

SB-2705-SD-2

Submitted on: 3/12/2018 5:58:50 AM

Testimony for EDB on 3/14/2018 9:30:00 AM

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

Comments:

We continue to STRONGLY SUPPORT these types of UNION BUSTING BILLS! With NO LANGUAGE in the bill that protects the rights of UNION WORKERS or COLLECTIVEBARGAINING, this "P3" bills are set to break the backs of Hawaii's Unions. Mahalo.



Aloha Chair Evans, Vice Chair Keohokalole, and members of the House Committee on Economic Development & Business,

On behalf of the nearly 600 registered members of the Young Progressives Demanding Action – Hawai‘i, I would like to express **opposition** for SB2705 SD2 with suggestions. Public-Private Partnerships (P3s) are not inherently bad things, and we appreciate that the legislature is attempting to find creative ways to finance infrastructure upgrades and key Capital Improvement Projects, but we have serious concerns that this bill, and its companion, will open up the door for P3 development of certain core competencies of the public sphere. In other words, there are some things that absolutely must remain fully public, with no allowance for privatization that could allow corporations to turn key public goods into wealth-extraction points. At the top of this list, we would place educational institutions, healthcare and the criminal justice system.

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

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

corporation's 2016 rebranding report. GEO Group describes itself as a "national leader in the finance, design, construction and management of correctional, detention and community reentry facilities."

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

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

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

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

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

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

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

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

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

Mahalo,

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



Hawai'i

Committee: House Committee on Economic Development & Business
Hearing Date/Time: Wednesday, March 12, 2018, 9:30 a.m.
Place: Conference Room 309
Re: Testimony of the ACLU of Hawai'i in opposition to S.B. 2705, S.D. 2, Relating to Public Private Partnerships

Dear Chair Evans, Vice Chair Keohokalole, and Committee Members:

The American Civil Liberties Union of Hawai'i writes **in opposition to** S.B. 2705, S.D. 2, which creates the 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 agreements for up to 65 years with a selected private entity after obtaining approval of the director of DEBT, the director of finance, the comptroller, the and attorney general, **but, significantly, without first obtaining approval from the Legislature or any elected official and without following procurement law.**

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

- In 2010, the Hawai'i State Auditor issued a scathing report, finding that the state's Department of Public Safety "repeatedly misled policymakers and the public by reporting inaccurate incarceration costs."¹ In justifying the decision to send prisoners to private prisons in Arizona, rather than publicly operated prisons in Hawai'i, the Department used a "flawed methodology," "provide[d] artificial inmate costs," and engaged in "skewed cost reporting."
- Private, for-profit prisons have little incentive to rehabilitate prisoners; in fact, crime is good for private, for-profit prisons because the more prisoners there are, the more money private prisons make. Unsurprisingly, private prisons often violate their government contracts, especially in areas of staffing and programming. For example, in 2010, the ACLU sued CCA/CoreCivic over the extraordinary level of violence at its Idaho Correctional Center, which prisoners

¹ State of Hawai'i Auditor, *Management Audit of the Department of Public Safety's Contracting for Prison Beds and Services* (Dec. 2010), available at <http://files.hawaii.gov/auditor/Reports/2010/10-10.pdf>.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: (808) 522-5900
F: (808) 522-5909
E: office@acluhawaii.org
www.acluhawaii.org

nicknamed “Gladiator School.”² After a settlement that required CCA/CoreCivic to hire and maintain additional security staff, it became clear that company officials had falsified thousands of hours of records to look like they were actually staffing security posts that remained empty. In response, the federal court in Idaho sanctioned the company.

- CCA-CoreCivic admits that sentencing reform and immigration reform could harm them by reducing demand for prisons. In fact, many private prison contracts include occupancy guarantees, sometimes referred to as “lockup quotas.”³ These require the government to either provide a certain number of prisoners on a daily basis or pay as if the empty prison beds were filled. As a direct result, private prisons spend millions of dollars in influence-peddling to expand contracts and avoid accountability.⁴

Accordingly, the ACLU of Hawai‘i respectfully requests that your Committee defer S.B. 2705, S.D. 2. Alternatively, we ask that your Committee amended the bill 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 purposes in Hawai‘i. Such protection is particularly important, because under the bill, public-private partnerships can be entered without 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.

Thank you for the opportunity to testify.

Sincerely,



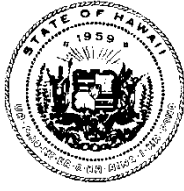
Mateo Caballero
Legal Director
ACLU of Hawai‘i

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.

² ACLU of Idaho, *Kelly v. Wengler*, available at <https://www.acluidaho.org/en/cases/kelly-v-wengler>.

³ CoreCivic, Inc., *2016 Form 10-K*, available at <https://www.sec.gov/Archives/edgar/data/1070985/000119312517053982/d310578d10k.htm>.

⁴ Michael Cohen, *How for-profit prisons have become the biggest lobby no one is talking about*, Washington Post (Apr. 28, 2015), available at https://www.washingtonpost.com/posteverything/wp/2015/04/28/how-for-profit-prisons-have-become-the-biggest-lobby-no-one-is-talking-about/?utm_term=.a9936534d870.



STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
Honolulu, Hawaii 96813
FAX: (808) 587-0600

IN REPLY REFER TO:

Statement of
Craig K. Hirai
Hawaii Housing Finance and Development Corporation
Before the

HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS

March 14, 2018 at 9:30 a.m.
State Capitol, Room 309

In consideration of
S.B. 2705, S.D. 2
RELATING TO PUBLIC-PRIVATE PARTNERSHIPS.

The HHFDC *offers the following comments* on S.B. 2705, S.D. 2. HHFDC supports and utilizes public-private partnerships to foster the development of affordable housing.

However, in the interests of ensuring that affordable housing developments continue to proceed apace with the level of need, we respectfully request an amendment to this bill to exempt HHFDC's public-private partnerships from the provisions of this bill, by amending Section 1 as follows:

SECTION 1. The department of business, economic development, and tourism is authorized to establish and fill five full-time equivalent (5.0 FTE) state public-private partnership coordinator positions, exempt from chapter 76, Hawaii Revised Statutes, to be placed under the director of business, economic development, and tourism to manage certain public-private partnerships entered into by the State and manage certain contracts, proposals, and negotiations associated with the State's public-private partnerships. Public-private partnerships entered into by the Hawaii public housing authority and the Hawaii housing finance and development corporation are exempt from this Act.

Thank you for the opportunity to testify.

SB-2705-SD-2

Submitted on: 3/12/2018 5:31:57 PM

Testimony for EDB on 3/14/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Gaye Chan	Individual	Oppose	No

Comments:

Sample Testimony:

I strongly oppose SB 2705. Handing over control of corrections to for-profit corporations is a recipe for civil liberties violations including abuse, neglect, and misconduct.

SB-2705-SD-2

Submitted on: 3/12/2018 6:34:14 PM

Testimony for EDB on 3/14/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Nicholas Chagnon	Individual	Oppose	No

Comments:

I strongly oppose SB 2705. Handing over control of corrections to for-profit corporations is a recipe for civil liberties violations including abuse, neglect, and misconduct. Private prisons are more dangerous for inmates and staff, and the evidence of their cost-effectiveness, when accounting for things like recidivism, is mixed at best. Private prisons are a public disservice.

SB-2705-SD-2

Submitted on: 3/12/2018 6:40:54 PM

Testimony for EDB on 3/14/2018 9:30:00 AM

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

Comments:

March 12, 2018

**TESTIMONY IN OPPOSITION TO SB2705, SD2
Relating to Public-Private Partnerships**

Hearing: March 14, 2018, 9:30am Room 309

TO: Representative Cindy Evans, Chair, Representative Jarrett Keohokalole, Vice Chair,
Members of the House Committee on Economic Development and Business

FROM: Barbara Polk

I am testifying as an individual to **strongly oppose SB2705, SD2**. I am appalled to see this bill to permit and encourage, public-private partnerships (P3s) 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 at a minimum of half a million dollars a year with an office and five high level staff?

Not only is financing through municipal bonds cheaper, but public priorities and facilities uses change over time. With P3s permitted by SB2705 for up to 65 years, the State may find (as others have) that tax payers must pay an exorbitant premium to make changes in the future. It does not make sense to lock the State—beyond our lifetimes--into the ways we do things in 2018

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

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

Attached is a publication that spells out in more detail the problems with P3s. 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

Written by David Hall

David Hall was the founding director of PSIRU (Public Services International Research Unit) at the University of Greenwich from 2000-2013. He is now a visiting professor at the university. He has published numerous reports and articles on the economics and politics of public services, public finance, and privatisation, including reports on water, energy, waste management, and healthcare. He has participated in many meetings around the world organised by PSI, unions, social movements and has been an invited speaker at many academic conferences and workshops. Before becoming director of PSIRU, David worked for over 25 years in research and teaching in colleges, research institutions, and trade union research units. Email: d.j.hall@gre.ac.uk

This report was commissioned by Public Services International (PSI) but the views expressed are not necessarily those of PSI.

First Published January 2014 Latest update February 2015

Public Services International Research Unit University of Greenwich, UK www.psiru.org

Public Services International (PSI) www.world-psi.org

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

// 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 privatisation 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 have 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.

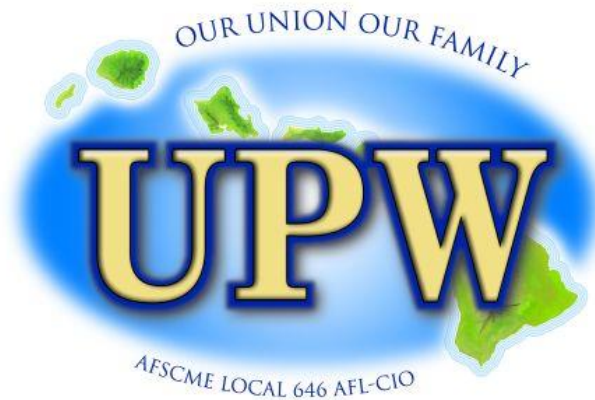
To access these funds, governments are advised to do a whole lot of PPPs at the same time in order to create a pool of assets that can then be bundled and sold on to long-term investors. This is exactly what the financial services companies did with home mortgages at the turn of the century, which brought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



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

COMMITTEE ON ECONOMIC DEVELOPMENT AND BUSINESS
The Honorable Cindy Evans, Chair
The Honorable Jarrett Keohokalole, Vice Chair

DATE OF HEARING: Wednesday, March 14, 2018
TIME OF HEARING: 9:30 a.m.
PLACE OF HEARING: State Capitol
415 South Beretania Street
Conference Room 309

**TESTIMONY ON SENATE BILL 2705, SD2 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 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 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.

