



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

Testimony of **Ford Fuchigami**
Administrative Director, Office of the Governor

Before the
House Committee on Finance
March 28, 2018
3:00 p.m., Conference Room 308

In consideration of
Senate Bill No. 2705 SD2 HD1
RELATING TO PUBLIC-PRIVATE PARTNERSHIPS

Chair Luke, Vice Chair Cullen, and committee members:

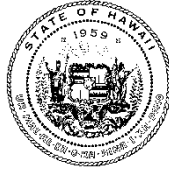
Thank you for the opportunity to submit comments on **Senate Bill 2705 SD2 HD1 Relating to Public-Private Partnerships**, which establishes an office of public-private partnership within the Department of Accounting and General Services (DAGS).

The Governor's Office strongly supports the concept of state agencies working with the private sector especially to improve the efficiency and effectiveness of completing public capital improvement projects. However, our office has serious concerns about whether this bill sets the appropriate framework and provides sufficient resources to effectively coordinate state public-private partnership efforts.

We defer specific comments to testimony submitted separately by the Department of Accounting and General Services.

Thank you for the opportunity to submit testimony.

DAVID Y. IGE
GOVERNOR



SARAH ALLEN
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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
FINANCE

March 28, 2018, 3:00 PM

SENATE BILL 2705, SD2, HD1
RELATING TO PUBLIC-PRIVATE PARTNERSHIPS

Chair Luke, Vice Chair Cullen, and members of the committee, thank you for the opportunity to submit comments on Senate Bill 2705, SD2, HD1.

The State Procurement Office (SPO) supports the intent of this measure. The SPO views the ability to enter into public-private partnerships (P3) as a creative tool for government to contract to deliver and finance State projects.

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

SPO Recommendation: 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 words: “in addition to design-build” within this definition.

2. Page 9, Section 3, Lines 1-10. This definition paragraph 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, at 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.”*

SPO Recommendation: This paragraph is attempting to have important stakeholders included in the planning, procuring and final approvals for public-private partnerships. This model will not work if the P3 business model is written inside of the procurement code. The Procurement Code has a very clear accountability model whereby Directors of the Executive Branch are seen as Heads of Departments and have certain procurement responsibilities, however, their Chief Procurement Officer, holds overall accountability and the procurement would be conducted and awarded (without final approval) by a Procurement Officer and/or an Evaluation Team (which is more likely in this case). SPO recommends deletion of this paragraph as it directly conflicts with normal procurement procedure.

3. Page 12, Section 4, Lines 13-21, and Page 13, Lines 1-21 and Page 14, Lines 1-8

103D-303 (i)(4) states: *“Each request for proposals to use any combination of the design-build or public-private partnership methods shall...”*

SPO Recommendation: The State has been procuring design-build construction since 2011, and this form of procurement should not be rolled into the additional requirements for P3 procurements. SPO recommends deletion of the words: “any combination of the design-build or”. Replace with: “(4) Public-private partnership request for proposals shall:”

4. Page 12, Line 16 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:

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

5. Page 13, Lines 8-9 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:

SPO Recommendation: 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 19-21 and Page 14, Lines 1-2 states: *“..thereafter, include responsible public-private partnership persons in important communications and meetings regarding the public-private partnership throughout the procurement process;”*

The during the evaluation stage is deemed confidential so Stateholder guidance can be added in rules or in a specific procurement’s strategy plan.

SPO Recommendation: Delete the phrase: “thereafter, include responsible public-private partnership persons in important communications and meetings regarding the public-private partnership throughout the procurement process;”

7. Page 14, Lines 3-8 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.”

SPO Recommendation: All procurements fall under the CPO authority purview and procurements already have a competitive procedure for final award.SPO recommends deletion of this phrase.

8. Page 14, Lines 12-13 states: “(1) *Shall not be enforceable until it receives final approval under this section;*”

SPO Recommendation: All procurements fall under the CPO authority purview and procurements already have a competitive procedure for final award.SPO recommends deletion of this phrase.

9. Section 4 of the measure does not include any reference to the Piggybacking Rule pursuant to HAR section 3-128-2(d). Strategic procurement 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.

SPO Recommendation: Add the following 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 Governor’s Bill, 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 an alternate means with which to explore and develop partnerships that would be most advantageous to the State.

Thank you.

DAVID Y. IGE
GOVERNOR



RODERICK K. BECKER
Comptroller

AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

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TESTIMONY OF
RODERICK K. BECKER, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE ON FINANCE
WEDNESDAY, MARCH 28, 2018
3:00 P.M.
CONFERENCE ROOM 308

S.B. 2705, S.D. 2, H.D. 1

RELATING TO PUBLIC-PRIVATE PARTNERSHIPS.

Chair Luke, Vice Chair Cullen and, and Members of the Committee, thank you for the opportunity to testify on S.B. 2705, S.D. 2, H.D. 1.

S.B. 2705, S.D. 2, H.D. 1 will establish the Office of Public-Private Partnership and the position of State Public-Private Coordinator within the Department of Accounting and General Services (DAGS) to provide support in contracting for public-private partnerships to deliver and finance public projects theoretically at a lower lifecycle cost and more diversified risk than the traditional delivery processes. While the Department appreciates the intent of this bill and acknowledges and appreciates the amendments that incorporate certain provisions of S.B. 2739 which was introduced by the Administration, we have significant concerns with the bill in its current form. S.B. 2739 addressed what the Administration believes are the key elements to provide an alternative method for government to finance and deliver public projects on time, on budget and remain in compliance with, among other laws, public union laws, prevailing wage laws, environmental and historic preservation laws, and all permitting laws. Further, the Administration's bill would not mandate, but allow government to elect an alternative method of managing public lands and awarding contracts, that is separate and apart from Chapters 171 and 103D, Hawaii Revised Statutes. The provisions of S.B. 2739 have addressed key elements of an alternate method for delivery of projects including:

- An alternative project delivery program for DAGS to assist departments and agencies with the development, solicitation, evaluation, award, and delivery of “qualified projects” defined as the planning, acquisition, financing, development, design, construction, reconstruction, rehabilitation, replacement, improvement, maintenance, management, operation, repair, leasing, or ownership of a project implemented under the Administration’s bill. Other key elements of this alternative project delivery program and related concerns of S.B. 2705 S.D. 2, H.D. 1 are described in the following bullet points.
- S.B. 2739 provides for transparency and open and fair competition by providing processes for requesting information and pre-qualifying of private entities that include a requirement for public notice of a request for qualifications. These provisions also provide for requirements for the identification and the criteria for pre-qualifying private entities and providing requirements that require proposals to address key criteria such as funding and financial resources, managerial, organizational and technical capacity and experience. S.B. 2739 further provides for a competitive process in soliciting alternative proposals defined as a proposal submitted by a private entity to a public entity in response to the public entity’s solicitation of alternative proposals pursuant to this alternative project delivery program. S.B. 2739 provides that such solicitations provide guidance by requiring that such solicitations for alternative proposals include key details such as scope and minimum requirements of the proposed qualifying project, material terms and conditions, criteria for evaluation and selection, a provision permitting private entities to protect trade secrets or confidential commercial, financial, or proprietary information that are to remain confidential subject to the Chapter 92F provisions and public notice requirements. A key element of this section of S.B. 2739 that is not available in the current Hawaii Revised Statutes (HRS) 103D provisions is that it permits public entities to engage in negotiations with the highest ranked offeror and may terminate negotiations if such negotiations are not successful and commence negotiations with the next highest scoring offeror. This alternative

- solicitation process further provides public entities the flexibility by providing options to award to the offeror with whom the public entity is currently negotiating, determine to continue negotiations with offerors or cancel the solicitation of alternative proposals but provides controls that requires awards be only made to an offeror whose proposal is determined in writing to be the most advantageous and in the best interests of the government taking into consideration the criteria set forth in the solicitation of alternative proposals. Transparency is again provided by requiring proposals be available to the public upon execution of the alternative project agreement provided information deemed confidential subject to the requirements of Chapter 92F will not be disclosed. S.B. 2739 provides for a stipend to an unsuccessful offeror in an amount and on terms and conditions determined by the public entity.
- S.B. 2739 provides for the oversight by the key financial, control and legal functions in the Executive Branch by requiring approvals by the Director of Finance, Comptroller and Attorney General, respectively. The key review and approval points during the alternative project delivery process includes notification requirements requiring public entities to notify DAGS of its intent to use the alternative project delivery program to conduct a request for information, pre-qualification, or solicitation of alternative proposals. Prior to the issuance of the solicitation of alternative proposals, public entities must submit the proposed solicitation of alternative proposals to the Director of Finance, the Comptroller and the Attorney General for review and approval. While amendments would be permitted, S.B. 2739 requires that the final solicitation for alternative proposals issued by the public entity be substantially similar to the solicitation of alternative proposals approved by the Director of Finance, the Comptroller and the Attorney General. A final review and approval process occurs after the public entity selects a proposal for a qualified project which then must be approved by the same three officials to enter into a qualified project agreement which is an agreement between a public entity and an offeror on the implementation of a qualified project. Minimum requirements in such agreements have been identified in S.B. 2739 and

