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# A BILL FOR AN ACT

RELATING TO PUBLIC-PRIVATE PARTNERSHIPS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Hawaii is faced with limited, if not declining,  
2 government funding. This trend is expected to continue,  
3 increasing the importance of leveraging limited governmental  
4 resources and partnering with the private sector.

5           A public-private partnership is a contractual agreement  
6 between a public agency and a private entity that allows for a  
7 greater risk transfer to the private sector in the delivery and  
8 financing of a public project, creating greater value for the  
9 public than traditional delivery methods. In a public-private  
10 partnership project, the public agency retains ownership and  
11 substantial control of the project, but transfers certain  
12 responsibilities to the private partner under a single contract,  
13 which is often a long-term contract involving lifecycle cost  
14 risk. The aim of a public-private partnership is to provide the  
15 best value and performance in the delivery of assets and  
16 services for the benefit of the general public.



1 The purpose of this Act is to establish a public-private  
2 partnership working group within the department of accounting  
3 and general services to help the State and counties undertake  
4 certain capital improvement projects in a more efficient and  
5 cost-effective manner by allowing more innovative project  
6 delivery methods.

7 SECTION 2. Chapter 103, Hawaii Revised Statutes, is  
8 amended by adding a new part to be appropriately designated and  
9 to read as follows:

10 "PART . DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
11 WORKING GROUP

12 §103- Public-private partnership working group;  
13 established; state public-private partnership coordinator.

14 There is established within the department of accounting and  
15 general services a public-private partnership working group to  
16 support state and county agencies in the use of best practices  
17 in contracting for public-private partnership projects. The  
18 goal of public-private partnership projects shall be to deliver  
19 and finance public projects at a lower lifecycle cost and with  
20 more diversified risk than the traditional delivery process.

21 The comptroller shall appoint a public-private partnership



1 coordinator, exempt from chapter 76, who shall administer the  
2 public-private partnership working group in accordance with this  
3 part.

4 §103- Duties. The public-private partnership working  
5 group shall:

6 (1) Create a strategic plan for the provision of advisory  
7 services to state and county agencies that includes:

8 (A) Objectives and goals for the working group,  
9 including criteria to measure the objectives and  
10 goals;

11 (B) A website for maintaining the status of public-  
12 private projects and best practice resources that  
13 meet the working group's objectives and goals;

14 (C) A framework for retention of qualified legal,  
15 financial, and technical advisors that can assist  
16 in the delivery of services contemplated by this  
17 part; and

18 (D) The necessary funding to establish and operate  
19 the working group and fee structures for advisory  
20 services to maintain the working group;



- 1           (2)   Coordinate collaboration among state and county  
2                   agencies to analyze the value of potential public-  
3                   private partnership delivery over other delivery  
4                   methods authorized by chapter 103D, and other needs  
5                   and goals of state and county agencies;
- 6           (3)   Provide to the purchasing agency best practice  
7                   processes for analysis of and contracting for public-  
8                   private partnerships, including modeling the potential  
9                   economic benefits, financial outcomes, and contract  
10                  terms and conditions that will achieve those economic  
11                  benefits and financial outcomes;
- 12          (4)   Create and maintain an analysis report of the value of  
13                  public-private partnership delivery over traditional  
14                  delivery of each public-private partnership project  
15                  that shall include:
  - 16                   (A)   Proposed economic benefits;
  - 17                   (B)   Potential financial outcomes;
  - 18                   (C)   Contract terms and conditions; and
  - 19                   (D)   Social benefits;
- 20          (5)   Develop, analyze, and implement plans for future  
21                  public-private partnership projects, including



1 objectives and criteria to measure the accomplishment  
2 of objectives, programs through which the objectives  
3 are to be attained, and financial requirements for  
4 public resources based on the needs and goals of the  
5 State;

6 (6) Assist state and county agencies, including their  
7 respective purchasing agencies, that have an interest  
8 in public-private partnership projects with the legal  
9 authority to:

10 (A) Coordinate activities that involve cross-agency  
11 responsibilities; and

12 (B) Encourage the timely and effective implementation  
13 and completion of project milestones and  
14 objectives among multiple governmental agencies;

15 (7) Develop educational and advisory programs that enhance  
16 the public-private partnership procurement process to  
17 continuously encourage best practice procurement of  
18 public-private partnership projects that will result  
19 in improved infrastructure and government services in  
20 the State;



1 (8) Assist state and county agencies in formulating  
2 specific program and procurement documents to solicit  
3 public private partnerships; and

4 (9) Undertake the program established in section  
5 26-6(b)(6) relating to centralized engineering and  
6 office leasing services, to facilitate facility  
7 agreements between the State and private investors for  
8 the sale of facilities, including operation and  
9 maintenance of public buildings.