SB-2705-SD-2

Submitted on: 3/13/2018 1:52:20 AM

Testimony for EDB on 3/14/2018 9:30:00 AM

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

Comments:

Dear Chair Evans, Vice Chair Keohokalole, and Committee Members:

I am Wendy Gibson, a Cannabis Nurse and I'm **OPPOSED** to the passage of SB2705 SD2 IF it allows the State of Hawaii to enter into a public-private partnership for corrections or law enforcement purposes.

I agree with the testimony submitted by Mateo Cabellero, the Legal Director of Hawaii's ACLU. I'm concerned that he reports that other states (such as Utah) have not had a good experience doing this.

I think it's a shame that many private prison contracts include an occupancy guarantee (lockup quotas). The quota must be met or (WE) the government must pay penalties. If WE are not able to provide a certain number of prisoners **on a daily basis**, WE will have to pay as if the empty prison beds were filled. That's not a good deal. I would much rather spend my tax money on social services.

Entering into public-private partnerships is not conducive to ending the failed war on drugs which has resulted in the "Mass incarceration" of a disproportionate number of minorities and poor people.

I am hopeful that projects that divert non-violent offenders--into social services and keep them OUT of out of jail & prison--will be successful and we will not need to build bigger and "better" prisons.

I encourage you to defer SB2705 SD2 and not consider public-private partnerships for law enforcement purposes until projects such as LEAD (Law Enforcement Assisted Diversion) have been given a chance to succeed.

Thank you for the opportunity to testify,

Wendy Gibson PTA/RN

Jim Richardson, PhD & Lorenn Walker, JD, MPH

COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS
Representative Cindy Evans, Chair
Representative Jarrett Keohokalole, Vice Chair

HEARING DATE: Wednesday, March 14, 2018

TIME: 9:30 A.M.

PLACE: Conference Room 309

OPPOSITON TO SB 2705, SD2 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 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



Committee on Economic Development & Business
Chair Cindy Evans
Vice-Chair Jarrett K. Keohokalole
Wednesday, March 14, 2018
9:30am
Conference Room 309

RE: OPPOSITION TO SB2705, SD2 RELATING TO PUBLIC-PRIVATE PARTNERSHIPS

Dear Chair Evans, Vice Chair Keohokalole, and Committee Members:

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

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

Although this bill does NOT specifically mentions jails or prisons, Governor David Ige, and the Department of Public Safety are pushing for public-private partnerships to build a new jail to replace O'ahu Community Correctional Center. A review of the Draft Environmental Impact Statement to replace OCCC clearly demonstrates that the State is leaning towards new jail construction to deal with overcrowding, rather than investing in comprehensive criminal justice reform that would significantly reduce the imprisoned population and alleviate overcrowding.

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

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

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

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

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

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

Private prison construction deals embed private interests in the criminal justice system, perpetuating mass incarceration. While we understand that governmental entities are looking for “creative” ways to finance infrastructure and governmental operations, providing financial INCENTIVES AND PROFITS will expand the prison industrial complex, rather than implementing comprehensive Criminal Justice Reform policies that will REDUCE the incarcerated population, and ultimately save taxpayer dollars.

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

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

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

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

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

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

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

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

Sincerely,

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



House Committee on Economic Development and Business
Chair Cindy Evans, Vice Chair Jarrett Keohokalole

03/14/2018 9:30 AM Room 309
SB2705 SD2 – Relating to Public-Private Partnerships

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

Dear Chair Evans, Vice Chair Keohokalole, and members of the committee:

Common Cause Hawaii opposes SB2705 SD2 which would establish an Office of Public-Private Partnerships (P3) with five coordinator positions.

We offer the caution that, in general, P3s have been found to be more expensive than the traditional way of funding public infrastructure projects through municipal loans. In addition, many municipalities have found that P3 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.

Setting up an office with five coordinators would suggest that the State intends to encourage and approve multiple projects in multiple public domains. While there may be P3 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**.

SB-2705-SD-2

Submitted on: 3/13/2018 9:23:07 AM

Testimony for EDB on 3/14/2018 9:30:00 AM

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

Comments:

SB-2705-SD-2

Submitted on: 3/13/2018 9:26:35 AM

Testimony for EDB on 3/14/2018 9:30:00 AM

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

Comments:

I am submitting testimony to the EDB Committee in STRONG opposition to this bill. This bill is inappropriate as it would give authority to a small group to enter into contracts relating to law enforcement and corrections (including the expansion/building of jails and prisons). This is inappropriate and dangerous as these decisions should be made with public input. In addition, after looking at prior testimony on this bill, I am concerned that this bill exempts these contracts from our state's procurement code (HRS Chapter 103D), including that part relating to "Requirements Of Ethical Procurement".