include, among other provisions, provisions for the minimum length of the agreement; complete description of facilities to be developed and functions and responsibilities to be performed by public entities and private entities; the type of property interest, if any, that the private entity will have in the project facilities, terms of the planning, acquisition, financing, development, design, construction, re-construction, rehabilitation, replacement, improvement, maintenance, management, operation, repair, leasing, and ownership of the facilities; rights of the public entities and private entities that are party to the agreement, if any, in revenue generated as a result of the qualified project agreement; minimum quality standards applicable to the qualified project, including performance criteria, reporting requirements, incentives, and penalties for failure to meet these standards; a specific plan to ensure proper maintenance of the project facilities throughout the term of the agreement and return of the facility to the state in good condition and repair; compensation of the private entities, including the extent to which and the terms upon which a private entity may charge fees to individuals and entities for the use of the facility, but in no event shall new fees be imposed or existing fees be amended unless authorized by the Director of Finance; requirements for annual independent audits; performance and payment bonds or other security and risk-mitigation tools deemed equitable by DAGS or the designated public entity; grounds for termination of the qualified project agreement by the public entity or private entity; procedures for amending the qualified project agreement; disposition of the facility upon the conclusion or termination of the qualified project agreement; the rights and remedies available to the government for material breach of the agreement by the private entity or entities; identification of funding sources to be used fully fund the capital, operation, maintenance, and other expenses under the qualified project agreement; and certification of compliance with applicable federal, state and local laws. S.B. 2739 also provides a separate section for legal rights and dispute resolution. Finally, for oversight and transparency, S. B. 2739 includes a requirement for DAGS to submit an annual report to the Legislature no later than 20 days prior to convening of the each regular

- session describing the requests for information issued, solicitations of alternative proposals issued, unsolicited proposals received and qualified project agreements entered into under this program including the amounts received and expended by the alternative project delivery fund during the previous fiscal year.
- S.B. 2705, S.D. 2, H.D. 1 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 strongly recommends that public-private partnership arrangements under this measure be exempted from HRS 171.
 - DAGS opposes the amendments to HRS 103D-303 Competitive Sealed Proposals that we believe will create uncertainty and will add requirements to processes and a project delivery method that is already allowed under the law. Accordingly,

DAGS believes that these amendments may ultimately delay the delivery of projects involving public-private partnerships. As previously noted, the Administration's bill provides for a separate alternative project delivery method while preserving the current requirement of HRS 103D-303.

- As previously described regarding the alternative project delivery program provided for in the Administration's bill, S.B. 2705 S.D. 2, H.D. 1 should include an 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 S.B. 2739 (and companion bill H.B. 2312) 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 S.B. 2739 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 S.B. 2739 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 S.B. 2739 which is based on a measure enacted by Washington, D.C. in 2015.

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



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

DAVID Y. IGE
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Statement of
LUIS P. SALAVERIA
Director

Department of Business, Economic Development, and Tourism
before the

HOUSE COMMITTEE ON FINANCE

Wednesday, March 28, 2018

3:00 p.m.

State Capitol, Conference Room 308

in consideration of

SB2705, SD2, HD1
RELATING TO PUBLIC-PRIVATE PARTNERSHIPS.

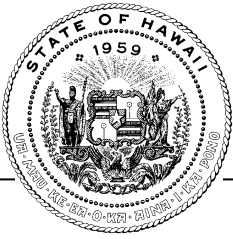
Chair Luke, Vice Chair Cullen, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) supports the intent of SB2705, SD2, HD1, 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.



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Statement of
LEO R. ASUNCION
Director, Office of Planning
before the
HOUSE COMMITTEE ON FINANCE
Wednesday, March 28, 2018
3:00 PM
State Capitol, Conference Room 308

in consideration of
SB 2705, SD2 HD1
RELATING TO PUBLIC-PRIVATE PARTNERSHIPS.

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

The Office of Planning (OP) supports SB 2705, SD2 HD1, which establishes an Office of Public-Private Partnership in the Department of Accounting and General Services (DAGS) and amends Hawaii Revised Statutes (HRS) Chapter 103D, the State Procurement Code, to clarify the allowance of public-private partnerships (P3) relative to design-build-finance-operate-maintain contracting arrangements for public projects. The bill establishes a P3 Coordinator who will support and assist State and county agencies in pursuing best practices for undertaking P3 project delivery.

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.

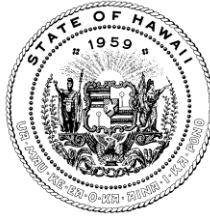
In the TOD Council's *State TOD Strategic Plan* of December 2017, actions items recommended to improve TOD implementation include "Support legislation and funding to establish a Public-Private Partnership Office", and authorize standards of practice for P3 or alternative or innovative financing delivery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



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
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Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
FINANCE

Wednesday, March 28, 2018
3:00 pm
State Capitol, Conference Room 308

In consideration of
SENATE BILL 2705, SENATE DRAFT 2, HOUSE DRAFT 1
RELATING TO PUBLIC-PRIVATE PARTNERSHIPS

Senate Bill 2705, Senate Draft 2, House Draft 1 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 (Coordinator) position. **The Department of Land and Natural Resources (Department) provides concerns and comments on this measure.**

Standing Committee Report No. 1445-18 explains that the current version of the measure deleted the contents of Senate Draft 2 and replaced with language contained in House Bill 2581, House Draft 2, with two changes. First, Senate Bill 2705, Senate Draft 2, House Draft 1 requires the Office of Public-Private Partnership (Office) to establish requirements for public entities intending to conduct a request for information, pre-qualification, or solicitation of public-private partnerships using the public-private partnership procurement process to notify the Office and DAGS to ensure appropriate application of the public-private partnership procurement process. Second, the current version prohibits the use of the public-private partnership delivery method for design, maintenance, or operation of community correctional centers, high security correctional facilities, and youth correctional facilities that provide public safety services.

The Department echoes the concerns in testimony submitted by DAGS on this measure. 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 Senate Bill 2739, which was introduced by the Administration this legislative session.

The Department shares DAGS' view that the alternate process under Senate Bill 2739 would provide a more effective means for delivering public-private partnership projects and ensure the continuation of an open and transparent delivery process. See Senate Bill 2739: 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.

Senate Bill 2739 (and companion House Bill 2312) RELATING TO ALTERNATIVE PROJECT DELIVERY provides 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. Senate Bill 2739 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

¹ The Department notes that Senate Bill 2705, Senate Draft 2, House Draft 1 incorporated the substance of subparagraphs (f) and (g) of Section 5 of Senate Bill 2739.

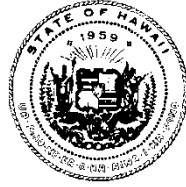
turn allows agencies to utilize both existing and future forms of project delivery, including public-private partnerships and lease-back options that exceed 65 years.

- 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 Senate Bill 2739 allows for the most flexible means with which to explore and develop partnerships that would be most advantageous to the State. Senate Bill 2739 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 Senate Bill 2739, 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



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

HOUSE COMMITTEE ON FINANCE

Wednesday, March 28, 2018
3:00 PM
Room 308, Hawaii State Capitol

In consideration of
SB 2705, SD2, HD1
RELATING TO PUBLIC-PRIVATE PARTNERSHIPS

Honorable Chair Luke and Members of the House Committee on Finance, thank you for the opportunity to provide testimony concerning Senate Bill 2705, SD2, HD1, relating to public-private partnerships.

The Hawaii Public Housing Authority (HPHA) **offers comments with strong concerns** for SB 2705, SD2, HD1, which establishes the Office of Public-Private Partnership and the position of State Officer of Public-Private Partnership Coordinator within the Department of Accounting and General Services, and 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 statutes, 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 Committee decides 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 House Committee on Finance with the HPHA's comments regarding SB2705, SD2, HD1. We thank you very much for your dedicated support.



**Testimony to the House Committee on Finance
Wednesday, March 28, 2018 at 3:00 PM
Conference Room 308, State Capitol**

**RE: SENATE BILL 2705 SD2 HD1
RELATING TO PUBLIC-PRIVATE PARTNERSHIPS**

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

The Chamber of Commerce Hawaii ("The Chamber") **supports the intent** of SB 2705 SD2, 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 (P3s) 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.

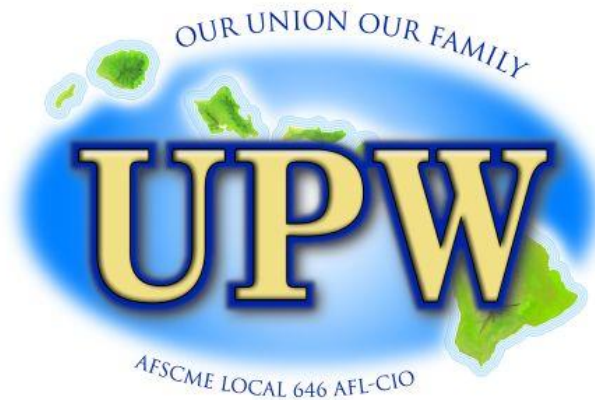
We believe the bill also needs to include language that would allow for the lease or concession of state owned facilities and/or infrastructure and also include land.

