potentially reducing demand for correctional facilities to house them.

This is not a hypothetical as [a 2013 MSNBC report highlighted](#): For-profit prisons are making contracts with states containing “(g)uarantee(s) that our prisons will be filled. Guarantee(s) we’ll make a profit,” says Michael Skolnik, a filmmaker who visited over 100 prisons while researching *Lockdown, USA*, a documentary about reforming jail sentences for drug offenses. “And how do you guarantee that? You create drug laws,” Skolnik told msnbc. He argues that private prisons reinforce drug sentencing policies that have constituted “a war against black and brown America.

As many states turn their back on xenophobia and the misguided War on Drugs, our state should not be contracting with corporations that wish to turn back the clock on progress. This

seems particularly true at a time when Hawai'i is championing its immigrant heritage and moving from a criminal justice to a public health focus on drug use. *Please amend this bill to exclude private prison companies from any form of P3 in the Aloha State.*

Thank you for the opportunity to testify.

HB-2581-HD-2

Submitted on: 3/19/2018 2:53:50 PM

Testimony for GVO on 3/20/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for Oahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i	Oppose	No

Comments:



Committee on Government Operations
Sen. Donna Mercado Kim, Chair
Sen. Russell Ruderman, Vice Chair

Committee on Economic Development, Tourism and Technology
Sen. Glenn Wakai, Chair
Sen. Brian Taniguchi, Vice Chair

Tuesday, March 20, 2018 @ 3pm
Conference Room 308

RE: OPPOSE- HB 2581, HD2 RELATING TO PUBLIC-
PRIVATE PARTNERSHIPS

Dear Chairs Kim and Wakai, Vice Chairs Ruderman and Taniguchi, 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 safer communities.

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 Hawai'i to design-build-finance operate and maintain NEW JAILS and PRISONS.

On its face, this bill defines "Infrastructure facility" to mean "a building, a structure, or networks of buildings, structures, pipes, controls and equipment that provide transportation, utilities, public education, or **public safety services**, including government buildings, public schools, courthouses, **jails, prisons**, hospitals.... (emphasis added).

Although the Legislators who introduced this bill may have not had jails, prisons and public safety services in mind, the current statutory language of this bill opens the door for PRISON PRIVATIZATION.

This broadly drafted P3 legislation is consistent with Governor David Ige and the Department of Public Safety's push 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.

Core Civic and GEO GROUP are Actively Pushing Governments to Consider Using Private Financing 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 re-entry 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.

Public-Private Partnerships Perpetuate Mass Incarceration by Creating Incentives to Fill Beds, Rather Than Reducing Inmate Populations.

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

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 are 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.

Interest rates for tax exempt municipal bonds have been at historically low borrowing rates, hovering at 3-4%. When a private entity finances construction, interest rates are usually higher than what they would be for municipal bonds because the private entity may not have the same credit worthiness as the government, and their debt is not tax-exempt. This higher costs of financing is passed on the government through high, contractually obligated lease payments.

Private prisons have notorious records of unconstitutional conditions of confinement, and inferior correctional services, programs and resources.

In 2016, under President Obama's administration, the Department of Justice announced that it would phase out the use of private prisons for federal prisoners citing superior and rehabilitation outcomes at state-run facilities. Deputy Attorney General Sally Yates wrote that private prisons "simply do not provide the same level of of correctional services, programs and resources", "do not save substantially on costs", and "do not maintain the same level of safety and security" as the departments own site. Although the U.S. Justice Department has since reversed this order under President Donald Trump, it's troubling that Hawai'i is pushing P3s, from the Republican Trump/Pence playbook, and would create a new pathway for private jails and prisons in Hawai'i.

Hawai'i continues to move in the wrong direction. It's bad enough that Hawai'i has a dependency on private prison profiteers through out-of-state prisoner contracts. What started as a "temporary" solution to overcrowding in our prisons, has now stretched to twenty-three years. Men and women have been murdered, assaulted, raped and subjected to substandard medical care. Yet, we continue to renew these contracts with CCA/Core Civic - enriching the pocket-books of its shareholders, and only tearing our family and communities apart. Meanwhile, other states have significantly reduced its incarcerated population through comprehensive criminal justice reform, while saving money and reducing crime rates.

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. Alternatively, we recommend that you specifically exclude jails, prisons, correctional facilities and public safety and law enforcement services from the definition and scope of this bill.

Sincerely,

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

CoreCivic and GEO Group's push for public-private partner- ships in building prisons

Guide • In the Public Interest • January 2017

While counties, states, and the federal government have traditionally used public debt to finance correctional facility construction, there is evidence that 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. This guide summarizes concerns about public-private partnerships in correctional facility construction.

What's happening

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,” CoreCivic Properties, in the corporation’s 2016 rebranding effort.¹ GEO Group describes itself as a “national leader in the finance, design, construction and management of correctional, detention and community reentry facilities.”²

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 staff 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.³ 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.⁴

Why it's concerning

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 1989.⁵ And what they lobby for ensures that facilities are filled. They’ve donated to politicians that support laws such as California’s three-strikes law⁶ and Arizona’s highly controversial anti-immigrant law, SB 1070.⁷ They’ve also lobbied for funding for Immigration and Customs Enforcement (ICE), to in effect increase the number of detainees.⁸

- 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.

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.⁹ 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.

Public-private partnerships limit the government’s ability to respond to changing correctional needs.

- Given that public-private partnerships can last for decades, it is inevitable that a government’s correctional facility needs will change during the life of the contract. However, these deals severely limit how a government can respond to shifting needs.
- Unlike a facility built using public financing, privately financed facilities belong to the corporation at least until the end of the contract term (as is the case in a lease-purchase agreement). The government cannot change how the facility and/or the land on which the facility is located are used, even if incarcerated populations significantly decline and the facility is no longer needed. When the public owns the facility and the land, it has much more flexibility, and could even dispose of the facility all together.

The private prison corporation may not properly maintain the facility.

- Regular maintenance of a facility is crucial to ensuring healthy and safe day-to-day conditions for both prisoners and workers. However, there’s reason to be cautious about CoreCivic’s and GEO Group’s commitment to high-quality facil-

ity maintenance.

- When CoreCivic (then Corrections Corporation of America) managed Hernando County's jail north of Tampa, Florida, the corporation failed to repair rusted doors, replace damaged windows, seal cracks in walls and doors, x damaged ceiling tiles, and patch leaks in the roof, even though maintenance **was a requirement** in its agreement with the county.¹⁰ When the sheriff's office assumed management of the facility in 2010, the county commissioned a report that found CoreCivic responsible for roughly **\$1 million** in deferred maintenance costs.¹¹
- In 2011, the Occupational Safety and Health Administration (OSHA) investigated the GEO Group-managed East Mississippi Correctional Facility and cited the corporation for **numerous workplace violations**, including cell doors with broken locks that could not be opened by staff from outside, but could be opened by prisoners from inside.¹²

Public-private partnerships may decrease opportunities for public and stakeholder input.

- Since these deals hand over the entire responsibility for design, construction, maintenance, and maintenance to one corporation, and bundle these project phases into one contract, public and stakeholder input may be limited or even non-existent.

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- When a government uses public debt and a more traditional procurement process, the project has multiple distinct phases in which the government can solicit stakeholder input, engaging in a more democratic process and increasing the likelihood that the resulting facility will reflect the needs of the community and other stakeholders, such as families of those who are incarcerated. By handing control of the entire process to a corporation, there is little opportunity or incentive to solicit stakeholder input. Unlike the government, which is ultimately accountable to the public, CoreCivic and GEO Group are only beholden to their shareholders.