Thank you-

Raelyn Reyno Yeomans

DAVID Y. IGE
GOVERNOR

RODERICK K. BECKER
COMPTROLLER



An Agency of the State of Hawaii

ROSS I. YAMASAKI
CHAIRMAN, STADIUM AUTHORITY

SCOTT L. CHAN
MANAGER

RYAN G. ANDREWS
DEPUTY MANAGER

TESTIMONY
OF
ROSS YAMASAKI, CHAIRMAN
STADIUM AUTHORITY
TO THE
SENATE COMMITTEE
ON
ECONOMIC DEVELOPMENT AND BUSINESS
March 14, 2018

S.B. 2705, S.D. 2

RELATING TO PUBLIC-PRIVATE PARTNERSHIPS

Chair Evans, Vice Chair Keohokalole, and members of the committee, thank you for the opportunity to submit testimony in support of the concept of Public-Private Partnerships (P3) and the intent of SB2705, SD2 to provide P3 as a State-wide financing option for those State projects that align with the criteria and requirements of P3 and the benefits and value that P3 has to offer to those P3-aligned projects.

The Stadium Authority (Authority) appreciates the Legislature's commitment towards providing an opportunity to pursue other viable financing alternatives such as public-private partnerships (P3). This type of alternative could potentially support financing of projects such as the building of a new Aloha Stadium and development of its surrounding ancillary property. This measure comes at a time when the Authority has moved forward to procure services to develop its Master Plan and Environmental Impact Study (MP/EIS) that will provide valuable information to not only chart the course for overall development of its property but also evaluate applicability of various means of underwriting its project, including evaluating a P3 model of financing.

One of the key critical outcomes expected from the Authority's MP/EIS studies is an evaluation of the various project delivery procurement methods that is expected to provide the most appropriate and beneficial procurement method to finance the stadium project and whether the recommended financing requirement(s) for the stadium aligns with the requirements of P3 financing.

In the 2017 Legislative session, the Legislature concurred with the Authority's goals and objectives by providing the financial support necessary for the Authority to address its MP/EIS. The Legislature appropriated \$10,000,000 through Act 49, Session Laws of Hawaii 2017 to proceed with the Aloha Stadium MP/EIS process.

The Authority believes that the outcome of the MP/EIS will drive much of what is required to proceed in the most efficient and effective manner. Should the MP/EIS identify P3 to be the most efficient and effective method of property development, the Authority would work closely with the Office of P3 to effectuate its development plan.

In supporting this measure, the Authority would also like to share the following comments to ensure that the proposed office of P3 is provided a smooth implementation path to ensure success.

In its January 2017 meeting, the Authority approved a resolution stating its intention to build a new stadium as being the most financially prudent course of action. The Authority has also established new goals and objectives in planning, designing, building, and financing a new stadium facility that builds upon several of the major projects that the Authority and stadium management have been working on over the past several years.

- Lifting of the Federal and City deed restrictions – Completion of this project marks a major milestone and accomplishment for the State of Hawaii and the Stadium Authority.
- The Honolulu Rail Transit Project – An important rail transit station will be located on stadium property and provide another connection between Aloha Stadium and West and East Oahu.
- Capital improvement projects – Concurrent with the foregoing, the Authority is engaged in ongoing major repairs and maintenance to address the health and safety issues identified by the Authority's consultants.
- Masterplan/EIS Project - The Authority is proceeding with a Masterplan and EIS for the Stadium and its property, which will provide information needed to evaluate next steps in development.

These major projects are important steps for the Authority to move towards meeting its overall goals and objectives for the Stadium redevelopment.

Mahalo for the opportunity to provide this testimony in support of the concept and intent of SB 2705, SD2.

SB-2705-SD-2

Submitted on: 3/13/2018 9:39:56 AM

Testimony for EDB on 3/14/2018 9:30:00 AM

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

Comments:

Ohana Ho'opakele stands in strong opposition to this bill.

it opens the door for Core Civic (ex-CCA) to build prisons in Hawaii. The performance of Core Civic at the Saguaro Correctional Facility is terrible. Hawaii does not allow the death sentence. However, isn't there a case right now where an inmate from Hawaii is being charged with the death sentence?

We oppose this attempt to bring in the Public-Private partnership again!

Mahalo for the opportunity to testify!



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 Economic Development & Business

Testimony by
Hawaii Government Employees Association

March 13, 2018

S.B. 2705, SD2 – RELATING TO
PUBLIC-PRIVATE PARTNERSHIPS

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO would like to comment on the broad nature of S.B. 2705, SD2, which establishes an Office of Public-Private Partnership and authorizes the establishment of five state public-private partnership coordinator positions within the Department of Business, Economic Development and Tourism to manage certain public-private partnerships, contracts, proposals and negotiations.

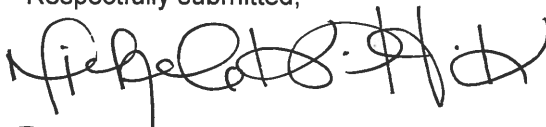
While we generally support the concept that there are potential benefits to certain public-private partnerships (P3s) in securing and leveraging private funds for the public's use, there are also examples of inefficiencies, failures and negative impacts to public assets and the public's trust in government as a result of P3s..