The current version of the bill makes amendments to Chapter 103D, the State Procurement Code. Chapter 103D-104 defines “Goods” as follows:

"Goods" means all property, including but not limited to equipment, equipment leases, materials, supplies, printing, insurance, and processes, including computer systems and software, excluding land or a permanent interest in land, leases of real property, and office rentals.

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.

Thank you for the opportunity to testify.



THE HAWAII STATE HOUSE OF REPRESENTATIVES
The Twenty-Ninth Legislature
Regular Session of 2018

COMMITTEE ON FINANCE

Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

DATE OF HEARING: Wednesday, March 28, 2018
TIME OF HEARING: 3:00 p.m.
PLACE OF HEARING: State Capitol
415 South Beretania Street
Conference Room 308

TESTIMONY ON SENATE BILL 2705, SD2, HD1 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, 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.

SB2705, SD2, HD1 proposes the establishment of the Office of Public-Private Partnership including five new positions. State government must be able to clearly identify its goal in establishing a partnership; it must understand and know in depth a potential partner. If a private partner assumes greater risks in a project or program, it will expect to be compensated accordingly. This could increase the cost to government. If there is limited private expertise to perform the tasks with which to partner thereby reducing

competitiveness, this too, could increase the cost to State government. More so, if the private partner provides most of the expertise or assumes the greater risk than State government for a program or project, State government will be at a significant disadvantage. It will not be able to assess the actual cost of a program or project thereby risking a greater cost of a project unnecessarily. The State must increase the capability and capacity of its workforce to operate and maintain State government facilities for services not profit.

The UPW opposes any outsourcing of work that State civil service public employees historically and traditionally perform. We respectfully refer the committee to HRS 89 (Collective Bargaining) and HRS 76 (Civil Service) laws that created a sturdy foundation and working relationship in public service.

Thank you for the opportunity to submit this testimony.



46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Executive Director

**TESTIMONY FOR SENATE BILL 2705, SENATE DRAFT 2, HOUSE DRAFT 1,
RELATING TO PUBLIC-PRIVATE PARTNERSHIPS**

**House Committee on Finance
Hon. Sylvia Luke, Chair
Hon. Ty J.K. Cullen, Vice Chair**

**Wednesday, March 28, 2018, 3:00 PM
State Capitol, Conference Room 308**

Honorable Chair Luke and committee members:

I am Kris Coffield, representing IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 400 members. On behalf of our members, we offer this testimony in opposition to Senate Bill 2705, SD 2, HD 1, relating to public-private partnerships.

We are concerned that one of the primary public-private partnerships that would be pushed, if this bill passes, is the establishment of private prisons in Hawai'i. Private prisons have no place in Hawai'i. Already, our state undermines its commitment to restorative justice, each day, by criminalizing low-level offenses, like possession of small amounts of marijuana or, under Honolulu's sit-lie bans, the act of being homeless and tired. As the visitor industry reaps record profits, people of Native Hawaiian ancestry, who comprise approximately 25 percent of the state's population, suffer the pangs of a biased criminal (in)justice system. Approximately 39 percent of incarcerated detainees are Hawaiian, according to a comprehensive study by the Office of Hawaiian Affairs, with the proportionality gap being even greater for Hawaiian women, who comprise 19.8 percent of the state's female population, but 44 percent of the state's female inmate population. Researchers also found that, on average, Hawaiians receive longer sentences, more parole revocations, and harsher drug-related punishments than other ethnic groups.

Private prisons only incentivize the cycle of crime by providing a financial motivation for the further criminalization of nonviolent offenses and imposition of longer sentences. Private prisons are run as businesses, after all. Without inmates, they cannot turn a profit. America's for-profit prison industry currently controls 126,000 Americans' lives. As Lauren Brooke-Eisen, Senior Counsel in the Brennan Center's Justice Program at the Brennan Center for Justice at NYU School of Law, has argued, "It's a \$5 billion sector—one that encompasses the operation of 65

percent of the nation's immigration detention beds. And at the same time, it is largely opaque, often unaccountable to the public or the government.”

When Hawai'i began sending prisoners to the private detention centers on the mainland in 1995, the policy was proposed as a temporary measure to relieve overcrowding of local prisons. More than 20 years later though, 1,300 inmates—43 percent of Hawaii's prison population—remain on the continental United States, locked inside a notorious private facility in the Arizona desert, midway between Tucson and Phoenix, nearly 3,000 miles from home. That prison, the Saguaro Correctional Center—named after a cactus native to the Sonoran Desert and based in the small town of Eloy—is run by the Corrections Corporation of America (CCA), recently renamed CoreCivic, the country's largest private-prison firm. The company isn't legally obligated to respond to public information requests and regularly refuses to answer even the most basic questions about its practices. Private prisons are not subject to the same freedom of information and open records laws as other government agencies. Without access to information, of course, it is impossible to know what injuries are being suffered by detainees. Former security guards who have worked at private prisons say that prisoner abuse is rampant, since disclosure of allegations is extremely rare. In the case of at least some Hawai'i prisoners sent to the mainland—like Johnathan Namauleg, Clifford Medina, and Bronson Nunuha—private prisons have proven to be a death sentence.

In 2010, staff from the Office of the State Auditor accompanied state contract monitors conducting a quarterly inspection of Saguaro. They watched as monitors accepted the testimony of CCA staff "without verifying their statements against documentary evidence" and concluded, in a lengthy report, that Hawai'i "lacked objectivity" when monitoring CCA. This should come as little surprise, since, over the past five years, CCA has spent more than \$500,000 to lobby local politicians. Here, we'd be remiss not to note that one of the firm's highest-paid lobbyists was Douglas Chin, Hawai'i's Lieutenant Governor, who earned more than \$100,000 for his services.

Incarceration should not be a goal of our state's criminal justice system. Expansion of the prison-industrial complex through for-profit detention centers only casts a pall over the treatment of offenders, who should be afforded every opportunity to become productive members of society. Moreover, public-private partnerships, while often fruitful, must be coupled with provisions that protect against the erosion of collective bargaining rights or essential state services (as a school voucher program would do, if implemented, as a P3 initiative. Put simply, we must build people, not prisons. We must strive to increase people's access to justice, not time spent in jail cells. Mahalo for the opportunity to testify in opposition to this bill.

Sincerely,
Kris Coffield
Executive Director
IMUAlliance

COMMUNITY ALLIANCE ON PRISONS

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

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



COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair

Rep. Ty Cullen, Vice Chair

Wednesday, March 28, 2018

3 pm – Room 308

STRONG OPPOSITION TO SB 2705 SD2, HD1 - KEEP PUBLIC INFRASTRUCTURE PUBLIC

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

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

SB 2705 SD2 has been gutted and replaced with the contents of HB 2581 HD2 – a bill that the community came out in force against last week; in fact, there were 134 pages of testimony on the bill, most of it expressing community opposition. Most agencies only provided comments, with many citing concerns. Of course, the Department of Public Safety was in full support as they push to get more dungeons built for people in our community struggling with public health and social challenges.

A 2014 report from Public Services International¹ based on 30 years' experience concludes that PPPs are an expensive and inefficient way of financing infrastructure and services. 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 privatization 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 maximize profits if they are to survive. **This is fundamentally incompatible with protecting the environment and ensuring universal access to quality public services.***

¹ Why Public-Private Partnerships don't work, Public Services International, David Hall, February 13, 2014.
http://www.world-psi.org/sites/default/files/documents/research/rapport_eng_56pages_216x279_lr_0.pdf

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.

*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 privatization 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.²

Community Alliance on Prisons acknowledges that prisons and jails have been removed from the definition of “Infrastructure facility” but WOW – this bill is all about handing over core government functions to the private sector who will “partner” with the state. The bill describes “Infrastructure facility” as:

*“...a building, a structure, or networks of buildings, structures, pipes, controls, and equipment that provide transportation, utilities, public education, including government office buildings; **public schools; courthouses; 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.**”*

The bill goes on to describe “Public Private Partnerships” as:

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

That the EDB committee gutted SB 2705 and replaced it with a bill that is WIDELY OPPOSED BY VOTERS ACROSS HAWAII NEI sends a strong message to the community.

² See FN 1

We are saddened by Hawai'i democrats who support "partnering" with corporations to provide core government functions. It is indeed a sad day for democracy when we see our policymakers adopt the tactics of the current federal administration as highlighted by this article³:

The Trump administration has proposed using \$200 billion in federal monies to leverage an additional \$800 billion from the private sector. It's an ambitious proposal, one that, if successful, could permanently change the landscape of America. The government can reap huge benefits from public-private partnerships—but only if they are structured correctly. All too often, though, government officials lack the knowledge and experience necessary to negotiate good deals, ultimately costing taxpayers millions, if not billions, of dollars. In their attacks, Democrats may be misusing the word "privatization" when describing Trump's infrastructure plan but the risks they describe are very real.