- The public and other stakeholders may not have access to important information about the construction project and resulting facility, as they would if the government was managing the process. CoreCivic and GEO Group have a history of avoiding releasing information about their facilities to the public, claiming “trade secrets” and other exemptions to open records laws, even though much of this same information would be public under a government-run facility.¹³
- Private prison construction deals prop up companies with records of human rights abuses.**
- Regardless of whether a new facility will be operated by private or public sector staff, these deals grow and strengthen CoreCivic and GEO Group, both of which have extensive records of extensive human rights abuses.
 - In 2010, CoreCivic’s (then Corrections Corporation of America) prisoners claimed that under- staffing and mismanagement made the Idaho Correctional Center so violent it was nicknamed the “Gladiator School.” The rate of prisoner-on-prisoner assaults at the facility was **four times** that of the other seven prisons in Idaho combined.¹⁴ The company **relinquished control** of the facility to gangs to save money on employee wages, severely endangering prisoners and the few correctional officers on staff.¹⁵ CoreCivic was later held in **contempt of the court** in 2013 for failing to fix the staffing shortage that created these violent conditions. CoreCivic admitted its employees had filed reports that falsely showed **4,800 hours** of vacant security posts as being staffed during the night shift alone from April to October 2012.¹⁶ For more information about CoreCivic’s track record, see In the Public Interest’s recent fact sheet.
 - In 2012, federal District Judge Carleton Reeves **wrote** that the GEO Group-managed Walnut Grove Juvenile Detention Center in Mississippi was “a picture of such horror as should be unrealized anywhere in the civilized world” and “a cesspool of unconstitutional and inhuman acts.”¹⁷ A U.S. Justice Department **report** found that GEO Group staff had sex with incarcerated youth and that poorly trained workers brutally beat youth while they were handcuffed and defenseless and excessively used pepper spray.¹⁸

About In the Public Interest

In the Public Interest is a research and policy center committed to promoting the common good and democratic control of public goods and services. We help citizens, public officials, advocacy

groups, and researchers better understand the impacts that government contracts and public-private agreements have on service quality, democratic decision-making, and public budgets. For more information, please visit inthepublicinterest.org.

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No free bridge

Why public–private partnerships or other ‘innovative’ financing of in-

frastructure will not save taxpayers money

Report • By **Hunter Blair** • March 21, 2017

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Press release

<http://www.epi.org/publication/no-free-bridge-why-public-private-partnerships-or-other-innovative-financing-of-infrastructure-will-not-save-taxpayers-money/>

Summary

The United States has allowed its stock of infrastructure capital to decay. Despite recognition of the importance of infrastructure for growth, there has been no increase in investment in the eight years since the American Recovery and Reinvestment Act (ARRA) was passed. Even the most traditional mode of finance at the federal level—use of the federal tax on gasoline to fund the Highway Trust Fund—has proved challenging.

During the 2016 presidential election, both candidates made increased infrastructure investment priorities of their campaigns. Each proposed some form of financing that differed from traditional federal infrastructure investment. Donald Trump proposed tax credits for the equity that private investors commit to financing infrastructure. Hillary Clinton proposed providing seed capital to create an infrastructure bank and renewing and expanding the Build America Bond program.

Recently, some policymakers have forwarded plans for infrastructure premised upon the idea that it is a lack of innovative financing measures that is holding back such investment. The so-

lution to this alleged problem can take a number of forms, including infrastructure banks and public–private partnerships (P3s). Such heightened interest in nontraditional infrastructure financing techniques, and the renewed possibility that some such program makes it through Congress means that their costs and benefits should be evaluated.

This report shows that engaging the private sector in infrastructure procurement and management does not provide a fiscal free lunch. There are substantial costs and risks that must be taken into account to fairly compare the costs and benefits relative to traditional infrastructure financing and procurement. This report examines various forms of infrastructure financing and provides a basis for comparing the costs and benefits of each. Key findings include the following:

- Infrastructure funding and financing are different concerns. Funding specifies how resources will be collected to pay for infrastructure construction, operations and maintenance, and repairs. Financing generally concerns how to raise the large upfront costs needed to build the infrastructure.
- Much of the contemporary policy debate implicitly assumes that lack of financing is a drag on policymakers' willingness to make infrastructure investments. In fact, unwillingness to specify funding sources is a much greater impediment to increased infrastructure investment.
- Governments typically finance infrastructure by issuing debt. Given persistently low interest rates, which make such borrowing very attractive, now is not the time to abandon this practice.
- 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, democ-

rationally 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.

- 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.
- Infrastructure banks provide some potential advantages to public investment decision-making, but none of the key advantages stem from the financing they provide. Such banks can promote regional and national coordination of decision-making and build technical capacity on the part of infrastructure planners.
- The Trump administration's infrastructure plan is often advertised as an expansion of P3s. Until more details about it are specified, it cannot be considered as such. So far it appears to be simply a tax credit that may apply to past investment or investment that has already been planned. As such, the plan's ability to induce net new infrastructure investment is extremely uncertain.

Funding versus financing

Infrastructure spending proposals involve two distinct aspects that are often conflated in the political space: funding and financing.

Funding refers to how the infrastructure is paid for, either through user fees, taxes, or both (Geddes 2015).

A defining characteristic of infrastructure is its large upfront fixed cost. The bulk of the money is needed at the outset to pay for the workers, equipment, and materials needed to build infrastructure.

But funding sources (user fees and taxes) materialize only after the infrastructure is built—and then only slowly, over time.

Financing bridges this gap—it involves structuring user fees and taxes in a way to allow upfront costs to be paid for over time.

Funding of a road, for example, may come from a state or city tax on gasoline. But financing the road—making the upfront payment to the builders who construct it—is often done by issuing municipal bonds (that is, borrowing money from private capital markets) that pay a stream of income (from increased gas tax revenues) to the purchasers of those bonds.

The difference between funding and financing can sometimes be murky—and policymakers, builders, and financiers of infrastructure projects often lack incentives to clear up the confusion. But keeping each separate is essential for evaluating claims about the need for “more innovative” financing.

As this report details, a lack of “innovative” financing is not to blame for holding back infrastructure spending in the United States; various nontraditional financing mechanisms have been used and are still in use. Rather, it is the lack of political will to ask for the necessary funding for infrastructure that holds back infrastructure spending. To make the difference between nontraditional financing and traditional financing clear, this report begins by explaining how infrastructure has been traditionally funded, financed, and built in the United States.

‘Natural monopolies’ and the role of the public sector in infrastructure procurement

Traditionally, infrastructure procurement has been left to the public sector, in part because large upfront fixed costs coupled with low marginal costs create what economists call “natural monopolies.” Consider a city’s drinking water infrastructure. The initial costs of

building treatment facilities and digging and installing pipes are high. Once the infrastructure is in place, however, the cost of providing a household with an additional glass of tap water is relatively trivial. Once the utility bears the large upfront cost, it will always be able to underbid a potential new rival (which would have to start from scratch in building alternative treatment facilities and digging and installing pipes), allowing the incumbent service provider to keep out competition.

This natural monopoly gives the provider considerable potential market power. Alone in the market, the monopolist water provider can maximize profits by taking advantage of its market power by hiking prices and allowing service quality to degrade. If drinking water were completely left to private provision, the government would likely be required to institute significant regulation of the monopolist to ensure efficient service delivery.

Given that infrastructure investments often lead to noncompetitive markets, it can make sense for the government to provide the infrastructure itself. Whether done through regulation or direct provision, some engaged public role is necessary to ensure democratic accountability in the provision of public goods and services. The public sector often owns, finances, operates, and maintains infrastructure, but it very rarely builds the infrastructure itself, because local governments typically lack the resources or expertise to engineer and build infrastructure projects. Instead, governments often contract with private companies using what is known as a design-bid-build (DBB) contract. In such a contract, the public sector works with architects and engineers to design the infrastructure and then accept bids from construction firms to build it (Geddes 2011). The government takes responsibility for financing the project, and the facility remains under public ownership. Once the facility is built, the public sector takes over its operations and maintenance.

Calls to “engage the private sector” in infrastructure investment are therefore often imprecise: the private sector is already en-

gaged in nearly every new project. What this “engagement” means in contemporary debates is that private entities should become more involved in some combination of ownership, financing, operations, or maintenance of the facility.

Traditional funding and financing

State and local governments account for the bulk of public spending on infrastructure. For example, in 2014 they accounted for 77 percent of spending on transportation and water infrastructure (CBO 2015).¹ And this actually understates the amount of control state and local governments have over public spending on infrastructure. The Congressional Budget Office (CBO) measures of spending by state and local governments are net of federal grants and loan guarantees, and while this funding comes from the federal government, it is state and local governments deciding which projects will be undertaken.