As drafted, we respectfully raise concerns over the unintended consequences of establishing any office that has carte blanche authority over its own objectives, goals, criteria, and measurements of efficacy. In order to ensure the public's trust, there must be accountability and oversight for every agency that expends tax payer dollars, independent of political shifts or the whims of a new Administration. While we can broadly support allocating state resources to capture private funding for public use, we cannot support so-called partnerships in which the state pays for the private operation of a facility or service.

Public-private partnerships can result in positive results for taxpayers and the community, we strongly believe that an appropriate oversight structure must be in place before such initiatives are pursued. Proper oversight and accountability can protect the public's interests, and ensure the long term protection of public assets. As drafted, we believe this measure to be too broad, and not sufficient to protect the public interest. We strongly urge that this bill be amended to ensure accountability and proper oversight before it is further considered.

Thank you for the opportunity to provide comments on S.B. 2705, SD2.

Respectfully submitted,


Randy Perreira
Executive Director

SB-2705-SD-2

Submitted on: 3/13/2018 11:00:26 AM

Testimony for EDB on 3/14/2018 9:30:00 AM

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

Comments:

Oppose! No No No No No!



**Testimony to the House Committee on Economic Development & Business
Wednesday, March 14, 2018 at 9:30 A.M.
Conference Room 309, State Capitol**

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

Chair Evans, Vice Chair Keohokalole, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports the intent** of SB 2705 SD2, which proposes to establish five state public-private partnership coordinator positions within the department of business, economic development, and tourism to manage certain public-private partnerships entered into by the State and associated contracts, proposals, and negotiations, except public-private partnerships entered into by Hawaii public housing authority. The Bill also proposes to establish an office of public-private partnership within the Department of Business, Economic Development, and Tourism.

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:



Chamber of Commerce HAWAII

The Voice of Business

- 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 that while there is a need to centralize the P3 expertise to provide consistent services to agencies seeking P3 projects, there is a more immediate need to have legislation in place that would allow the state to enter into the various P3 delivery models. Having a clear process established in the statute will not only provide the P3 office with the means to analyze and implement a P3 project but more importantly, provide private investors with transparency, predictability, and certainty in the process. We believe the bill also needs to include language that would allow for the lease, lease-back or concession of state owned facilities and/or infrastructure including an interest in the state-owned land.

We note that the bill has been amended to exempt P3's from Chapter 103 HRS. We understand that P3's are effectively a hybrid between the procurement of services (i.e. Chapter 103D HRS) and the leasing of real property (i.e. Chapter 171 HRS), we believe a new section of the law should be created rather than amend either 103D or 171 HRS. The bill lacks a process or legal framework for an agency to consider, and enter into public-private-partnership arrangements.

We support the intent of SB 2705 but would suggest that language that would allow for leases, lease-like, and concession arrangements be added to the bill.

Thank you for the opportunity to testify.

SB-2705-SD-2

Submitted on: 3/13/2018 12:22:53 PM

Testimony for EDB on 3/14/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Nandita Sharma	Individual	Oppose	No

Comments:

I strongly *oppose* SB 2705. Hawaii should not give greater control of corrections to for-profit corporations. This has proven to be a disaster for people's civil liberties and a recipe for abuse, neglect, and misconduct.

SB-2705-SD-2

Submitted on: 3/13/2018 1:05:33 PM

Testimony for EDB on 3/14/2018 9:30:00 AM

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

Comments:

This bill is direct opposition to the Democratic Party of Hawaii's Platform:

We want the practice of private for-profit detention centers and prisons prohibited.

Page 5 - Line 277 - 278 <https://hawaiidemocrats.org/wp-content/uploads/2015/06/2016-democratic-party-of-hawaii-platform.pdf>

Please vote this bill down!

SB-2705-SD-2

Submitted on: 3/13/2018 1:35:25 PM

Testimony for EDB on 3/14/2018 9:30:00 AM

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

Comments:

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 D. Weger, Attorney at Law

733 Bishop Street, Suite 1410

Honolulu, HI 96813

SB-2705-SD-2

Submitted on: 3/13/2018 2:03:00 PM

Testimony for EDB on 3/14/2018 9:30:00 AM

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

Comments:

SB-2705-SD-2

Submitted on: 3/13/2018 2:35:21 PM

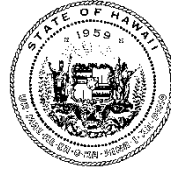
Testimony for EDB on 3/14/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
John Bickel	Individual	Oppose	No

Comments:

As I oppose the use of public money to support private profit unless necessary, I oppose this opening of the gates to private profit seekers to take advantage of public resources.

DAVID Y. IGE
GOVERNOR



RODERICK K. BECKER
Comptroller
AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

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

TESTIMONY OF
RODERICK K. BECKER, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS
WEDNESDAY, MARCH 14, 2018
9:30 A.M.
CONFERENCE ROOM 309

S.B. 2705, S.D. 2

RELATING TO PUBLIC-PRIVATE PARTNERSHIPS.

Chair Evans, Vice Chair Keohokalole, and members of the Committee, thank you for the opportunity to testify on S.B. 2705, S.D. 2.