Several articles have been published about the advantages and disadvantages of P3s that have pointed out some of the pitfalls of entering into these long-term agreements:

"It is important to note that there is no "free lunch" when it comes to PPPs: the cost of an infrastructure project must eventually be paid, either by the taxpayer or the consumer. When firms are offering to pay the upfront costs of infrastructure investments, it can be easy to lose sight of this reality."⁴

"If the expertise in the partnership lies heavily on the private side, the government is at an inherent disadvantage. For example, it might be unable to accurately assess the proposed costs."⁵

Community Alliance on Prisons is disheartened by the legislature's rush to hand over core government services to the private sector with little to no due diligence performed and absolutely no community participation. It is known that public financing is less costly. Why then is our government rushing to hand over core government functions to corporations only interested in profit? When everything is done in secret, the community's trust in government is squandered...we see the results of secrecy in the federal and state governments currently at work.

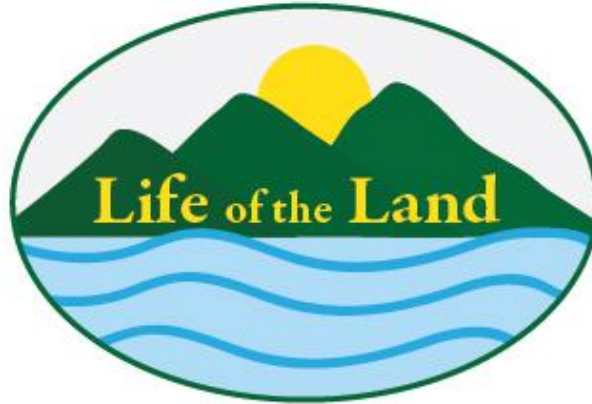
"When a citizenry no longer feels that it can find justice through the organs of power, when it feels that the organs of power are the enemies of freedom and economic advancement, it makes war on those organs. The longer citizens are locked out of and abused by systems of power the more these systems become targets."

Chris Hedges - Wages of Rebellion

³ **Trump's infrastructure plan: How "private" will he go?** *Public-private partnerships can be a terrific idea—but there are pitfalls.* By DAVID VAN SLYKE, 06/07/2017 05:07 AM EDT
<https://www.politico.com/agenda/story/2017/06/07/trumps-infrastructure-public-private-partnership-000454>

⁴ **No Free Lunch: The Pros and Cons of Public-Private Partnerships for Infrastructure Financing**, Diane Whitmore Schazzenbach, Ryan Nunn, Greg Nantz, Anna Rotrosen, February 9, 2017. <https://www.brookings.edu/blog/up-front/2017/02/09/no-free-lunch-the-pros-and-cons-of-public-private-partnerships-for-infrastructure-financing/>

⁵ **Public Private Partnership Pros and Cons - Public Private Partnership (P3) Benefits and Disadvantages**, BY JUAN RODRIGUEZ, Updated December 24, 2017. <https://www.thebalance.com/public-private-partnership-pros-and-cons-844713>



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

Wednesday, March 28, 2018
3:00 P.M.
Conference Room 308

SB2705 SD2 HD1 Public-Private Partnership aka Government-Corporation Fusion OPPOSE

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

Life of the Land is Hawai`i's own energy, environmental and community action group advocating for the people and `aina for 47 years. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

The government can access inexpensive funds to meet public needs. This bill proposes that governments should be able to issue very long-term agreements with corporations in order to privatize governmental functions in exchange for financial benefits including political donations.

Mahalo

Henry Curtis
Executive Director



Dedicated to safe, responsible, humane and effective drug policies since 1993

TO: House Committee on Finance
FROM: Carl Bergquist, Executive Director
HEARING DATE: 28 March 2018, 3PM
RE: SB2705 SD2 HD1, RELATING TO PUBLIC-PRIVATE PARTNERSHIPS, **OPPOSE**

Dear Chair Luke, Vice Chair Cullen, Committee Members:

The Drug Policy Forum of Hawai'i previously submitted this testimony on 3/20/18 in opposition to HB2581 HD2 that was deferred by the Senate Committees on Government Operations and Economic Development, Tourism and Technology on that date. As the HD1 version of SB2705, [per Standing Committee Report 1445-18](#), has been gutted and replaced with HB2581 that testimony remains germane.

We **oppose** this bill as written, and 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.



Email: communications@ulupono.com

HOUSE COMMITTEE ON FINANCE
Wednesday, March 28, 2018 — 3:00 p.m. — Room 308

Ulupono Initiative Strongly Supports SB 2705 SD 2 HD 1 with Comments, Relating to Public-Private Partnerships

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

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

Ulupono strongly supports SB 2705 SD 2 HD 1, which establishes the Office of Public-Private Partnership (P3) and the Coordinator position, because it aligns with our goals of developing infrastructure more efficiently and affordably.

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

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

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

Investing in a Sustainable Hawai'i

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

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

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

When discussing this bill with our Jones Lang LaSalle consultant Jill Jamieson, who is one of the nation's leading P3 experts with years of experience, strongly believes the State needs a comprehensive P3 bill, she provided numerous comments on House Bill 2581 HD 2, which is where much of the content of this current version of Senate Bill 2705 SD 2 HD 1 comes from.

General Comments: While this bill represents a slight improvement on the previous version of House Bill 2581 (HD 1), it still does not reflect best practice or baseline P3 legislative principles. It also appears to want to be both a design-build bill and a P3 bill and these are VERY different things from a legal perspective. It would be better to separate them.

Key considerations:

1. The legislation lacks an adequate definition of a Public-Private-Partnership (P3). This lack of clarity will almost certainly generate confusion as to the bill's intended scope of application and, more broadly, obscure other provisions with the State's

procurement code. For instance, in multiple provisions the law contemplates a simple design-build as a P3 (which is not a P3). The law also references the ability to leverage the law for the “procurement of goods and services”, which is not P3. Moreover, there are no provisions limiting the applicability of this law to public purpose infrastructure, so it appears as though it could be abused and/or applied to private-use facilities on public land (which would typically be contemplated under a simple ground-lease).

2. The law does not address ANY basic financial considerations critical to P3, such as allowable compensation mechanisms, user fees, budget considerations for multi-year obligations and contingent liabilities, allowable financial support mechanisms, use of federal credit and grant programs, etc. This creates great uncertainty as the usefulness of the law, but also exposes the public to financial risk.
3. The law does not address key legal issues critical to P3, such as asset ownership, contract term restrictions, incorporation requirements for SPV, ownership transfers, etc.
4. The law does not establish any criteria for the use of P3 (such as affordability, value-for-money, public-purpose requirements, etc.), which could quickly lead to abuse.
5. The law appears more favorable to the private partner than in other jurisdictions (i.e., compensation for design fees is not standard in P3 legislation).
6. Some Specific concerns:
 - (i) Independent peer reviewer: This is not standard in the industry and should not be codified in law. Contract governance and oversight mechanism, including the use of independent engineers, performance appraisals, auditors, etc. are standard, but how they are structured (and paid for) depends on the specifics of the transaction. For instance, in many cases, the lenders’ representatives may provide inspection information to the State, which could be adequate. In others, the State might want to retain services from an independent engineer. These services are best NOT contracted by the Private Partner (that would be like the private partner selecting and paying for its own regulator).
 - (ii) The RFP submission requirements and evaluation criteria are not industry standard and will likely not result in maximizing public interest.
 - (iii) The requirement to include union workers will likely deter investment. Flexibility might be considered to allow for union workers or similar arrangements (such as a project labor agreement, secondment arrangements, etc.).

Given the complex issues involving P3s, Ulupono would be happy to make our rail P3



consultant Jill Jamieson of Jones Lang LaSalle in Washington D.C. available for a call to answer any technical questions you may have.

Thank you for this opportunity to testify.

Respectfully,

Murray Clay
Managing Partner



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**Testimony to the House Committee on Finance
Wednesday, March 28, 2018
11:00 AM
State Capitol, Conference Room 308**

RE: S.B. 2705, SD 2, HD 1, – Relating to Public Private Partnerships

Chair Luke, Vice Chair Cullen, and members of the committee:

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

BIA-Hawaii **supports the intent** of H.B 2705, S.D. 2, H.D. 1, which proposes to establish the Office of Public-Private Partnership and the position of State Public-Private Partnership Coordinator. The bill would add design-build-operate-maintain and design-build-finance-operate-maintain project delivery methods to the Procurement Code and related conditions and requirements.

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

- Lease-Develop-Operate: the private party leases an existing facility from a public agency; invests its own capital to renovate, modernize, and/or expand the facility; and then operates it under a lease contract with the public agency.
- Lease Lease-backs: Public agency leases real property to a private partner for a stipulated price and the private partner then must design, build, finance and/or maintain improvements on the property, for which the public partner will make ongoing lease payments (capital lease purchase).
- 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 "Goods" as follows:

*"Goods" means all property, including but not limited to equipment, equipment leases, materials, supplies, printing, insurance, and processes, including computer systems and software, **excluding land or a permanent interest in land, leases of real property, and office rentals.***

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. 2705 S.D. 2, H.D. 1, but would suggest that language that would specifically allow for leases, lease-back, and concession arrangements be added to the bill. We appreciate the opportunity to express our views on this matter.