The federal government does play a significant role in capital infrastructure spending—the money spent on new structures and equipment or improvements and rehabilitation of already existing structures and equipment—accounting for 38 percent of public capital spending on transportation and water infrastructure in 2014. However, that year it contributed just 12 percent of spending on operations and maintenance, which has been the consistently larger category of infrastructure spending since 2005. In 2014 total capital spending on transportation and water infrastructure was \$181 billion and total spending on operations and maintenance was \$235 billion (CBO 2015).

Despite the widely agreed upon need for infrastructure investment, public spending on infrastructure has been falling (**Figure A**). Public spending on transportation and water infrastructure fell from a high of 3 percent of gross domestic product (GDP) in 1959 to 2.4 percent of GDP in 2014. The more recent decline since 1980 is due entirely to decreased public spending at the federal level. Federal spending on transportation and water infrastructure

fell from 1 percent of GDP in 1980 to 0.55 percent of GDP in 2014 (CBO 2015).

FIGURE A

Public spending on infrastructure has been falling

Public spending on transportation and water infrastructure as a share of GDP, 1956–2014

Total public spending

Federal government

State and local governments

1956

2.54%

0.41%

2.10%

1957

2.69%

0.47%

2.19%

1958

2.85%

0.60%

2.23%

1959

3.02%

0.86%

2.11%

1960

2.88%

0.91%

1.94%

1961

2.97%

0.87%

2.07%

1962

2.90%

0.85%

2.00%

1963

2.96%

0.87%

2.05%

1964

2.89%

0.91%

1.92%

1965

2.83%

0.92%

1.85%

1966

2.75%

0.86%

1.83%

1967

2.75%

0.83%

1.87%

1968

2.67%

0.80%

1.81%

1969

2.64%

0.76%

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1971

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0.82%

1.90%

1972

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1973

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0.91%

1.51%

1979

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0.93%

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1980

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2010

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0.67%

2.00%

2011

2.58%

0.64%

1.92%

2012

2.49%

0.61%

1.86%

2013

2.44%

0.57%

1.85%

2014

2.42%

0.55%

1.84%

Created with Highcharts 4.0.3

Total public spending

State and local governments

Federal government

1960

1970

1980

1990

2000

2010

0

0.5

1

1.5

2

2.5

3

3.5%

ChartData

Note: GDP = gross domestic product.

Source: Congressional Budget Office (CBO 2015) analysis based on data from the Office of Management and Budget, the Census Bureau, and the Bureau of Economic Analysis

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State and local governments fund their infrastructure spending in a variety of ways. For highways and bridges, gas taxes have historically played the major role in funding, acting as a rough proxy for user fees (Geddes 2015).² Not all transportation infrastructure is paid for with user fees, however; some states have paid for it

with dedicated sales taxes and general tax revenues. To drive home an earlier point, whether it is roads, bridges, drinking water, electricity, or anything else, all infrastructure projects must be funded through either user fees or tax revenues.

State and local governments generally finance their infrastructure spending through municipal bonds, which provide investors with interest payments that are exempt from federal income tax. This tax advantage reduces the cost of capital for state and local governments, because investors are willing to accept lower interest payments on municipal bonds. (For example, assuming a tax rate of 35 percent, a municipal bond paying interest of just 3.25 percent is as appealing to an investor as a taxable bond that pays 5 percent.)

Calls for nontraditional financing that leverages private capital rest on the premise that it is this traditional financing mechanism, the issuance of public debt, which stymies infrastructure investment. But as **Figure B** shows, interest rates remain persistently low; it is cheap for state and local governments to borrow. It is odd indeed to claim that building infrastructure *now* necessitates the use of nontraditional financing mechanisms. The Bond Buyer 20 index for municipal bonds fell from a high of 13.3 percent in 1982 to just 3.9 percent in 2016 (*The Bond Buyer* 2016). What constrains policymakers from engaging in more infrastructure spending is not the cost of financing but the fundamental funding problem.

FIGURE B

State and local governments can currently borrow at remarkably low rates

Bond Buyer 20 Index, 1979–2016

Date

20-Bond GO index

1979-01-01

6.47

1979-02-01

6.31

1979-03-01

6.33

1979-04-01

6.29

1979-05-01

6.25

1979-06-01

6.13

1979-07-01

6.13

1979-08-01

6.20

1979-09-01

6.52

1979-10-01

7.08

1979-11-01

7.30

1979-12-01

7.22

1980-01-01

7.35

1980-02-01

8.16

1980-03-01

9.17

1980-04-01

8.63

1980-05-01

7.59

1980-06-01

7.63

1980-07-01

8.13

1980-08-01

8.67

1980-09-01

8.94

1980-10-01

9.11

1980-11-01

9.56

1980-12-01

10.11

1981-01-01

9.66

1981-02-01

10.10

1981-03-01

10.16

1981-04-01

10.62

1981-05-01

10.78

1981-06-01

10.67

1981-07-01

11.14

1981-08-01

12.26

1981-09-01

12.92

1981-10-01

12.83

1981-11-01

11.89

1981-12-01

12.91

1982-01-01

13.28

1982-02-01

12.97

1982-03-01

12.82

1982-04-01

12.58

1982-05-01

11.95

1982-06-01

12.38

1982-07-01

12.28

1982-08-01

11.23

1982-09-01

10.66

1982-10-01

9.69

1982-11-01

10.06

1982-12-01

9.96

1983-01-01

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1983-02-01

9.58

1983-03-01

9.20

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1983-06-01

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1983-07-01

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1983-08-01

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9.77

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9.01

1985-06-01

8.69

1985-07-01

8.81

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9.08

1985-09-01

9.27

1985-10-01

9.08

1985-11-01

8.54

1985-12-01

8.43

1986-01-01

8.08

1986-02-01

7.44

1986-03-01

7.08

1986-04-01

7.20

1986-05-01

7.54

1986-06-01

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1986-08-01

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1986-12-01

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1987-01-01

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1987-02-01

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7.43

1990-10-01

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7.18

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2016-04-01

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2016-10-01

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2016-12-01

3.86

Created with Highcharts 4.0.3

20-Bond GO index

1980

1990

2000

2010

0

2.5

5

7.5

10

ChartData

Note: The Bond Buyer 20 index consists of 20 general obligation municipal bonds that mature in 20 years. Index is based on surveys of municipal bond traders by *The Bond Buyer* rather than actual prices or yields. Data displayed here reflect monthly averages of the index.

Source: EPI analysis of [The Bond Buyer 20-Bond GO Index](#)
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As the next section details, many options for nontraditional financing exist, some of which have been tapped. However, no tricky financing scheme can obviate the need for user fees (tolls) and taxes. And it is calling for new tolls and taxes that often deters policymakers from calling for new infrastructure projects. In fact, far from being a panacea, the benefits of private sector involvement in infrastructure financing and control are often overstated and the potential costs and risks that private sector involvement brings are typically radically underestimated.

Public–private partnerships

The most discussed alternative financing option is public–private partnerships. P3s are contracts between the public sector and private partners in which the private sector participates in the financing, operations, or maintenance of infrastructure. When used for financing, private partners provide some of the upfront cash for the project in return for equity returns from the project. As a result, fewer (or no) municipal bond issues are needed. They are not full privatization, where the ownership of the infrastructure is passed to the private partner. Rather, P3s sit somewhere between standard public provision and full privatization dependent upon how many of the previously stated activities (financing, operations, and maintenance) the private partner is involved in.

Alternative financing does not mean that traditional funding mechanisms are not needed. Private partners invest in infrastructure only in return for a future revenue stream. This stream

usually takes the form of user fees. But there are other options. One is “availability payments,” a system in which the government pays the private partner based on performance standards. Take a road for example, the private provider may be paid based on their ability to keep the road clean and in a state of good repair and ensure low levels of congestion. The government can also choose to act as if there were a toll on a road and pay the private partner based on the demand for the road through “shadow tolls.” With a shadow toll, the government chooses how to raise funding, say through a gas tax, but then pays the private partner not with this funding source, but instead simply as if the road were tolled. 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. Proponents of P3s characterize them as the solution to many perceived problems with public provision of infrastructure. They argue that P3s can prevent the construction of “bridges to nowhere,” ensure better maintenance of infrastructure, and impose more efficient user fees. How valid are these claims?