10 **§103- Annual report.** The department of accounting and  
11 general services, in coordination with the public-private  
12 partnership working group, shall submit a report to the  
13 legislature no later than twenty days prior to the convening of  
14 the regular sessions of 2020, 2021, 2022, 2023, 2024, and 2025.  
15 The annual report shall include but not be limited to:

16 (1) The process developed by the working group to support  
17 state and county agencies in the use of best practices  
18 in contracting for public-private partnerships;

19 (2) A detailed description of any public-private  
20 partnerships entered into, including a cost-benefit  
21 analysis of the public-private partnership compared to



1 the traditional means of financing and delivering a  
2 similar public contract; and  
3 (3) A detailed listing of any effects that the public-  
4 private partnership had on state or county agencies  
5 involved in the public-private partnership, including  
6 fiscal and personnel impacts."

7 SECTION 3. Section 103D-104, Hawaii Revised Statutes, is  
8 amended by adding three new definitions to be appropriately  
9 inserted and to read as follows:

10 "Independent peer reviewer services" means additional  
11 professional services provided to the purchasing agency in  
12 public-private partnership procurements to confirm that the key  
13 elements of the professional engineering and architectural  
14 design provided by the contractor conform to the applicable  
15 standard of care.

16 "Infrastructure facility" means a building or a structure,  
17 or a network of buildings, structures, pipes, controls, and  
18 equipment, that provide transportation, utilities, public  
19 education, or public safety services, including government  
20 office buildings; public schools; courthouses; jails; prisons;  
21 public hospitals; water treatment plants, distribution systems,



1 and pumping stations; wastewater treatment plants, collection  
2 systems, and pumping stations; solid waste disposal plants,  
3 incinerators, landfills, and related facilities; public roads  
4 and streets; highways; public parking facilities; public  
5 transportation systems, terminals, and rolling stock; and rail,  
6 air, and water port structures, terminals, and equipment.

7 "Public-private partnership" means a project delivery  
8 method in which the purchasing agency enters into a single  
9 contract for any combination of design, build, financing,  
10 maintenance, or operation in addition to design-build of an  
11 infrastructure facility over a contractually-defined period."

12 SECTION 4. Section 103D-303, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "**§103D-303 Competitive sealed proposals.** (a) Competitive  
15 sealed proposals may be used to procure goods, services, or  
16 construction that are either not practicable or not advantageous  
17 to the State to procure by competitive sealed bidding.

18 (b) Proposals shall be solicited through a request for  
19 proposals.

20 (c) Notice of the request for proposals shall be given in  
21 the same manner as provided in section 103D-302(c).





1 (d) Proposals shall be opened so as to avoid disclosure of  
2 contents to competing offerors during the process of evaluation.  
3 A register of proposals shall be prepared and shall be open for  
4 public inspection after contract award.

5 (e) The request for proposals shall state the relative  
6 importance of price and other evaluation factors.

7 (f) Discussions may be conducted with responsible offerors  
8 who submit proposals determined to be reasonably likely to be  
9 selected for a contract award for the purpose of clarification  
10 to assure full understanding of, and responsiveness to, the  
11 solicitation requirements. Offerors shall be accorded fair and  
12 equal treatment with respect to any opportunity for discussion  
13 and revision of proposals, and revisions may be permitted after  
14 submissions and prior to award for the purpose of obtaining best  
15 and final offers. In conducting discussions, there shall be no  
16 disclosure of any information derived from proposals submitted  
17 by competing offerors.

18 (g) Award shall be made to the responsible offeror whose  
19 proposal is determined in writing to be the most advantageous,  
20 taking into consideration price and the evaluation factors set  
21 forth in the request for proposals. No other factors or



1 criteria shall be used in the evaluation. The contract file  
2 shall contain the basis on which the award is made.

3 (h) In cases of awards made under this section, non-  
4 selected offerors may submit a written request for debriefing to  
5 the procurement officer within three working days after the  
6 posting of the award of the contract. Thereafter, the  
7 procurement officer shall provide the non-selected offeror a  
8 prompt debriefing. Any protest by the non-selected offeror  
9 pursuant to section 103D-701 following debriefing shall be filed  
10 in writing with the procurement officer within five working days  
11 after the date upon which the debriefing is completed.