House Committee on Finance
Chair Sylvia Luke, Vice Chair Ty Cullen

03/28/2018 3:00 PM Room 308
SB2705 SD2 HD1 – Relating to Public-Private Partnerships

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

Dear Chair Luke, Vice Chair Cullen, and members of the committee:

Common Cause Hawaii opposes SB2705 SD2 HD1 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 **SB2705 SD2 HD1**.



AMERICANS FOR DEMOCRATIC ACTION

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Karin Gill, Secretary	Chuck Huxel	Doug Pyle		

March 26 , 2018

TO: Honorable Chair Luke and Members of the Finance Committee

RE: SB 2705 SD2 HD1 Relating to Public-Private Partnerships

Opposition for hearing on March 28

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 SB 2705 SD2 HD as it opens the door for profit-seeking companies to use private 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 consideration.

Sincerely,

John Bickel
President



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

HEARING DATE: Wednesday, March 28, 2018
TIME: 3:00 P.M.
PLACE: Conference Room 308

OPPOSITON TO SB 2705, SD2 HD1 RELATING TO PUBLIC-PRIVATE PARTNERSHIPS for ANY JAIL/PRISON CONSTRUCTION

Dear Honorable Committee members:

We oppose any aspect of this bill that would allow the state to pursue any private public partnerships with for profit entities to provide any jail and prison construction or jail and prison administration for the state.

The state must decrease its use of jails and prisons, and it must stop working with entities that profit from incarceration. "For every dollar in corrections costs, incarceration generates an additional ten dollars in social costs" (2016, Institute *for* Advancing Justice Research and Innovation 2 Washington University in St. Louis, p. 2).

Hawai'i is suffering badly from the social costs of its incarceration policies and practices.

The private prison industry is especially harming communities in devastating ways as many have noted including the New Yorker magazine:

<https://www.newyorker.com/business/currency/making-profits-on-the-captive-prison-market>

The state must not be allowed to contract with any private for profit entities concerning jail or prison construction or the administration and management of incarcerated people. If you have any questions about why we have come to this position after decades of research and working with the justice system, please contact us at: (808) 218-3712 and lorenn@hawaiiifriends.org.

Hawai'i Friends of Restorative Justice incorporated as a 501(c)3 in 1980 to improve our justice system. We design, implement and measure interventions using applied learning to generate evidence-based knowledge to increase civic behavior, help people desist from crime, and assist those harmed by crime and social injustice. We have worked with imprisoned people since 2004. Numerous articles about our work have been published and disseminated. Others, nationally and internationally, frequently contact us for assistance with correctional interventions and policies.

Mahalo for your public service.

Aloha, Lorenn Walker, JD, MPH, Director

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SB-2705-HD-1

Submitted on: 3/25/2018 10:10:03 PM

Testimony for FIN on 3/28/2018 3:00:00 PM

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

Comments:

Ohana Ho`opakele, a non-profit Hawaiian organization working with pa`ahao (incarcerated) since 1999 opposes this bill strongly.

We do not trust any organization that may lead to building a new prison or jail.

Hawai`i already has one of the highest costs of living compared to other states in North America. To encourage private-public partnerships as an alternative to public funding will only encourage corporations looking for the highest profit to come and work in Hawai`i. We do not need this.

The track record for CoreCivic (previously CCA) is horrible. Right now, isn't there a case against one of our pa`ahao from Hawai`i asking for the death sentence? Here in Hawai`i we do not have a death sentence. This is just one example why everyone in Hawai`i should be vigilant and not allow any public-private partnership that may lead to corporations like CoreCivic to enter Hawai`i and build or run our prisons.

Mahalo for allowing us to testify!

SB-2705-HD-1

Submitted on: 3/24/2018 11:49:59 AM

Testimony for FIN on 3/28/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Moran	Individual	Oppose	No

Comments:

OPPOSE!

Aloha Chairs & Committee Members. Public-Private Partnerships are not inherently favorable or not; as always it is in the details. Reading the details of what is proposed here concludes no good in this situation. No private for-profit prisons in Hawaii Please vote NO.

Mahalo,

Mike Moran Kihei

SB-2705-HD-1

Submitted on: 3/26/2018 2:24:37 PM

Testimony for FIN on 3/28/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Tulsi Greenlee	Individual	Oppose	No

Comments:

Aloha,

Please oppose this bill.

Thank you for your time,

Tulsi Greenlee

Haiku Hi

Jim Richardson, PhD & Lorenn Walker, JD, MPH

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

HEARING DATE: Wednesday, March 28, 2018

TIME: 3:00 P.M.

PLACE: Conference Room 308

OPPOSITON TO SB 2705, SD2 HD1 RELATING TO PUBLIC-PRIVATE PARTNERSHIPS

Dear Honorable Committee members:

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

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

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

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

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

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

Thank you for your time public service.

Aloha,

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

SB-2705-HD-1

Submitted on: 3/26/2018 11:02:46 AM

Testimony for FIN on 3/28/2018 3:00:00 PM

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

Comments:

The purpose does not justify establishing an Office of Public-Private Partnership and the position of State Office of Public-Private Partnership Coordinator.

SB-2705-HD-1

Submitted on: 3/26/2018 9:25:32 PM

Testimony for FIN on 3/28/2018 3:00:00 PM

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

Comments:

Strongly Oppose!

SB-2705-HD-1

Submitted on: 3/27/2018 10:46:37 AM

Testimony for FIN on 3/28/2018 3:00:00 PM

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

Comments:

I strongly oppose this bill.

Hawaii does not need a profit driven corporate prison. This is not a wise use of tax money.

This is your opportunity to do the right thing. You MUST include serious efforts at reducing the inmate population with justice reform at the same time that you are trying to upgrade OCCC.

SB-2705-HD-1

Submitted on: 3/27/2018 10:47:58 AM

Testimony for FIN on 3/28/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Walter Rees	Individual	Oppose	No

Comments:

I strongly oppose this bill.

This is your opportunity to do the right thing. You MUST include serious efforts at reducing the inmate population with justice reform at the same time that you are trying to upgrade OCCC.

Hawaii does not need a profit driven corporate prison. This is not a wise use of tax money.

March 18, 2018

TESTIMONY IN OPPOSITION TO SB 2705 SD2 HD1
Office of Public-Private Partnerships

Hearing: March 28, 2018, 3:00pm Room 308

TO: Rep. Sylvia Luke, Chair, Rep. Ty J.K Cullen, Vice Chair; and
Members of the House Committee on Finance

FROM: Barbara Polk

I am testifying as an individual to **strongly oppose SB 2705 SD2 HD1**. 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 corporation has borrowed (and that rate is almost always higher than interest on municipal bonds), and enough extra for the corporation 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 do often 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 (see SB 2705, Section 3): 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 the use of facilities 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. Does the State really want to consider turning all of these public facilities over to private corporations?

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 much 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](#)

SB-2705-HD-1

Submitted on: 3/27/2018 11:16:50 AM

Testimony for FIN on 3/28/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Brodie Lockard	Individual	Oppose	No

Comments:

SB-2705-HD-1

Submitted on: 3/27/2018 2:10:23 PM

Testimony for FIN on 3/28/2018 3:00:00 PM

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

Comments:

Aloha Chair Luke and members of the committee,

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

Chair Wakai, Vice Chair Taniguchi, and members of the committee:

I am writing in opposition of SB 2705 SD2 HD1. Senate Bill 2705 has been written in an effort to create public-private partnerships (possibly) with the prison industry. However, as a social work student and member of the community I would have to strongly oppose any collaboration with the private prison industry.

It is well known that those who profit off of incarceration do not have the best interest of individuals and communities affected by mass incarceration in mind. When profit is the motivation for running these types of facilities, the people locked in them just become a commodity and the value of human life is overlooked by the value of a dollar.

Hawaii, a primarily blue, Democratic and forward thinking state, should not digress from its efforts to protect our community's most vulnerable (immigrants, poor, people of color, and women) by partnering with any agency that supports legislation that inevitably criminalizes these demographics of people in an effort to meet quota, fill up jails, and turn profit.

We do not need any more jails or private sector involvement in the way we run these facilities in the state of Hawaii. As law makers in Hawaii I think it is important to be proud of the way that we as a state stand up and speak out against unjust policy on a federal level. Let's also be sure to stand up and speak out against local policy that is not in the best interest of the communities you serve.

Thank you for your time and careful attention to detail in the wording of this bill and the long term implications and repercussions its implementation may have in the communities you serve.

Destiny Brown – Constituent - House District 25 (Senate District 13)

Commented [CB1]: It is good to include which version of a bill is being heard, e.g. HD1 (House Draft 1) etc. This is especially true when they pull these gut and replace tricks!