S.B. 2705, S.D. 2 authorizes the Department of Business, Economic Development, and Tourism (DBEDT) to establish and fill five full-time equivalent (5.0 FTE) State public-private partnership coordinator positions, exempt from Chapter 76, Hawaii Revised Statutes (HRS), and placed under the Director of DBEDT to manage certain public-private partnerships entered into by the State in addition to managing certain contracts, proposals, and negotiations associated with the State's public-private partnerships. Public-private partnerships involving the Hawaii Public Housing Authority are exempt from the provisions of this bill.

While the Department of Accounting and General Services (DAGS) supports effective use of public resources and engagement of the private sector, DAGS strongly believes the combination of the basic features set forth 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.

Accordingly, DAGS believes that the provisions of S.B.2705, S.D. 2 has significant deficiencies which can be corrected if the following areas are addressed and incorporated into S.B. 2705, S.D. 2:

- DAGS believes it is the appropriate agency to implement and administer a public-private partnership program as it has the complementary existing resources to enhance the resources to be provided by the skills of the five full-time equivalent public-private coordinator positions authorized by this bill. As the State's centralized engineering function resident within its Public Works Division, DAGS has the existing planning, design and project management and construction management functions that substantially all public-private partnerships will require. Accordingly, DAGS can provide a coordinated resource to be available to all State agencies with potential public-private projects.
- To ensure an open and transparent process for the delivery of projects involving public-private partnerships, DAGS strongly recommends including a formal program for such arrangements by considering the provisions that the Administration has provided for in SB 2739. Specifically, we refer you to Section 2 – Alternative project program; established; Section 3 – Requests for information; Section 4 – Pre-qualification; and Section 5 – Solicitation of alternative proposals. DAGS believes these provisions lay the groundwork for the desired goal of providing transparency to ensure a fair and open process for projects.
- S.B. 2705, S.D. 2 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 be undertaking 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 through 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.

- DAGS respectfully requests that the bill include standards for minimum terms and conditions for public-private partnerships. An example of such minimum standards is the requirement for the terms of the planning, acquisition, financing, development, design, construction, re-construction, rehabilitation, replacement, improvement, maintenance, management, operation, repair, leasing, and ownership of facilities. These conditions are addressed in Section 7 – Qualified project agreements; approvals of S.B. 2739.
- 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 also recommends a separate uncodified section of the bill addressing priority projects instead of requiring initiation of the Aloha Stadium redevelopment as the initial public-private partnership project.

- DAGS requests that the term public-private partnership be defined.
- DAGS recommends that on page 2, lines 5 to 9, the purpose of the Office be to deliver State government projects in an efficient and effective manner.
- DAGS continues to be concerned that the provision on page 4, lines 12 to 14, requiring oversight and implementation of each public-private partnership project, could affect the current operations of State agencies.

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 that are in line with existing statutes. 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.

We encourage your consideration of the language 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.



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ADDRESS:
94-487 AKOKI STREET SUITE 213
WAIPAHU, HAWAII 96797
P 808.847.4666

**Testimony to the House Committee on Economic Development
and Business
Wednesday, March 14, 2018
9:30 am
State Capitol, Room 309**

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

Chair Evans, Vice-Chair Keohokalole, & 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 S.B 2705, SD 2, which proposes to establish five state public-private partnership coordinator positions within the department of budget, economic development, & tourism to manage certain public-private partnerships entered into by the State and associated contracts, proposals, and negotiations, except public-private partnerships entered into by Hawaii public housing authority. The bill also establishes an office of public-private partnership within the department of accounting and general services.

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. While the current version of the bill exempts P3 projects from Chapter 103D 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 that while there is a need to centralize the P3 expertise to provide consistent services to agencies seeking P3 projects, there is a more immediate need to have legislation in place that would allow the state to enter into the various P3 delivery models. Having a clear process established in the statute will not only provide the P3 office with the means to analyze and implement a P3 project but more importantly, provide private investors with transparency, predictability, and certainty in the process. We believe the bill also needs to include language that would allow for the lease, lease-back or concession of state owned facilities and/or infrastructure including an interest in the state owned land.

We note that the bill has been amended to exempt P3's from Chapter 103 HRS. We understand that P3's are effectively a hybrid between the procurement of services (i.e. Chapter 103D HRS) and the leasing of real property (i.e. Chapter 171 HRS), we believe a new section of the law should be created rather than amend either 103D or 171 HRS. The bill lacks a process or legal framework for an agency to consider, and enter into public-private-partnership arrangements.

We support the intent of S.B. 2705, SD 2, but would suggest that language that would allow for leases, lease-like, and concession arrangements be added to the bill. We appreciate the opportunity to express our views on this matter.



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

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

Before the
House Committee on Economic Development & Business
March 14, 2018
9:30 a.m., Conference Room 309

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

Chair Evans, Vice Chair Keohokalole, and committee members:

Thank you for the opportunity to submit comments on **Senate Bill 2705, SD2, Relating to Public-Private Partnerships**, which establishes an office of public-private partnership as well as five public-private partnership coordinator positions.

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, we have concerns about placement of the office in the Department of Business, Economic Development and Tourism and the blanket exemption from chapter 103D. We suggest the office be placed within the Department of Accounting and General Services because of their expertise in both managing large-scale CIP contracts and state procurement laws. We also suggest that along with the exemption from chapter 103D, HRS, an alternative open and transparent process to deliver projects be established.