Do P3s provide incentives for the right investment in infrastructure?

White elephant projects (bridges to nowhere) are projects that are approved because they benefit local politicians despite yielding small (or no) net economic benefits to citizens. Since private part-

ners will require a return on their investment, bad projects could be filtered out through the use of a P3. However, profit motives inherent in P3 financing would mean that socially beneficial projects that are not profitable would not be funded. For example, low or no returns to the private partner mean that projects that serve low-income or rural communities would be overlooked. To put it bluntly, the fact that the citizens of Flint cannot afford to pay fees that are high enough to make the replacement of lead-infested water pipes profitable for a P3 does not mean that such investment is socially unnecessary.

Another problem that the profit motives of P3s are intended to address is deferred maintenance. Political incentives may favor new projects (ribbon-cutting) at the expense of maintenance and repairs, even though maintenance and repair often yield the largest economic benefits (Altman, Klein, and Krueger 2015). In a well-managed P3, the private partner would have to take into account the long-term costs of deferring maintenance (failure to meet the quality measurements specified in the contract or the less likely entrance of competitors). It would therefore repair the infrastructure early, when it is cheapest to do so.

But assuming that a P3 is well managed and that the contract is structured appropriately assumes away the real-world risks and costs that P3s present. If, for example, the contract's length is too short, the private partner may decide that it is profitable to defer maintenance, saddling the public with the costs of repair once the contract ends. If the contract is too long, the noncompete clauses that are part of most P3 contracts create tension with the public's control of the asset. Non compete clauses exist in P3 contracts because, like the private partner, the public partner also has some market power. Take a road for example, the private partner could have the return on its investment stripped away if the public partner were to build parallel roads that serve as competition. But noncompete clauses also hamstringing the public's ability to build needed infrastructure. The government may enter into a P3 con-

tract believing that this is the only additional road that will be needed only to find that an unexpected uptick in population growth creates congestion without additional roads. With the non-compete clause, now it is the private partner's market power that comes into play. The private partner would like to lock in the congestion, since their monopoly power on the thruway will ensure them higher profits. In such a case, the goals of the private partner and the public are at odds.

In short, the design of efficient P3 contracts is enormously complicated. They must balance the need for a level of return that entices private investment, while still protecting the public interest. An illustrative example—and cautionary tale—is the P3 used to build the express lanes on California State Route 91. According to Engel, Fischer, and Galetovic (2014), the private provider reduced construction time substantially. Those savings were dwarfed, however, by the problems associated with the poor design of the contract. Traffic ended up heavier than projected, requiring additional lanes to alleviate congestion. However, the noncompete clause in the P3 contract barred such construction, forcing the California Department of Transit to engage in lengthy court battles. The negotiations eventually gave the Orange County Transportation Authority (OCTA) the power to purchase the toll lanes. With no value stipulated in the contract, however, determining the price involved another round of negotiations. In the end, OCTA purchased the lanes, which cost \$130 million to build in 1995, for \$207.5 million in 2003. Only then, years after beginning negotiations, could the public sector start the process of paying for and building the additional lanes needed to alleviate congestion.

Do P3s yield efficiency gains?

Even the short-run savings stemming from lower construction costs in P3s could well come from redistributing costs rather than efficiencies. For example, Engel, Fischer, and Galetovic (2014) document that most of the lower costs for P3s come from side-

stepping Davis-Bacon provisions that require the payment of prevailing wages to construction workers. The savings to taxpayers thus come at the expense of workers, suggesting simple redistribution, not efficiency.

Proponents of P3s claim that private profit incentives lead to more efficient pricing. These profit incentives may be particularly relevant for roads on which, for political reasons, local governments are afraid to use congestion pricing. Governments often have incentives to set prices too low (often zero), but private monopolies create the incentives to set prices too high. Substituting public for private monopoly pricing does not ensure efficiency. It is possible that the price will be set at the appropriate level through negotiations. But an effective government concerned about the public interest is necessary for such a price to be reached.

Potentially the largest problem facing P3s in the real world is their demonstrated inability to enforce strictures against opportunistic renegotiation. Engel, Fischer, and Galetovic (2014) note that the “prevalence of opportunistic renegotiations overturns many of the potential advantages” of P3s. They also note that international evidence suggests that renegotiation is a common problem. Private partners tend to initiate the renegotiations and do so fairly quickly. Governments often bail them out when they run into financial problems after doing a poor job of forecasting the revenue streams from user fees. The experience of P3s increasingly diverges from the theoretical benefits, with ex post renegotiations and market power turning the mechanism from one in which the private sector is brought in to manage risks into crony capitalism that privatizes gains and socializes losses.

Worryingly for the U.S., 40 percent of P3s in the U.S. transportation sector have undergone renegotiation (Engel, Fischer and Galetovic 2014). P3s are still new to the United States as a means of infrastructure financing; the high rate of renegotiation could thus be a sign of growing pains as state and local governments learn to draw up appropriate contracts. But, substantial im-

provements in contract design must be made if P3s are to serve a useful purpose.

“Risk allocation” is a major driver of renegotiations. Ideally, each type of risk should be allocated to the sector that can handle it most efficiently. For example, the risk of the government behaving opportunistically means that noncompete agreements help to ensure that the government has some skin in the game. As noted, the international evidence shows that demand risk is the greatest risk in infrastructure projects; it is particularly important for road construction. To mitigate the prospects of renegotiations, demand risk must be shared.

To do so, Engel, Fischer, and Galetovic (2014) suggest using a present-value-of-revenue (PVR) contract instead of a fixed-term concession. Under such a contract, “the regulator sets the discount rate and toll schedule, and firms bid the present value of toll revenue they desire. The firm that makes the lowest bid wins, and the contract term lasts until the winning firm collects the toll revenue it asked for.” When demand is low, the term of the contract lasts longer; when demand is high, the contract ends sooner. The contract also sets the value at which the public sector purchases back the infrastructure. It curtails the risk of opportunistic renegotiations by limiting the upside and downside demand risk to the private partner.

PVR contracts underscore the need for contractible quality. Consider a private partner with a PVR contract for a road P3 for which there is already some form of competition (say, a parallel road). Were there no PVR contract, reducing service quality would be risky, because drivers would increasingly use the parallel route to avoid potholes. In contrast, under a PVR contract, reducing service quality would mean only that it would take longer to collect the toll revenue. The point is not that PVR contracts are not useful but that ensuring that quality is contractible is critical.

Do P3s provide free (or cheaper) infrastructure?

The idea that P3s allow infrastructure to be built for free is economic snake oil. If P3s are structured so that no funds come from tax revenues, then this simply means that tolls or some other user fee are the funding mechanism. User fees can be an economically efficient way to pay for infrastructure, but they do not require that a private partner be involved; governments can fund infrastructure with user fees while financing the project with traditional tax-exempt municipal bonds. In other words, while tolls and user fees are not taxes per se, they are still a cost that must be borne. Viewed skeptically, the political case for P3s often appears to hinge on the fact that “engaging the private sector” is a way to bring tolls into the funding mix while hiding the word “toll.”

Other financing options

Several nontraditional financing mechanisms are (or were) in use in the United States. They are often implicitly characterized as relieving policymakers of the need to raise taxes or impose user fees. They do not.

Build America Bonds

Build America Bonds (BABs) were created under the 2009 American Recovery and Reinvestment Act (ARRA). Instead of the tax exemption on interest earned attached to standard municipal bonds, BABs provided a federal subsidy of 35 percent of interest costs to the state and local governments that issued the bonds (U.S. Treasury 2010). Issuing a bond that paid 5 percent interest thus cost the state or local government just 3.25 percent interest. The higher interest rate allowed these bonds to draw in more investors. And BABs expanded the universe of potential investors in infrastructure by attracting more pensions and sovereign wealth funds as investors, which do not pay taxes and were thus unable

to benefit from the tax-exempt status of municipal bonds. They allowed states and localities to issue bonds with the market interest rates needed to draw in these investors while still costing less as a result of the federal subsidy.