Hawai'i

LATE

Committee: House Committee on Finance
Hearing Date/Time: Wednesday, March 28, 2018, 3 p.m.
Place: Conference Room 308
Re: Testimony of the ACLU of Hawai'i with comments on S.B. 2705, S.D. 2 H.D. 1, Relating to Public Private Partnerships

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

The American Civil Liberties Union of Hawai'i writes with comments on S.B. 2705, S.D. 2 H.D. 1, which creates an Office of Public-Private Partnerships tasked with exploring, formulating, coordinating, and implementing plans for public-private partnerships in Hawai'i. The bill also gives state agencies the power to enter into arrangements with private partners to finance, design, build, operate, and maintain infrastructure facilities without necessarily obtaining approval from the Legislature.

While public-private partnerships in and 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. 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.

To address some of these concerns, S.B. 2705 was amended to explicitly provide that public-private partnerships "[s]hall not be used for the design, maintenance, or operation of community correctional centers, high security correctional facilities, or youth correctional facilities that provide public safety services."¹ The bill currently is silent, however, on public-private partnerships being used to finance and build any such facilities.

The ACLU of Hawai'i appreciates the changes made so far in response to its concerns and respectfully requests that your Committee consider making two additional amendments to the bill.

First, given that—no matter what procurement method is used—the ultimate costs to the State to finance and build any correctional facilities would be significant and would have a major impact on criminal justice policy in Hawai'i, we ask that appropriate legislative approval and public input² be required. For this purpose, we propose the following amendment to Section 4, § 103D-303(j):

¹ H.B. 2705, S.D. 2, H.D. 1, Section 4, § 103D-303(j)(3).

² 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

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(4) shall not be enforceable for the purpose of financing and building jails and prisons, including community correctional centers, high security correctional facilities, or youth correctional facilities that provide public safety services, until:

(A) it receives approval by way of a resolution from the Hawai‘i State Legislature as to the costs, size, design, and location of the facility; and

(B) the community partnering process required under Section 353-16.37 is completed.

Second, we ask that Section 4, § 103D-303(j)(3) be amended to clarify that public-private partnerships “shall not be used for the design, maintenance, or operation of jails and prisons, including community correctional centers, high security correctional facilities, or youth correctional facilities that provide public safety services.”

If our proposed amendments cannot be made by your Committee at this time, we respectfully ask that the amendments be referenced in the Committee report and considered in conference. 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.

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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LATE



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

On behalf of the 653 registered members of the Young Progressives Demanding Action – Hawai‘i, I would like to express **opposition** for SB2705 SD2 HD1. We appreciate that the legislature is attempting to find creative ways to finance infrastructure upgrades and key Capital Improvement Projects, but we have serious concerns that this bill will open up the door for private development and coopting of certain public sector core competencies. In other words, there are some things that absolutely must remain fully public, with no allowance for privatization that could open a pathway for corporations to turn key public goods into wealth-extraction points. At the top of this list, we would place educational institutions, healthcare and the criminal justice system.

The current draft of the bill excludes “the design, maintenance, or operation of community correctional centers, high security correctional facilities, or youth correctional facilities that provide public safety services” from the proposed P3 model, which is a great start. But schools and hospitals are not exempted. Many of the same problems with privatizing prisons exist with privatizing schools and medical facilities, and we believe these core public competencies must be protected as well.

“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 do 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**” (Blair, Hunter. No free bridge: Why public–private partnerships or other ‘innovative’ financing of infrastructure will not save taxpayers money. Economic Policy Institute. 2017).

“P3s are an increasingly popular mode of financing. In theory, they can be effective—but they provide no free lunches. Funding must still be found for the projects—and ordinary households will end up paying the costs through taxes or user fees. In addition, the details of contract construction and oversight are daunting and require a competent, democratically accountable government to manage them. In short, P3s do not allow for simple outsourcing because they do not bypass the need to fund infrastructure or the need for competent public management” (Blair. 2017).

“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” (Blair. 2017).

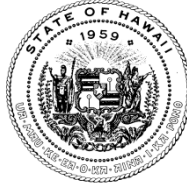
Public-private partnerships result in higher financing costs for the public. In the past few years, interest rates for tax-exempt municipal bonds have hovered around 3 to 4 percent, representing a period of historically low borrowing rates. When a private entity finances construction, interest rates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

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. The same can be said for schools and hospitals. Providing financial incentives and the opportunity for profits will inherently prevent the democratization of education and healthcare, public goods that should be accessible to as many people as possible. We've already seen the effects of privatization on our schools and healthcare system and it is horrendous.

If this bill must be passed, we ask that language be included to specifically exempt projects dealing with healthcare and education, in addition to the criminal justice system, from being considered for P3 development. These public goods—health, education and corrections—must remain in the hands of the public and must never become privatized. To do so would be to hand democracy over to corporate control.

Mahalo,

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



Testimony By:
JADE T. BUTAY
DIRECTOR

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

IN REPLY REFER TO:

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

March 28, 2018
3:00 p.m.
State Capitol, Room 308

**S.B. 2705, S.D.2, H.D. 1
RELATING TO PUBLIC-PRIVATE PARTNERSHIPS**

Senate Committee on Finance

The Department of Transportation (DOT) **supports the intent of this bill with reservations**. As written, this bill proposes to establish the Office of Public-Private Partnership and the position of State Public-Private Partnership Coordinator within the Department of Accounting and General Services (DAGS) and adds public-private partnership project delivery methods to the Procurement Code, along with related conditions and requirements. .

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

However, the DOT has concerns as the current language seems to add requirements to basic "design-build" projects. For example, the proposed amendment to HRS 103D-303(i), (at page 11, Lines 12-15) states:

"In addition to any other provisions of this section, construction projects may be solicited through a request for proposals to use any combination of the design-build [method;] or public-private partnership delivery methods;..."

Moreover, the proposed amendment to HRS 103D-303(i)(4), (page 12, Lines 13-15) states:

"Each request for proposals to use any combination of the design-build or public-private partnership methods shall:..."¹

¹ Followed by a listing of requirements meant to apply to public-private partnerships, which currently do not apply to the basic design-build method, including, but not limited to new approvals by the governor, director of finance, comptroller (outside of the Budget process).

These revisions become problematic as language in the proposed bill would add new requirements to the basic design-build project delivery method severely limiting the ability and flexibility the DOT has in the delivery of basic design-build projects.

While the DOT recognizes that revisions to the Procurement Code could be beneficial at times, the DOT views basic design-build projects and the current process as generally meeting its needs. A revision with the intent or effect of adding new requirements would add to the regulatory burden instead of streamlining the project delivery process.

Thank you for the opportunity to provide testimony.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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

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

LATE

Testimony by
Hawaii Government Employees Association

March 28, 2018

S.B. 2705, S.D. 2, H.D. 1 – RELATING TO PUBLIC-PRIVATE PARTNERSHIPS

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO would like to provide comments over the intent of S.B. 2705, S.D. 2, H.D. 1 which establishes and appropriates funding for the Office of Public-Private Partnership within the Department of Accounting and General Services to plan and coordinate collaboration amongst state and county agencies to develop and implement public-private partnership projects and adds project delivery methods to the Procurement Code, with related conditions and requirements.

While we acknowledge that there can be benefit to certain public-private partnerships (P3s) in securing and leveraging private funds for the public's use, there are also many examples of inefficiencies, failures and negative impacts to public assets and the public's trust in government as a result of P3s. In order to ensure the public's trust, there must be accountability and oversight for every agency that expends tax payer dollars, independent of political shifts or the whims of a new Administration. We appreciate the efforts made to flesh out the scope and duties of the Office of Public-Private Partnership, as well as the intentional carve-out of a P3 prison facility, and recognize the current H.D. 1 adds stronger language that if a contract for delivery of a construction project is procured using a P3 method it shall require, if an operational phase is part of the project delivery, the use of public worker union employees. However, we continue to raise concerns over the implications of adding overly broad definitions to the Procurement Code which could enable the state to privately operate any and all of its facilities, including public schools, hospitals, water treatment plants, collection systems, landfills, public roads, parking lots, airports, and highways, among others, as well as language that would facilitate the sale of public buildings.

While S.B. 2705, S.D. 2, H.D. 1 can be well intended, this current version continues to be overly broad and all encompassing. We prefer policy that strictly limits the scope of P3s to securing a fusion of private sector funding.

Thank you for the opportunity to provide comments on the broad scope of S.B. 2705, S.D. 2, H.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director

LATE

SB-2705-HD-1

Submitted on: 3/28/2018 2:48:13 AM

Testimony for FIN on 3/28/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Christine Weger	Individual	Oppose	No

Comments:

“Public private partnerships” sounds so wholesome - and yet experience is showing other states its dangers. This is nowhere more true than in respect to the subject of public safety.

In 2016 the Legislature commissioned the HR85 Task Force to study the need for prison reform. The preliminary report of that body, together with ALL of the available literature/studies on the subject in Hawaii and in other states, points to one single conclusion. Hawaii over-incarcerates! All authorities, including those in Hawaii, have stated that the answer is not for-profit prisons, or a new prison structure--the answer is instead *drastically reducing our prison population*.

What economic and political forces are at work that would militate against following the recommendations of these authorities -- ones appointed by the Legislature itself?