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

Thank you for the opportunity to submit testimony.

SB-2705-SD-2

Submitted on: 3/13/2018 3:11:59 PM

Testimony for EDB on 3/14/2018 9:30:00 AM

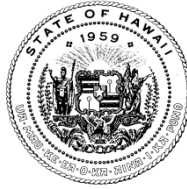
Submitted By	Organization	Testifier Position	Present at Hearing
Stephen L Tschudi	Individual	Oppose	No

Comments:

Esteemed Lawmakers,

SB2705, ostensibly written to benefit the public by harnessing the economic energy of the private sector, turns out to be a bad idea. This bill as currently written opens Hawaii's door to the prison-industrial complex, a socially harmful phenomenon that creates profit based on our nation's shamefully high incarceration rate. Handing over control of corrections to for-profit corporations is a recipe for civil liberties violations including abuse, neglect, and misconduct. I urge you to oppose this bill until access to public-private partnerships of the kind deccribed in the bill is denied to operators of for-profit prisons.

DAVID Y. IGE
GOVERNOR



JADE T. BUTAY
DIRECTOR

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

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

IN REPLY REFER TO:

March 14, 2018
9:30 a.m.
State Capitol, Room 309

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

Senate Committee on Economic Development and Business

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 Business, Economic Development, and Tourism (DBEDT) 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 DBEDT and Appropriates funds.

Having a designated office to develop, implement, maintain, and manage a public-private partnership project should the DOT have a need to deliver a project in this way could be beneficial.

Thank you for the opportunity to provide testimony.



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

DAVID Y. IGE
GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Web site: www.hawaii.gov/dbedt

Telephone: (808) 586-2355
Fax: (808) 586-2377

Written Statement of
LUIS P. SALAVERIA
Director
Department of Business, Economic Development and Tourism
before the
HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS

Wednesday, March 14, 2018
9:30 a.m.
State Capitol, Conference Room 309

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

Chair Evans, Vice Chair Keohokalole, and Members of the Committee.

The Department of Business, Economic Development and Tourism (DBEDT) comments on SB2705, SD2, which would establish an office of Public-Private Partnership within the Department of Business, Economic Development and Tourism and appropriates funds for five FTE positions.

DBEDT agrees that public-private partnerships allow for projects to be delivered in a more efficient manner by increasing the effective use of State resources. Thus, DBEDT prefers the language that was in the Administration's Bill SB2739, which would provide an alternative method of managing public lands and awarding contracts that is separate and apart from Chapters 171 and 103D, HRS.

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

LATE

SB-2705-SD-2

Submitted on: 3/13/2018 5:01:31 PM

Testimony for EDB on 3/14/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Janet Graham	Individual	Oppose	No

Comments:

Dear Economic Development and Business Committee:

Thank you for the opportunity to express my opposition to this bill. Some of my comments reiterate the testimony of the ACLU Hawaii on this bill. The bill offers state funds to private companies without oversight and the wording of the bill doesn't exclude using state funds to create private prisons. I ask you to either reject this bill or amend it to exclude corrections from the areas that allow for public-private partnerships. Private prisons are fiscally irresponsible and increasing incarceration will not make us safer while it makes it more likely that the state will violate the human rights of its prisoners. I urge you to read the attached report entitled: *The Native Hawaiian Justice Task Force Report* -see link below - before passing a bill that could lead to more suffering and injustice. I trust that our state can learn from our negative experiences with private prisons and do our best to avoid similarly poor decisions.

https://static.prisonpolicy.org/scans/2012NHJTFREPORT_0.pdf

Please don't pass this bill without amending it to protect Hawaiian residents from the cost and injustice of private prisons.

Mahalo, Janet Graham

COMMUNITY ALLIANCE ON PRISONS

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

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



COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS

Rep. Cindy Evans, Chair

Rep. Jarrett Keohokalole, Vice Chair

Wednesday, March 14, 2018

9:30 am

Room 309

LATE

STRONG OPPOSITION TO SB 2705 SD2 - PRIVATIZING HAWAII

Aloha Chair Evans, Vice Chair Keohokalole 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.

Community Alliance on Prisons is deeply concerned about Hawai'i entering the shark tank world of P3s. We know that **P3s really are Private Prison Profits**. This is a serious move for inexperienced Hawai'i, especially when the climate from D.C. is all about privatization. The experience of other places has shown that public-private partnerships are far more expensive than public financing and – without very strong protections – can hand control of infrastructure to private investors. Hawai'i is weak on enforcement. This is dangerous.

Please don't hand off our correctional system to the private sector because the department of public safety is failing as the 2010 audit made that painfully clear. Make the department better. Provide **real independent oversight and guidance** so that we don't continue this rash of suspicious deaths, assaults, and suicides and so that correctional officers are trained to assist and facilitate the rehabilitation of those in their "care and custody." The legislature has the power to fix these problems – please don't hand off corrections to some corporate profiteers whose sole interest is their bottom line and who could care less about our community.

Privatization would make things worse. The department of public safety currently operates under a veil of secrecy; privatization would only build a bigger barrier between the department and everyone else. Privatization costs more economically while destroying the fabric of communities.