Despite being popular and more efficient than traditional tax-exempt municipal bonds, BABs were allowed to lapse when the ARRA-funded program expired. The lack of appropriated funds killed the program.

Federal infrastructure banks

Much like already existing state infrastructure banks, a federal infrastructure bank would select and finance infrastructure projects given an initial capitalization. Their main draw appears to be their separation from the political process (Pollack 2009). Federal infrastructure bank proposals are often constructed to move toward cost-benefit analysis to decide which infrastructure gets built instead of the political whims and formulas that currently underlay our federal infrastructure decisions. They also often emphasize regional and national planning in infrastructure decisions (CBO 2012); this ability to look past state and local lines and see the bigger picture could allow federal infrastructure funds to be put toward more efficient uses.

A national infrastructure bank could provide the vehicle for more national planning on infrastructure strategy, which would increase coordination between geographic areas and different infrastructure modes (Altman, Klein, and Krueger 2015). Infrastructure bank proposals usually appropriate a certain initial capitalization and then leverage private investment using P3s (CBO 2012). As we've noted before, P3s involve contracts that are hard to construct to insure efficient outcomes. So a federal infrastructure bank could help state and local governments write P3 contracts in ways that avoid renegotiation and prevent crony capitalism.

The Fixing America's Surface Transportation Act (FAST) of 2015 already took steps in this direction, establishing a National Surface Transportation and Innovative Finance Bureau "to serve as a one-stop shop for state and local governments to receive federal funding, financing or technical assistance" (U.S. DOT 2016). Federal involvement in standardizing transponder technology to help states and localities fund transportation improvements with user fees would also be beneficial (Altman, Klein, and Krueger 2015). So while a federal infrastructure bank could be useful, its main advantages do not involve innovative changes to the financing of infrastructure, because the financing support they would offer (the use of funds to leverage private capital and the provision of loans, loan guarantees, and lines of credit) already exists. Indeed, the Department of Transportation's Transportation Infrastructure Finance and Innovation Act (TIFIA) program performs all of these functions (CBO 2012). The potential benefits of a federal infrastructure bank could be achieved by creating a national infrastructure plan and expanding and extending the TIFIA program to new types of infrastructure (including infrastructure in other sectors). Similar programs have already been set up for infrastructure in the railroad (the Railroad Rehabilitation and Improvement Financing program) and water (the Water Infrastructure Finance and Innovation Act) sectors.

TIFIA does not lack innovation in financing; it lacks funding. Demand for TIFIA financing consistently exceeds supply (Altman, Klein, and Krueger 2015). Congress simply does not appropriate enough funds to the TIFIA program to meet the demand, actually cutting funds in recent years. In this regard, Congress has in fact moved backwards. The Moving Ahead for Progress in the 21st Century Act (MAP-21)—the transportation funding bill President Obama signed in 2012—allocated \$750 million in 2013 and \$1 billion in 2014 to the TIFIA program. However, the implementation of the FAST Act cut the TIFIA program dramatically, leaving just \$275–\$300 million allocated each year between 2016 and 2020.

The Trump administration's infrastructure plan

With the benefits and drawbacks of innovative financing and engaging the private sector in infrastructure investment now clear, it's time to finish by evaluating what the incoming administration has offered. Because the Trump administration's plan details are still few and far between, and because details matter a lot with nontraditional infrastructure financing, the overall plan should worry those concerned about democratic accountability and efficiency in infrastructure provision.

To put it plainly, President Trump's plan is not yet even a simple expansion of P3s, as it is often described. Instead, it provides a tax credit of 82 percent of the equity amount that investors commit to financing infrastructure (Ross and Navarro, 2016). The plan lacks key details on which types of equity investment would qualify for the credit, instead leaving open numerous questions.

Will the tax credit apply to the private equity in existing P3 arrangements or projects approved before the tax break was announced? If it does, it simply provides a windfall for private infrastructure financing that has already occurred. This would result in no net new infrastructure investment. And the incentives for how to finance an already-planned infrastructure project would change. Rather than using municipal bonds to finance a piece of planned infrastructure, state and local governments may shift to using P3 equity financing due to the enormous tax credit attached to it. Once again, this would yield no net new investment. These projects were already going to take place, all that has changed is the arrangement through which they are operated, maintained, and financed.

Assuming that the Trump administration manages to restrict the tax credit to just future investments, how will it ensure that the tax

credits result in net new infrastructure investment relative to what would have occurred without the tax credits?

All of these unanswered questions mean that whether the plan would spur much new infrastructure investment remains extremely unclear.

It is possible that the administration will shift away from tax credits toward a more typical mechanism that expands P3s. Testimony by Elaine Chao, the new secretary of transportation, has focused on P3s, as have discussions about infrastructure investment by Speaker of the House Paul Ryan. However, this report makes clear that simply stating that a P3 structure will be used does nothing to ensure that infrastructure investment is provided in the public interest rather than as simple graft.

About the author

Hunter Blair is a budget analyst at the Economic Policy Institute, where he researches tax, budget, and infrastructure policy. He majored in math and economics at New York University and received his master's degree in economics from Cornell University.

Acknowledgments

This research was made possible (in part) by a grant from the Peter G. Peterson Foundation. The statements made and views expressed are solely the responsibility of the author.

Endnotes

1. The Congressional Budget Office defines transportation infrastructure as including all national, state, and local roads, bridges, tunnels, mass transit, rail, aviation, and water transportation. It defines water infrastructure as including water containment systems, sources of fresh-water, and water utilities.
2. Historically, the gas tax acted as an approximate measure of road usage. With basically all cars being gasoline-powered and fuel efficiency fairly uniform, users that drove the most would also pay the most for their road usage through the gas tax. However, due to increasing fuel

efficiency and the growth of electric and hybrid vehicles the gas tax is no longer a good gauge of road use, and it charges users with more fuel efficient vehicles less. Going a step further, using a gas tax means that drivers of electric vehicles will contribute nothing to pay for roads financed entirely through a gas tax. With the combined growth of fuel efficiency and electric vehicles, the gas tax has begun to behave less like a proxy for road usage, and more as a deterrent to driving less fuel efficient cars, or even gasoline-powered cars at all. The contribution of cars to carbon emissions mean that these are still benefits in their own right. However, it also means that the traditional model of funding roads through approximate user fees needs updating.

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Projects and Create Jobs While Saving Taxpayers Billions.” Washington,
D.C.



Progressive Democrats of Hawai'i

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March 16, 2018

To: **COMMITTEE ON GOVERNMENT OPERATIONS**

Senator Donna Mercado Kim, Chair
Senator Russell E. Ruderman, Vice Chair

COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY

Senator Glenn Wakai, Chair
Senator Brian T. Taniguchi, Vice Chair

Re: HB 2581, HD 2 - Public-Private Partnerships.

Hearing: Tuesday, March 20, 2018 - 3:00 p.m. - Room 224

Position: Strong Opposition

Progressive Democrats of Hawai'i generally oppose public-private partnerships. They tend to give the private partner the profits and stick the public partner with the risks and the losses. This bill suffers from ALL of those problems, especially because it creates a bureaucratic office within the Department of Accounting and General Services (DAGS), whose sole justification for existence would be to crank out public-private contracts and thereby put pressure on other government agencies to accept such contracts. Note that the bill fails to set any limits on the length of any of these contracts!

Core government services should be operated by government agencies, not by private contractors. When private contractors operate services, we lose public accountability and transparency.

As has already been pointed out by many other critics of the present bill and its Senate companion, one area in which a public-private partnership COULD be created under this bill, would be to create a PRIVATE PRISON in Hawai'i. This is expressly permitted by the bill. We consider private prisons to be an abomination in many respects – in terms of civil liberties, treatment of prisoners, the introduction of the profit motive into criminal justice administration, and multiple other factors.

This bill takes Hawai'i seriously in the wrong direction, not simply in terms of private prisons, which we see as the worst possible manifestation of this bill, but in pretty much any way that this bill might be implemented in practice. For these reasons, we respectfully urge this Committee to kill this bill. Thank you very much for the opportunity to testify on it.