Where prisons have been privatized, you know the data: increased human rights abuses and few meaningful efforts at rehabilitation. Why? large prison populations (supported by the extremely high 50% recidivism rate in Hawaii) are good for business!!

Your constituents are watching the Legislature this year in very unprecedented ways. It can't be business as usual. The public is tired of spending more and more on a failed prison system. Your own advisory bodies are giving you *cost-effective alternatives that also increase rather than decrease the safety of the public*.

How will you answer for this failure to follow your own good advice?

Christine Weger

733 Bishop Street, Suite 1410

Honolulu, HI 96813

LATE

SB-2705-HD-1

Submitted on: 3/28/2018 1:15:14 PM

Testimony for FIN on 3/28/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Koohan Paik	Individual	Oppose	No

Comments:

LATE

SB-2705-HD-1

Submitted on: 3/28/2018 1:54:11 PM

Testimony for FIN on 3/28/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
MaryAnn Omerod	Individual	Oppose	No

Comments:

LATE

SB-2705-HD-1

Submitted on: 3/28/2018 1:59:45 PM

Testimony for FIN on 3/28/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Patricia Blair	Individual	Oppose	No

Comments:

Absolutely NO!

LATE

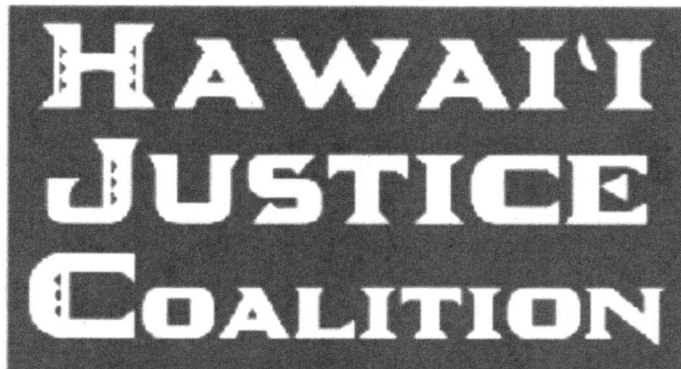
SB-2705-HD-1

Submitted on: 3/28/2018 2:50:00 PM

Testimony for FIN on 3/28/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ikaika Hussey	Individual	Support	No

Comments:

**LATE**

Committee on Finance
Chair Sylvia Luke
Vice Chair Ty Cullen
Wed., March 28, 2018
3:00pm
Conference Room 308

RE: OPPOSE- SB2705, SD2, HD1 - RELATING TO PUBLIC-
PRIVATE PARTNERSHIPS

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

Hawai'i Justice Coalition is comprised of organizations and individuals united in our work to reduce the number of people incarcerated in Hawai'i's jails and prisons. We seek to shift the state's spending priorities away from mass criminalization and incarceration towards rehabilitation, education, restorative justice, health and human services. We believe that comprehensive criminal justice reform promotes public safety, makes responsible use of our resources, and builds 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 build and finance NEW JAILS and PRISONS under the P3 process that allows for less transparency, accountability and public input:

We oppose this proposed measure for the following reasons:

1. Hawai'i Justice Coalition is opposed to prison and jail privatization. Jail/prison privatization perpetuates mass incarceration. The more money we spend on building bigger and newer jails and prisons in Hawai'i, the less incentive and resources available to INVEST in comprehensive criminal justice reforms.

2. Hawai'i should NEVER contract away our responsibility to provide core governmental public functions (i.e. judiciary, probation, parole, corrections, etc.). Nor should we sell off public infrastructure assets (jails and prisons) to private prison and jail operators. HJC has overarching concerns the State Legislature is moving further and further into the direction of privatization. This has been the philosophy and strategy of Republicans and conservatives, not Democrats, liberals, and union supporters.

3. HJC agrees with the most recent draft that "prohibits the use of the public-private partnership delivery method for design, maintenance, or operation of community correctional centers, high security correctional facilities and youth correctional facilities that provide public safety services" "Infrastructure facility" does NOT include jails and prison correctional facilities.

* { However, we continue to OPPOSE this bill as it still allows for private prison corporations to build and finance jail, prison and youth correctional facilities under this proposed P3 process.

4. Private corporations like CCA and GEO Group care only about one thing - increasing profits for its shareholders. Their interests ARE NOT in the best interest of the people of Hawai'i. If you take a peak at Core Civic/CCA's website, you will be able to review their quarterly and annual financial reports. CCA frequently acknowledges Hawai'i as one of their best and most consistent "customers" that contribute to increased profits! See, <http://ir.corecivic.com>

5. **HJC opposes this measure for the very reason that a build-finance P3 process is a perfect fit with Core Civic and GEO Group's new marketing strategy. They have since converted to REIT (Real Estate Investment Trusts) and have pushing State governments to enter into P3s to build new jails and prisons. See, *In the Public Interest*, January 2017. This status incentives facility ownership over operations due to the tax breaks afforded REITs. For example, 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.**

6. The processed embedded in P3s as drafted in SB 2705, SD 2, HD1 appears to contravene **HRS Chapter 353-16.5. Corrections Community Partnering**. The purpose behind this bill was to create a more transparent process and allow for greater community input when the State proposes to build a new jail or prison.

7. To be fair, both public and private jails and prisons have serious problems. However, the Department of Justice's report released in 2016 confirmed that


private prisons had higher rates of violence and offered less rehabilitation programs and services, than federally run prisons. See, <https://www.ny-times.com/2016/08/19/us/us-to-phase-out-use-of-private-prisons-for-federal-inmates.html>

8. A plethora of research debunks the myth that private jails and prisons “saves” money. 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.” 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.”
9. Impact on labor unions. I did a cursory review of the Konno v. County of Hawaii decision. The proposed measure appears to codify the Konno decision by requiring the use of public worker union positions customarily and historically provided for such projects when an OPERATIONAL phase is part of the project delivery. Nevertheless, as the Konno pointed out, the Legislature has the authority to enact legislative that carve out exceptions and exclusions to public worker union type jobs. The push towards privatization and P3s by this legislative body is concerning, and does not to protect union jobs when a private entity is involved with CONSTRUCTION and FINANCE. As currently drafted, a private entity could construct and finance a \$500 MILLION to 700 MILLION dollar public facility (jail or prison) and undermine union paying construction jobs.
10. **Hawai‘i Justice Coalition opposes building a new jail to replace OCCC. We support cost-effective alternatives to reduce overcrowding at all our of jails and prisons, while saving money and promoting further reductions in crime rates.** Policy reforms can take effect immediately whereas the proposed new jail will take 6-8 years to build - doing absolutely nothing to ease overcrowding and unconstitutional conditions of confinement now.
11. Other forward thinking jurisdictions, such as New York, New Jersey, California and even Texas, have enacted comprehensive criminal justice reform policies that have significantly reduced their incarcerated populations. (**See attached PowerPoint Presentation that highlights the successful outcomes of reform in NY, NJ and CA.**) Their reductions ranged from 8,000 to 40,000 inmates over a period of 6 to 11 years. In comparison, we have less than 6,000 men and women in our state jails and prisons. We have the ability to reduce overcrowding WITHOUT building new jails and prisons, but we need the political will and leadership to do it.

In closing, with respect to SB 2705, SD2, HD1, Hawai'i Justice Coalition recommends amending this bills to clarify that the Office of Public -Private Partnerships may not explore or enter into plans for public-private partnerships for corrections, public safety and/or law enforcement purposes in Hawai'i. This would exclude design, build, finance, operation and/or maintenance, or any of these combinations under the P3 process.

If you have other questions or concerns, I may be reached at 808-269-3858.

Mahalo,



Carrie Ann Shirota, JD
Hawai'i Justice Coalition
(808) 269-3858

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 state 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 flexibility 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) County's jail north of Tampa, Florida, the corporation failed to repair r damaged windows, seal cracks in walls and floors, fix damag patch leaks in the roof, even though maintenance was a requirement in its agreement with the county.¹⁰ When the sheri 's o ce assumed management of the facility in 2010, the county commissioned a report that found CoreCivic respon- sible for roughly \$1 million in deferred maintenance costs.¹¹
- In 2011, the Occupational Safety and Health Administration (OSHA) investigat- ed 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 sta from outside, but could be opened by pris- oners 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, finance, 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 incar- cerated. 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 ulti- mately accountable to the public, CoreCivic and GEO Group are only beholden to their shareholders.