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

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

John Adams

LATE

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

Honolulu, Hawai'i 96826

To: Rep. Cindy Evans, Chair; Rep. Jarrett Keohokalole, Vice-Chair;
Members, House Committee on Economic Development & Business

Date: March 14, 9:30 a.m., Room 309

Re: **SB 2705 SD 2, OPPOSE**

Respectfully, I ask this Committee to please defer this bill. I have reviewed previous testimony, and this is the only reasonable conclusion I can reach.

I adamantly oppose this bill for these reasons:

- The bill proposes five civil service exempt positions. People who are objectively the most qualified for these positions, can and will be hired through our civil service system.
- The bill seeks to evade Hawaii's procurement process.
- The bill will function to kick the financial feet out from under even more of Hawaii's already struggling families by undermining our unions.
- The bill opens the door to privately owned, for-profit prisons and jails. Hardly anything could be worse for our prison population and the families of our prisoners. The experience on the Mainland shows that these for-profit facilities are unhealthy and may be violating the civil rights of the prisoners.
- Furthermore, as pointed out in previous testimony, the for-profit prison companies lobby actively against measures that would actually improve our laws and better serve our population. Hawai'i should not put a single penny into the coffers of these companies.

Please defer this bill, and defer as well, any of the other bills which make similar proposals. Thank you.

LATE

SB-2705-SD-2

Submitted on: 3/13/2018 7:09:08 PM

Testimony for EDB on 3/14/2018 9:30:00 AM

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

Comments:

Committee Chair and Senators,

It is bad enough we are already sending Hawaii's inmates to the mainland institutions, often these for profit ones with poor reputations. Now we are considering bringing these businesses to Hawaii? Please just say no.

Mahalo,

Mike Moran Kihei, Maui

LATE

SB-2705-SD-2

Submitted on: 3/13/2018 8:51:11 PM

Testimony for EDB on 3/14/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Ellen Smith	Individual	Oppose	No

Comments:

Chair Wakai, Vice Chair Taniguchi, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 2705.

The primary source of income for private prisons is based on the number of people incarcerated. If the income for private prisons is dependent entirely on maintaining a stable inmate population, then privatized prison management often demands guaranteed occupancy rates. These guarantees run counter to declining prison population trends, and they violate efforts toward early release, alternative sentencing and other forms of restitution, especially in cases of non-violent crimes.

Our systems should be geared toward rehabilitation which would yield more benefits to our society; societal benefits to our community completely contradict the essential function of privatized ownership.

This State of Arizona study concluded that, when all factors are taken into proper consideration and weighted appropriately, privately operated facilities were actually more costly to operate than their public counterparts.

https://corrections.az.gov/sites/default/files/ars41_1609_01_biennial_comparison_report_122111_e_v.pdf

Private corrections providers pay lower wages to their corrections staff, spend less on staff training and economize on inmate food costs, medical care, and rehabilitative services.

Those correctional staff are members of our communities and they handle the most dangerous and fragile inmates, who are also community members, neighbors, friends and family.

We should be investing and looking into ways to cure and heal our community members, not encourage increased prisons populations for profit that may in the end result in higher costs and a fractured community.

Lisa Ellen Smith

LATE

SB-2705-SD-2

Submitted on: 3/13/2018 9:51:28 PM
Testimony for EDB on 3/14/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Marion McHenry	Individual	Oppose	No

Comments:

My name is Marion McHenry. I am submitting testimony from Kauai. I am strongly opposed to this bill. I agree with the testimony submitted by the ACLU of Hawaii. We do not want for profit prisons in our state!

Thank you

LATE

SB-2705-SD-2

Submitted on: 3/13/2018 10:12:19 PM
Testimony for EDB on 3/14/2018 9:30:00 AM

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

Comments:

In STRONG CONTINUED SUPPORT of this UNION BUSTING BILL.

LATE

SB-2705-SD-2

Submitted on: 3/13/2018 11:14:14 PM

Testimony for EDB on 3/14/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carl Bergquist	Drug Policy Forum of Hawaii	Comments	No

Comments:

We suggest that the public-private partnerships (P3s) contemplated 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, saying, 'Guarantee that our prisons will be filled. Guarantee 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.

LATE



Progressive Democrats of Hawai'i

<http://pd-hawaii.com>

PO Box 231 Honolulu HI 96809

email: info@pd-hawaii.com

March 13, 2018

To: House Committee on Economic Development and Business
Rep. Cindy Evans, Chair
Rep. Jarrett Keohokalole, Vice Chair

Re: SB 2705, SD 2 – Public-Private Partnerships in DBEDT

Hearing: Wednesday, March 14, 2018, 9:30 a.m., Room 309

Position: Strong Opposition

Progressive Democrats of Hawai'i generally oppose public-private partnerships. They tend to give the private partner the profits and stick the public partner with the risks and the losses. This bill suffers from ALL of those problems, especially because it creates a bureaucratic office within DBEDT whose sole justification for existence would be to crank out public-private contracts and thereby put pressure on other government agencies to accept such contracts. The present bill is even worse because the potential public-private partnership contracts could last for as long as 65 years.

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

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

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