Alan B. Burdick, Co-Chair
Progressive Democrats of Hawai'i
Burdick808@gmail.com/ 486-1018

HB-2581-HD-2

Submitted on: 3/17/2018 1:58:49 PM

Testimony for GVO on 3/20/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Janet Graham	Testifying for ACLU	Oppose	No

Comments:

Senate Committees on Government Operations & Economic Development, Tourism, and Technology

Chairs: Senators Donna Mercado Kim and Glenn Wakai

Vice Chairs: Senators Russell E. Ruderman and Brian T. Taniguchi

Tuesday, March 20, 2018 at 3:00 pm, Conference Room 224

Thank you for the opportunity to express my opposition to this bill. The wording of this bill includes “prisons” in infrastructure facilities as subject to public-private partnerships. I am completely against creating private prisons. They have been disastrous for Hawaii and other states. They are more expensive than public prisons and don’t have good track records for protecting the human rights of prisoners. That is specifically why I oppose this bill. If this bill were to specify that prisons could not be subject to public-private partnerships, I might reconsider. However, as written, I oppose it.

Private prisons are fiscally irresponsible and increasing incarceration will not make us safer while it makes it more likely that the state will violate the human rights of its prisoners. I urge you to read the attached report entitled *The Native Hawaiian Justice Task Force Report* https://static.prisonpolicy.org/scans/2012NHJTFREPORT_0.pdf before passing a bill that could lead to more suffering and injustice. I trust that our state can learn from our negative experiences with private prisons and do our best to avoid similarly poor decisions in the future.

Please don't pass this bill without amending it to protect Hawaii's residents, especially native Hawaiians, from the cost and injustice of private prisons.

Mahalo, Janet Graham

HB-2581-HD-2

Submitted on: 3/16/2018 6:54:59 PM

Testimony for GVO on 3/20/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joshua Kay	Individual	Oppose	No

Comments:

Please do not allow for-profit prisons and jails to operate on our shores. I respectfully request that your committees defer H.B. 2581 H.D. 2. Thank you for the opportunity to testify.

HB-2581-HD-2

Submitted on: 3/16/2018 8:32:33 PM

Testimony for GVO on 3/20/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
E. Ileina Funakoshi	Individual	Oppose	No

Comments:

For profit corporations are primarily interested in the bottom line and their performance satisfy their stockholders.



92-954 Makakilo Dr. #71, Kapolei, HI 96707 Email: RainbowFamily808@gmail.com Ph: (808) 779-9078 Fax: (808) 672-6347

March 16, 2018

Honorable Senator Kim, Chair, Government Operations Committee
and members
Honorable Senator Wakai, Chair, Economic, Development, Tour and Technology Committee
and members
Hawaii State Capitol
[514 Beretania Street](#)
[Honolulu, Hawaii 96813](#)

RE: Strong Opposition for HB 2581- HD2 – Non-profit prisons

Rainbow Family 808 strongly opposes HB 2581 – HD2 because the last thing we need in Hawai'i is non-profit prisons. This is further denegration of our society and our families if we give into the greed of corporations at the expense of the value of each person.

Our Rainbow Family 808 has over 1,000 voices pleads with you to stand up against a system that was started as a TEMPORARY fix, NOT A PERMEMENT SOLUTION. There are so many rehabilitation and humane moves that the Prison system can do to assist those in trouble and who really need the help. They need retraining to assist them to reenter society so they can support themselves and their families.

Time's UP. Now is the time to stop the continuation of this temporary, inhumane cooperation. As a Social Worker, I saw the damage that Non-Profit prisons did to the Foster Youth sent to mainland. They weren't given any rehabilitation. So young and so shabbily treated. I hated my Case Manager job when it came to youth imprisoned after their families, the justice system failed them. Some of the youth had never known their families, good or bad. We can't allow them to be failed again.

Thank you for the opportunity to provide our opposition for non-profit prisons which will further destroy our families, society and culture here in Hawai'i. Please vote against greed and vote for the quality of life in putting our funds to work for our people in the form of education and therapy. This change of mindset is a Choice of Life for all our people. Please vote against HB 2581, D2. Vote for We the People.

Sincerely,

Carolyn Martinez Golojuch
President and Co-Founder Rainbow Family 808

Marcella Alohalani Boido, M. A.
Hawaii Judiciary Certified Spanish Court Interpreter, Tier 4

Moili'ili, Honolulu, Hawai'i 96826

To: Sen. Donna Mercado Kim, Chair; Sen. Russell E. Ruderman, Vice-Chair;
Members, Senate Committee on Government Operations

To: Sen. Glenn Wakai, Chair; Sen. Brian T. Taniguchi, Vice-Chair;
Members, Senate Committee on Economic Development, Tourism, & Development

Date: March 20, 3:00 p.m., Room 224

Re: **HB 2581 HD 2, OPPOSE**

Respectfully, I ask these Committees to please defer this bill. I have reviewed previous testimony on this bill and on SB 2705, and this is the only reasonable conclusion I can reach. The testimony from the HGEA and UPW discusses some of the issues that concern me. The testimony and reasoning on February 28, 2018 from the Community Alliance on Prisons; the Hawaii Justice Coalition; Young Progressives Demanding Action – Hawaii; Ohana Ho'opakele; Barbara Polk; ACLU; Jim Richardson, PhD & Loren Walker, JD, MPH; and Wendy Gibson; raise points that I consider extremely important.

I adamantly oppose this bill for these reasons:

- All governments have limited resources. Hawaii has ways to both increase income and reduce costs, as has been pointed out by testimony on HB 2705 by the Community Alliance on Prisons.
- One of the major reasons we have government is to manage public resources in a wise, transparent, responsible manner, with integrity. For this purpose, we have a civil service system and a procurement process. This helps us to avoid corruption.
- If it is all so profitable to provide these structures and services, then it stands to reason that government can do it to a high or higher standard, for less cost, precisely because it does not need to make a profit. The only way it can be profitable to provide these structures and services is to lower standards and cut costs, including wages.
- The bill will function to kick the financial feet out from under even more of Hawaii's already struggling families by undermining our unions.
- The for-profit companies will profit, the wealthy will become wealthier, and our government will foot the bill for even more people who have to go on welfare or, even

worse, become homeless. Those who can will leave Hawaii, and we will hear more sadness about how Hawaii's people cannot afford to stay in Hawaii.

- The bill opens the door to privately owned, for-profit prisons and jails. Hardly anything could be worse for our prison population, the families of our prisoners, the prison staff, and our state. The for-profit companies have prison staff who are poorly trained and paid. We need prison staff who are well trained and paid commensurately. The for-profit facilities do not meet appropriate standards. The experience on the Mainland shows that these for-profit facilities are unhealthy and may be violating the civil rights of the prisoners. The Legislature is well aware of this, I venture to say. Our community needs and deserves better.
- Furthermore, as pointed out in previous testimony on SB 2705, the for-profit prison companies lobby actively against measures that would actually improve our laws and better serve our population. Hawaii should not put a single penny into the coffers of these companies. They take money from the government and spend it to harm people and undermine the public good.

Again, with all due respect, I ask you to please defer this bill, and defer as well, any of the other bills which make similar proposals. Thank you.

HB-2581-HD-2

Submitted on: 3/18/2018 6:59:50 AM

Testimony for GVO on 3/20/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lawrence Ford	Individual	Oppose	No

Comments:

For profit prisons have no place in Hawaii. The profit motive is automatically in conflict with the reason for prisons to exist. With profit centric prisons, there would be no incentive to rehabilitate inmates. At the same time, the less spent on inmates, the more profit engendered. Please do not allow private prisons in our state.

HB-2581-HD-2

Submitted on: 3/18/2018 8:43:27 AM

Testimony for GVO on 3/20/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mona Bomgaars	Individual	Oppose	Yes

Comments:

Dear Chairperson and Members.

Please negate this bill overwhelmingly. What we in Hawaii do not need is privateering in the state cocrrections system! The results of such misuse of earning money from prisons is well known from experiences on the mainland.

We do need some reform of our judicial system especially in our prisons but what we need is increased individual respect for prisoners, social and even access to spiritual services. We also need alternative ways to deal with those who are convicted of crimes to decrease their chances of returning to criminal activities.