P3 = Miami Hospital 

- 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

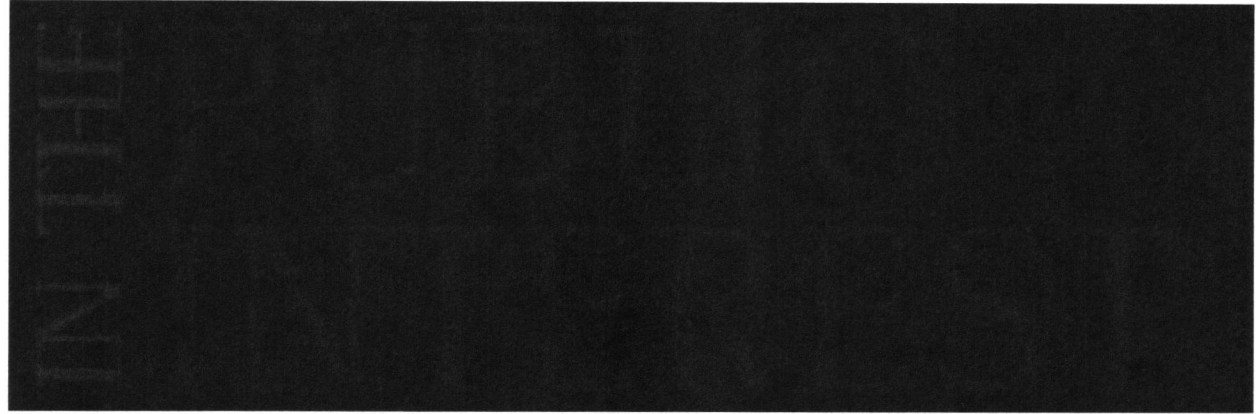
Private prison construction deals prop up companies with records of human rights abuses.

- 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. 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.”¹ 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.¹

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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Endnotes

- 1 CoreCivic website, <http://www.cca.com/insidecca/corecivic-properties-building-on-a-legacy-of-innovation>, accessed October 18, 2017.
- 2 GEO Group website, https://www.geogroup.com/Design_Build_Finance/Lease, accessed October 18, 2017.
- 3 Corrections Corporation of America, “CCA Board of Directors Authorizes REIT Conversion,” Press Release, February 7, 2013. <http://www.marketwired.com/press-release/cca-board-of-directors-authorizes-reit-conversion-nyse-cxw-1754558.htm> and GEO Group, GEO World, 1Q 2013. <https://www.geogroup.com/userfiles/337e14c1-4d30-4723-a85d-a02f51816e54.pdf>
- 4 GEO Group’s Annual Report (Form 10-K) for fiscal year ended 31 December 2016, pages 150 and 151.
- 5 Michael Cohen, “How for-profit prisons have become the biggest lobby no one is talking about,” Washington Post, April 28, 2015. <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=.4089ab8d2b1f

6 Beau Hodai, "Corporate Con Game," In These Times, June 21, 2010. http://inthesetimes.com/article/6084/corporate_con_game

7 Laura Sullivan, "Prison Economics Help Drive Ariz. Immigration Law," National Public Radio, October 28, 2010. <http://www.npr.org/2010/10/28/130833741/prison-economics-help-drive-ariz-immigration-law>

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The Little Black Book of Billionaire Secrets

Why Would A Prison Corporation Restructure As A Real Estate Company

Matt Stroud , CONTRIBUTOR

I track U.S. prison spending and anything else that fascinates me.

Opinions expressed by Forbes Contributors are their own.

Yesterday, I briefly noted that shares of GEO Group stock were on the rise after the Internal Revenue Service approved its request to restructure as a Real Estate Investment Trust (REIT). Why would a corporation designed to house prisoners want to restructure as a real estate company? As it turns out, this month's edition of Prison Legal News -- arguably the most comprehensive publication worldwide devoted to prison trends -- published an explanation of the current REIT transition as well as some history of similar transitions in the past. That explanation is published below, in full, with permission from Alex Friedman, PLN's associate editor. Worth noting, he says: "This article was written before the IRS issued a favorable private letter ruling to GEO Group regarding that company's REIT conversion. Also, CCA has since filed an objection with the SEC regarding the shareholder resolution [I] submitted ... concerning that company's REIT conversion."

Media requests have been sent to both CCA and GEO offering space to respond.

--Stroud

"Nation's Largest Private Prison Companies Trying to Do the REIT Thing"

Prison Legal News, Jan. 2013

In early January 2013, both Corrections Corporation of America (CCA) and the GEO Group – the nation's two largest private prison companies that control a combined 75 percent of the for-profit prison market in the United States – announced that they had each completed preliminary plans to convert their corporate structure to a Real Estate Investment Trust (REIT).

REITs are designed for companies that primarily invest in and generate revenue from real estate holdings, such as hotel chains; like other publicly-held corporations they trade on the stock market. There are special tax advantages for REITs, which generally pay no income tax. They also must distribute at least 90 percent of their income to shareholders in the form of dividends.

Although CCA and GEO operate prisons as their primary form of business, the prisons themselves constitute real estate. By creating an entity called a taxable REIT subsidiary (TRS), the companies can separate the operational side of their private prison management from the real estate side of owning and generating income from correctional facilities.

There are various rules and regulations governing REITs; for example, at least 95 percent of a REIT's income "must be derived from 'passive' financial investments ... as opposed to 'active' income from business activities," and "at least 75 percent of a REIT's income must be derived from real estate sources..." according to the IRS. Further, a REIT cannot have over 25 percent of its assets invested in non-qualifying securities or stock of taxable REIT subsidiaries.

On January 1, 2013, GEO Group announced that as of the end of 2012 it had "completed all the necessary restructuring steps" to convert to a REIT. This included divesting itself of its GEO Care subsidiary, which provided medical and mental health services through government contracts, including at some prisons and jails. REITs are restricted in the direct or indirect operation of health care facilities.

"Our Board and our management team strongly believe that these important steps will maximize our company's ability to create shareholder value given the nature of our assets, help lower our cost of capital, draw a larger base of potential shareholders, provide greater flexibility to pursue growth opportunities, and create a more efficient operating structure," GEO's chairman and CEO, George C. Zoley, said in a press release. GEO created a TRS to handle its non-real estate related operations, including "managed-only contracts, international operations, electronic monitoring services, and other non-residential facilities." This arrangement "will allow GEO to maintain the strategic alignment of almost all of its diversified business segments under one entity," the company stated.

GEO Group authorized an initial special dividend of \$350 million, amounting to \$5.68 per share of common stock payable to shareholders of record as of December 10, 2012. CCA made a similar REIT-related announcement on January 2, 2013, stating that it had “completed an internal reorganization of its business operations so that it now has the ability to elect to qualify as a real estate investment trust (REIT) for the taxable year commencing January 1, 2013.” CCA is expected to make an initial estimated dividend distribution of \$700 to \$750 million to shareholders once it converts to a REIT, which it described as “a complex process.” In a May 2012 press release, the company said the benefits of the conversion would include “an increase in long-term shareholder value, a more tax-efficient corporate structure with higher cash flow, and a lower cost of capital, while maintaining access to ample capital to fund future growth.”

In fact CCA had converted to a REIT previously, in 1997, with disastrous results. CCA formed Prison Realty Trust and a separate operating company, but due to various factors, including poor management decisions, the REIT defaulted on its debt and the company’s stock dropped to under \$1.00 a share, putting it at risk of being delisted from the New York Stock Exchange. CCA subsequently reversed its REIT conversion, and faced shareholder lawsuits that alleged various corporate officers and directors had concealed information and made false and misleading statements. The suits were eventually settled for approximately \$104 million in stock and cash.

However, the rules applicable to REITs have changed since CCA's initial unsuccessful venture into REIT territory, including the enactment of a federal law, the REIT Modernization Act, which went into effect in 2001. REITs no longer have to have a completely separate company to manage their non-real estate business operations, but can now own 100% of a TRS. And while REITs must distribute at least 90 percent of their income in the form of dividends, the dividends do not have to be paid entirely in cash but can be distributed as a combination of cash and stock. While both CCA and GEO have positioned themselves for conversion to REIT structures, neither company has received approval from the IRS despite their requests for a private letter ruling (PLR) regarding their REIT intentions.

The companies are unlikely to finalize their REIT conversions until they receive a PLR, which will create a binding understanding between the IRS and the requester with respect to the tax issue that is the subject of the ruling. There is no time frame in which the IRS must issue a PLR. Regardless, the prospect of CCA and GEO Group converting to REITs has piqued the interest of investors, and both companies' stock prices have increased as a result. In early January 2013, CCA's stock hit a 13-year high, trading at up to \$37.25 per share, while GEO traded as high as \$32.24 per share in December 2012 after announcing its \$350 million special dividend distribution.

Previously, on November 20, 2012, PLN managing editor Alex Friedmann, who owns a small amount of CCA stock – and who previously served time in a CCA-operated facility – filed a shareholder resolution that would require the

company to disclose certain information regarding its REIT conversion. The resolution asks CCA to issue a report addressing 1) disadvantages to stockholders, and/or advantages to the company, should it make required REIT dividend distributions primarily in the form of stock rather than cash; 2) the extent to which CCA's Board has taken into account the outcome of the company's prior conversion to a REIT and the shareholder lawsuits that resulted; and 3) how CCA plans to comply with IRS rules governing REITs, including the limitation on REIT assets that can be held in TRSs.

As this issue of PLN goes to press, CCA has not indicated whether it will file an objection to the resolution with the Securities and Exchange Commission (SEC), as the company did in response to a shareholder resolution filed by Friedmann in 2011 that asked CCA to report on its efforts to reduce prisoner rape and sexual assaults in its for-profit facilities. That resolution failed to pass, although it received almost 20 percent of the voting shares.