



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

February 28, 2018
11:00 a.m.
State Capitol, Room 211

LATE

S.B. 2705, S.D.1
RELATING TO PUBLIC PRIVATE PARTNERSHIPS

Senate Committee on Ways and Means

The Department of Transportation (DOT) **supports the intent** of this bill which proposes to authorize five state public-private partnership coordinator positions within the Department of Accounting and General Services (DAGS) to manage certain public-private partnerships entered into by the State and associated contracts, proposals, and negotiations, except public-private partnerships entered by Hawaii public housing authority. Establishes an office of public-private partnership within DAGS.

Procurement, budget, fiscal and contract administration challenges seems to show the need for a procuring agency to have different options for project delivery.

The DOT comments that this bill and HB2581 H.D. 1 should be rewritten as one bill. Both this bill and HB2581 H.D. 1 propose the establishment of an office of public-private partnership within DAGS. What is missing from this bill, however, is the language in HB 2581 H.D. 1 adding two new project delivery methods to the procurement code, design-build-operate-maintain and design-build-finance-operate-maintain project delivery.

Further, this bill in general creates five positions within DAGS to assist in coordinating, managing and providing oversight to agencies entering into public-private partnerships. It would be beneficial for one office to collaborate and facilitate with agencies and private businesses. The DOT prefers bill HB2581 H.D. 1, however as state agencies are all very different in its mission and priorities, and the language in HB2581 H.D. 1 appears to create public-private partnership office with a more advisory role, to provide best practices and guidance, rather than management and oversight. This approach allows each agency entering into public-private partnerships greater autonomy in furthering its mission.

This proposed bill should be reviewed together with the proposed Alternative Project Delivery Bills (SB2739 and HB2312) which as proposed, would allow the procuring agency to contract outside of HRS 103D and HRS 171 (Conservation and Resources Laws).

Thank you for the opportunity to provide testimony.



Committee: Senate Committee on Ways and Means
Hearing Date/Time: Wednesday, February 28, 2018, 10:45 a.m.
Place: Conference Room 211
Re: Testimony of the ACLU of Hawai'i with comments on S.B. 2705, S.D. 1, Relating to Public Private Partnerships

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and Committee Members:

The American Civil Liberties Union of Hawai'i writes with comments on S.B. 2709, S.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 gives this newly created office the unprecedented power to enter into projects that could last up to 65 years with a selected private entity after obtaining approval of the director of finance, comptroller, and attorney general, but **without obtaining approval from the Legislature or any elected official and without following procurement laws.**

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

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

Accordingly, the ACLU of Hawai'i requests that S.B. 2709, S.D. 1, be amended to clarify that the Office of Public-Private Partnerships may not explore or enter into plans for public-private partnerships for corrections or law enforcement services in Hawai'i. Such protection is particularly important, because under the bill, such partnerships can be entered without any public input or debate even though these arrangements could determine the future of criminal justice in Hawai'i for the next 65 years or more.

American Civil Liberties Union of Hawai'i
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Thank you for the opportunity to testify.

Sincerely,



Mateo Caballero
Legal Director
ACLU of Hawai'i

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

SB-2705-SD-1

Submitted on: 2/27/2018 8:19:41 PM

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

LATE

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

Comments:

LATE

SB-2705-SD-1

Submitted on: 2/27/2018 8:54:31 PM

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

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

Comments:

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

SB-2705-SD-1

Submitted on: 2/28/2018 10:56:36 AM

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

LATE

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

Comments:

To the WAM committee-

Strongly OPPOSE SB2705 SD1.

Thank you-

Raelyn Reyno Yeomans

LATE

SB-2705-SD-1

Submitted on: 2/28/2018 9:45:41 AM
Testimony for WAM on 2/28/2018 11:00:00 AM

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

Comments:

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

LATE

SB-2705-SD-1

Submitted on: 2/28/2018 8:57:31 AM

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

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

Comments:

LATE

SB-2705-SD-1

Submitted on: 2/27/2018 11:44:39 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Kim Coco Iwamoto	Individual	Oppose	No

Comments:

I am in strong opposition to SB2705 SD1. On one hand the private sector and the public sector need to coordinate how to best serve Hawaii; however this legislation is written in a way that exempts of all P3s in Hawaii from the procurment code (HRS Chapter 103D) completely, including "Requirements of Ethical Procurement." (See Below.) Not sure how Hawaii is better served by exempting private contracts from ethical procurement.

SB2705 SD1 presumes that all P3s are equally desireable; when infact, some are repugnant to public policy and values embedded in the state Democratic Party platform. Hawaii should not allow private corporations to profit from the imprisonment of our citizens. And we do not support diverting public funds away from our public schools in order to fund private school vouchers.

§103D-101 Requirements of ethical public procurement. (a) All public employees shall conduct and participate in public procurement in an ethical manner. In conducting and participating in procurement, public employees shall:

- (1) Act as a fiduciary and trustee of public moneys;
- (2) Remain independent from any actual or prospective bidder, offeror, contractor, or business;
- (3) Act only in the public interest;
- (4) Abide by the statutes and administrative rules relating to public procurement;
- (5) Identify and maximize efficiencies in the public procurement process;
- (6) Encourage economic competition by:
 - (A) Ensuring that all persons are afforded an equal opportunity to compete in a fair and open environment; and
 - (B) Researching innovative goods and services to meet the public's needs;
- (7) Avoid the intent and appearance of unethical behavior;

(8) Avoid social interactions with any actual or prospective bidder, offeror, contractor, business, or other interested parties during the procurement process;

(9) Maintain confidentiality in a manner that ensures a fair procurement process;

(10) Remain impartial in dealings with any actual or prospective bidder, offeror, contractor, business, or other interested parties; and

(11) Identify and eliminate any conflicts of interest.

(b) Any actual or prospective bidder, offeror, [contractor], or business taking part in the conduct of public procurement, shall act in good faith to practice purchasing ethics, and when applicable, display business integrity as a responsible offeror through the public procurement process, including but not limited to the following:

(1) Avoiding the intent and appearance of unethical behavior or business practices;

(2) Refraining from any activity that would create the appearance of impropriety or conflicts of personal interest and the interests of the State or counties;

(3) Identifying and eliminating any conflicts of interest; and

(4) Ensuring that all persons are afforded an equal opportunity to compete in a fair and open environment.

Jim Richardson, PhD & Lorenn Walker, JD, MPH

COMMITTEE ON WAYS AND MEANS
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

LATE

HEARING DATE: Wednesday, February 28, 2018

TIME: 11:00 A.M.

PLACE: Conference Room 211

OPPOSITON TO SB 2705, SD1 RELATING TO PUBLIC-PRIVATE PARTNERSHIPS

Dear Honorable Committee members:

We oppose to this bill on creating 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. Lorenn Walker, JD, MPH, is an adjunct assistant professor for the public health department, University of Hawai'i and long time social justice advocate.

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

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

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

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

Thank you for your time public service.

Aloha,

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

LATE

SB-2705-SD-1

Submitted on: 2/28/2018 8:44:29 AM

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

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

Comments:

I am opposed to for-profit prisons in Hawaii. Please consider criminal justice reform instead (SMART Justice).