However we do not need private companies coming into the system earning profits from the number of people we have in our prisons.

Kill this bill!!

Thank you. Mona R Bomgaars MD, 712 Ainapo Street, Honolulu, HI 96825

HB-2581-HD-2

Submitted on: 3/18/2018 11:08:31 AM

Testimony for GVO on 3/20/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Deborah G. Nehmad	Individual	Oppose	No

Comments:

H.B. 2581, H.D. 2. – like S.B. 2705, S.D. 2 – would open the door to private, for-profit prisons and jails operating on our shores. Private prisons profit from mass incarceration. Driven by profit and shareholder demands, privatization of prisons and jails inevitably results in civil liberties violations, cutting corners, and secrecy. H.B. 2581, H.D. 2.

I strongly urge you to defer action on this measure.

Thank you

Deborah G. Nehmad

HB-2581-HD-2

Submitted on: 3/18/2018 7:48:40 PM

Testimony for GVO on 3/20/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Leilani Maxera	Individual	Oppose	No

Comments:

I oppose HB 2581, HD2, as this bill would open the door for jails and prisons to be designed, built, financed, operated and maintained by PRIVATE CORPORATIONS in Hawai`i. Core Civic, formerly known as CCA, and GEO Group, profit off of the pain and suffering of others. If they build a facility, they lose money if it is not filled. It is in their best interest to keep people incarcerated, whereas it is in the best interest of the community to seek alternatives to incarceration that have been proven to work, such as community courts and diversion programs.

HB-2581-HD-2

Submitted on: 3/19/2018 2:04:46 AM

Testimony for GVO on 3/20/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Shannon Rudolph	Individual	Oppose	No

Comments:

Strongly Oppose!

HB-2581-HD-2

Submitted on: 3/19/2018 8:33:23 AM

Testimony for GVO on 3/20/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Teri Heede	Individual	Oppose	No

Comments:

We do not need #Prisons4Profit in Hawai'i.

Don't pass this bill and bring this to our state.

HB-2581-HD-2

Submitted on: 3/19/2018 9:58:57 AM

Testimony for GVO on 3/20/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Evern Williams	Individual	Oppose	No

Comments:

I oppose this bill.

You are again spending money where other people gain profits and our incarcerated brothers and sisters continue to exist in sub-standard conditions. Yes, we must improve the jail and prison environment. We must also invest in proven criminal justice reform policies that would reduce our incarcerated population, save money and reduce crime rates. Now is the time to do this.

March 18, 2018

**TESTIMONY IN OPPOSITION TO HB 2581, HD2
Relating to Public-Private Partnerships**

Hearing: March 20, 2018, 3:00pm Room 224

TO: Senator Donna Mercado Kim, Chair, Senator Russell Ruderman, Vice Chair; and
Members of the Senate Committee on Government Operations

Senator Glenn Wakai, Chair; Senator Brian Taniguchi, Vice Chair; and
Members of the Senate Committee on Economic Development, Tourism & Technology

FROM: Barbara Polk

I am testifying as an individual to **strongly oppose HB 2581, HB2**. I am appalled to see this bill to permit and 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—those who do not believe there should be a public sector at all.

All research shows that using municipal bonds is much cheaper for public infrastructure projects. The state currently has an excellent bond rating and interest rates are low. Why is there any consideration of jumping into these "partnerships" and supporting them with a taxpayer funded office and staff?

Private entities do not provide additional money to the State in the public-private partnership. They join in to make a profit, something they are expected to do by their shareholders. They aren't going to simply "donate" a project to the State. The State will eventually pay back their partner's investment, as well as the interest on the money the business has borrowed (and that rate is almost always higher than interest on municipal bonds), and enough extra for the business to make a profit. This costs the public more money than if they had used municipal bonds and conventional contracts to begin with, plus public oversight of the project is blunted, often resulting in shoddy work, poor maintenance, and management not in accord with public values. As a recent report points out (see reference to the full report below):

PPPs are used to conceal public borrowing, while providing long-term state guarantees for profits to private companies. Private sector corporations must maximise profits if they are to survive. This is fundamentally incompatible with protecting the environment and ensuring universal access to quality public services.

It is also not true that the private party takes on the risk—it is unlikely that a business would sign a contract that left the risk on them. Businesses often fail or declare bankruptcy (even the current US President has had several bankruptcies), at which point the public is left holding the bag at much greater expense.

Privatizing public facilities leaves the “public” out. It is essential that public facilities, including: government office buildings; public schools; courthouses; jails; prisons; public hospitals; water treatment plants, distribution systems, and pumping stations; wastewater treatment plants, collection systems, and pumping stations; solid waste disposal plants, incinerators, landfills, and related facilities; public roads and streets; highways; public parking facilities; public transportation systems, terminals, and rolling stock; and rail, air, and water port structures, terminals, and equipment be maintained and operated by the public, in accord with public priorities rather than the priority of turning a profit. Public priorities and facilities use also change over time, and are limited by long-term contracts that lock in the ways of doing things at the time the contract is signed.

I urge the legislature to become more familiar with the many issues that have arisen nationally and internationally in the use of public-private partnerships. It is apparent from the ways these bills are written (with a lot of the language taken from the model bills provided by the arch-conservative American Legislative Exchange Coalition—ALEC), that there has not been sufficient information and thought given to this concept. Though there may be some, very limited, ways in which a public-private partnership 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.

Attached is a link to a publication that spells out in more detail the problems with public-private partnerships. I encourage you, and/or your staff, to read the Preface and examine other parts of the report as time permits.

Thank you for the opportunity to testify **IN OPPOSITION TO SB2705 SD2**.

Full publication at: www.world-psi.org/sites/default/files/rapport_eng_56pages_a4_lr.pdf

WHY PUBLIC-PRIVATE PARTNERSHIPS DON'T WORK

The many advantages of the public alternative

BY DAVID HALL, PSIRU

// PREFACE

BACK TO THE FUTURE

For decades the failures of water, energy, rail and health privatisations have made clear across the globe that those who promote privatisation offer false promises. Elections have been fought and won on promises to keep public services in public hands. In sectors like health, education, water, energy and transport, community attitudes strongly support universal public provision.

Yet privatization and so-called public-private partnerships are coming back in fashion. Many governments are turning to public-private partnerships (PPPs) in the hope that the private sector will finance public infrastructure and public services which been savagely hit by the financial crisis. This hope has long run through the World Bank and OECD, but is now emerging in the G20 and the ongoing negotiations at the United Nations for the Sustainable Development Goals and the linked Financing for Development. If successful, privatisation could become official UN policy.

Why such a resurgence when the past 30 years experience shows that privatisation is fundamentally flawed?

In the context of the economic crisis, governments are under increased pressure to find quick answers to hard questions about maintaining public services and funding infrastructure. The longer the crisis extends the more pressure mounts to find answers, but so do the risks of forgetting the root causes: greed, deregulation, and excessive faith in private corporations.

PSI's report "Why Public-Private Partnerships (PPPs) don't work" explores the importance of public investment. This accompanying report examines private sector motives, capabilities, influence and performance.

It is the culmination of thirty years experience with and assessment of privatisation, in countries both rich and poor. It demystifies the shadowy PPP processes, most of which hide behind confidential negotiations to protect commercial secrecy. There are no public consultations, lots of false promises, and incredibly complex contracts, all designed to protect corporate profits. There is also a fair amount of bribery, as privatisation contracts can be extremely valuable.

PPPs are used to conceal public borrowing, while providing long-term state guarantees for profits to private companies. Private sector corporations must maximise profits if they are to survive. This is fundamentally incompatible with protecting the environment and ensuring universal access to quality public services.

The report concludes that PPPs are an expensive and inefficient way of financing infrastructure and services. The report is an excellent working paper that PSI is proposing to affiliates to better understand privatisation and its dangers. The different arguments need to be considered on their own merits and in conjunction with the others, as privatisation is an inherently complex process. Unions can extract information from this reference document and apply it to their specific contexts.

^[3]

Regrettably, most politicians and senior civil servants never access this type of information. Local and national governments and the UN are heavily influenced by the powerful lobby of the biggest services and financial corporations, global consulting and law firms, all intent on reaping profits from basic public services such as health, water, energy. It is our job, in alliance with social movements, to raise the alarm bells, to demand transparency and accountability of our public officials and elected politicians and to create mechanisms for systematic participation in decision making.

These privatisation policies are also linked to the new wave of trade negotiations (TISA, TPP, TTIP), also secretive, without public consultation, agreed behind closed doors and heavily influenced by business interests. These trade deals not only facilitate PPPs but will also lock them in, making it next to impossible to reverse them, regardless of outcomes.

A further danger is the recent effort by the World Bank, the G20, OECD and others to 'financialize' PPPs in order to access the trillions of dollars held by pension funds, insurance companies and other institutional investors.

To access these funds, governments are advised to do a whole lot of PPPs at the same time in order to create a pool of assets that can then be bundled and sold on to long-term investors. This is exactly what the financial services companies did with home mortgages at the turn of the century, which brought us the global financial crisis of 2008.

The PSIRU report also points to the public alternative to privatisation, in which national and local governments continue to develop infrastructure by using public finance for investment, and public sector organisations to deliver the service. This provides numerous benefits to the public such as greater flexibility, control, and comparative efficiency – because of reduced transaction costs and contract uncertainty, as well as economies of scale – and the efficiency gains of more democratic accountability. PSI engages with national unions and with social movements. Our work on trade has brought new

attention to the issue and has provoked a number of serious debates as to the merits of the ongoing negotiations. In the utilities sector, our work has helped provoke a wave of remunicipalisations around the world, most strongly in the water sector. And, our alternative to PPPs, public-public partnerships, based on solidarity and not profit, is having an effect in the development community.

Our work to protect the public interest is unending, but this report provides a boost to the evidence base and a shot in the arm to those seeking to defend public services for the benefit of all. As one of our powerful slogans clearly indicates : People and Planet Before Profits.

Rosa Pavanelli General Secretary of Public Services International (PSI)

[WHY PUBLIC-PRIVATE PARTNERSHIPS DON'T WORK](#)

Jim Richardson, PhD & Lorenn Walker, JD, MPH

COMMITTEE ON GOVERNMENT OPERATIONS

Senator Donna Mercado Kim, Chari
Senator Russell E. Ruderman, Vice Chair

COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY

Senator Glenn Wakai, Chair
Senator Brian T. Taniguchi, Vice Chair

HEARING DATE: Tuesday, March 20, 2018

TIME: 3:00 P.M.

PLACE: Conference Room 308

OPPOSITON TO HB 2581, HD2 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 because of its funding troubles.

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 the Massachusetts Institute of Technology (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. If passed this measure could also allow private prison construction that would be a mistake for additional ethical reasons (private prisons profit from recidivism, etc.).

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

HB-2581-HD-2

Submitted on: 3/19/2018 2:52:09 PM

Testimony for GVO on 3/20/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Peter Gellatly	Individual	Oppose	No

Comments:

Aloha Senators,

Please do not allow this measure to proceed further in this or any legislative session. The facts are clear: As tempting as the numbers may be, partnerships with for-profit entities like CoreCivic for the caretaking of our imprisoned fellow Hawaii citizens simply do not work in elementary ethical and practical ways. Shifting the responsibility for the safety and rehabilitation of inmates to a third party has been shown to be foolhardy and counterproductive, and it is anathema to the spirit of aloha. There are other, better paths, and it is our duty — all of us — to take them.

Mahalo and aloha, Peter Gellatly

HB-2581-HD-2

Submitted on: 3/19/2018 3:46:37 PM

Testimony for GVO on 3/20/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Erica Scott	Individual	Oppose	No

Comments:

This is the WRONG Direction to go with the justice system in Hawaii. No Privatization of Incarceration! No profiteering off the backs of disadvantaged peoples!

The Committees received the form letter below from the following individuals as listed on the next page.

From: kimberly=kimberlydark.com@mg.gospringboard.io on behalf of [Kimberly Dark](#)
To: [GVO Testimony](#)
Subject: Testimony in Opposition to H.B. 2581 H.D. 2
Date: Monday, March 19, 2018 9:22:04 AM

Dear Chair Wakai, Chair Kim, Vice Chair Taniguchi, Vice Chair Ruderman, and Joint Committee Members:

I am writing in opposition to H.B. 2581, H.D. 2, which will be heard on Tuesday, March 20 at 3:00 p.m. by the Senate Joint Committee on Economic Development, Tourism, and Technology and Government Operations. H.B. 2581, H.D. 2 opens the door to private, for-profit prisons and jails operating on our shores. It creates the Office of Public-Private Partnerships tasked with exploring, formulating, coordinating, and implementing plans for public-private partnerships in Hawai'i, but under the definitions, it explicitly allows such partnerships for prisons, jails, and other public safety services.

H.B. 2581, H.D. 2, 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 input from the community, including the community affected by the new facility.

While public-private partnerships in of themselves do not 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, but which could easily be the subject of public-private partnerships under H.B. 2581, H.D. 2. The experience of Hawai'i and other states amply shows that handing over control of corrections to for-profit corporations is a recipe for civil liberties violations including abuse, neglect, and misconduct.

Please do not allow for-profit prisons and jails to operate on our shores. I respectfully request that your committees defer H.B. 2581 H.D. 2. Thank you for the opportunity to testify.

Sincerely,

Kimberly Dark
12-211 Oliana St.
PAHOA HI, 96778-8028

1. Alan Johnson
2. Alan Young
3. Alexis Erum
4. Alis Rasmussen
5. Andre Deslauriers
6. Ann Fielding
7. Ann Horwath
8. Anne Freeman
9. April Lee
10. Ashlee Valeros
11. Audrey Vandreschoot
12. Barbara Franklin
13. Barbara Logan
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32. Dave Pettus
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48. Edwin Lesperance
49. Elizabeth Laliberte
50. Eric Haskins
51. Eric Voorhies
52. Esta Marshall
53. Eve Powers
54. Felicia Bissell
55. Gary DuBrall
56. Gary Oamilda
57. Gayle Morrison
58. George Sliney
59. Gille Peterson
60. Gilmer Borbo
61. Gita Tucker
62. Gordon Lange
63. Greg Puppione
64. Gwen Geronimo
65. H G Picher
66. H. Asumen
67. Harley Hill
68. Heidi Holloran
69. Heraldo Farrington
70. Ilene Grossman
71. James Johnston
72. James Long
73. James Riley
74. Janet Venturini
75. Janice Palma-Glennie
76. Janie Archuleta
77. Jason Youn
78. Jeffery Ugai
79. Jenn Oishi
80. Jennifer Losalio
81. Jessica Carter
82. Joan Jackson
83. John Dunlap
84. Joy Ray
85. Joy Yukumoto
86. K. Chung
87. Karen Buzzard
88. Karen Kiefer
89. Katherine Wood
90. Kathryn Bradley
91. Kathy Shimata
92. Kayce Hazelgrove
93. Keith Krueger
94. Kelly High
95. Kimberly Dark
96. Kristin Gillette
97. Kuincey Banac-Aricayos
98. Kyra Bramble
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100. L.M. Holmes
101. Laura Rosas Leong
102. Laure Dillon
103. Lea Taylor
104. Leah Yamamoto
105. Leilani Maxera
106. Leslie Luttig

107.Linda Burnham Larish
108.Liz Brown
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110.Lois Langham
111.Loren Bullard
112.Lynda Barry
113.Lynne Domitz
114.Madeleine Turner
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117.Margaret Clark
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119.Marilyn Davis
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145.Randal Bartlett
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179.Taryn Bell
180.Terrence Travis
181.Terry Aguiar
182.Theresa Nash
183.Theresa V De Mello
184.Thorne Silverberg
185.Tia Pearson
186.Tiffany Thomas
187.Valerie Weiss
188.Vanessa Walker
189.Veronica Slaughter
190.Veryl Ann Grace
191.Vivian Chang
192.Walter Hebblethwaite
193.William Swan
194.Yujen Hsia
195.Zoe Alexander