12 (i) In addition to any other provisions of this section,  
13 construction projects may be solicited through a request for  
14 proposals to use any combination of the design-build [method]  
15 or public-private partnership methods; provided that:

16 (1) A request for proposals is issued to prequalify  
17 offerors to select a short list of no more than three  
18 responsible offerors, prior to the submittal of  
19 proposals; provided that the number of offerors to be  
20 selected for the short list shall be stated in the  
21 request for proposals and prompt notice is given to



- 1 all offerors as to which offerors have been short-
- 2 listed;
- 3 (2) A conceptual design fee may be paid to non-selected
- 4 offerors that submit a technically responsive
- 5 proposal; provided that the cost of the entire project
- 6 is greater than \$1,000,000; [and]
- 7 (3) The criteria for pre-qualification of offerors, design
- 8 requirements, development documents, proposal
- 9 evaluation criteria, terms of the payment of a
- 10 conceptual design fee, or any other pertinent
- 11 information shall be stated in the request for
- 12 proposals[-]; and
- 13 (4) Each request for proposals to use any combination of
- 14 public-private partnership methods shall:
- 15 (A) State the relative importance of:
- 16 (i) Demonstrated compliance with the design
- 17 requirements;
- 18 (ii) Financial capacity;
- 19 (iii) Project schedule;
- 20 (iv) Price or lifecycle price; and
- 21 (v) Other factors, if any; and



- 1           (B) Require each offeror:
- 2                (i) For a project with a contract price
- 3                    estimated to exceed \$10,000,000;
- 4                (ii) For a project with a contract period of
- 5                    operations and maintenance of at least ten
- 6                    years; or
- 7                (iii) In other circumstances identified by the
- 8                    comptroller by rule;
- 9                    to identify and include qualified and competent
- 10                  independent peer reviewer services, which shall
- 11                  be an additional evaluation factor in the award
- 12                  of the contract.
- 13            (j) The purchasing agency may engage in negotiations with
- 14            the highest-ranked offeror in a public-private partnership
- 15            procurement and may negotiate:
- 16                (1) The statement of work;
- 17                (2) The contract price as it is affected by negotiating
- 18                    the statement of work; and
- 19                (3) Any other terms and conditions reasonably related to
- 20                    those expressly authorized for negotiation in the
- 21                    solicitation of public-private partnership proposals.



1 Offerors shall not submit for negotiation, and the purchasing  
2 agency shall not accept, any terms and conditions that are not  
3 reasonably related to those expressly authorized for negotiation  
4 in the solicitation of public-private partnership proposals. In  
5 conducting negotiations, there shall be no disclosure of any  
6 information derived from proposals submitted by competing  
7 offerors.

8 (k) Notwithstanding any other provisions in this section  
9 to the contrary, a purchasing agency may terminate negotiations  
10 with an offeror of a public-private partnership if the  
11 negotiations are not successful, and a purchasing agency may  
12 commence negotiations with the next highest scoring offeror. A  
13 purchasing agency may continue this process until the public  
14 entity has determined to:

- 15 (1) Award the contract to the offeror with whom it is  
16 currently negotiating;  
17 (2) Continue negotiations with the offerors; or  
18 (3) Cancel the solicitation of the public-private  
19 partnership."

20 SECTION 5. Section 103D-323, Hawaii Revised Statutes, is  
21 amended by amending subsections (a) and (b) to read as follows:



1           "(a) Unless the policy board determines otherwise by  
2 rules, bid security shall be required only for construction  
3 contracts to be awarded pursuant to sections 103D-302 and 103D-  
4 303 and when the price of the contract is estimated by the  
5 procurement officer to exceed \$25,000 or, if the contract is for  
6 goods or services, the purchasing agency secures the approval of  
7 the chief procurement officer. Bid security shall be a bond  
8 provided by a surety company authorized to do business in the  
9 State, or the equivalent in cash, or otherwise supplied in a  
10 form specified in rules[-] and shall be in an amount equal to at  
11 least five per cent of the amount of the bid.

12           (b) [~~Bid security shall be in an amount equal to at least~~  
13 ~~five per cent of the amount of the bid.~~] In addition to other  
14 requirements of this section, one or more of the following forms  
15 of security shall be required to assure the timely, faithful,  
16 and uninterrupted provision of operations or maintenance  
17 services as elements of public-private partnership procurements:

- 18           (1) Operations period surety bonds that secure the  
19                 performance of the contractor's operations and  
20                 maintenance obligations;



- 1        (2) Letters of credit in an amount appropriate to cover
- 2        the cost to the purchasing agency of preventing
- 3        infrastructure service interruptions for a period of
- 4        up to twelve months; and
- 5        (3) Appropriate written guarantees from the contractor or
- 6        the contractor's parent corporation to secure the
- 7        recovery of re-procurement costs to the purchasing
- 8        agency in the event of a default in performance by the
- 9        contractor."

10        SECTION 6. There is appropriated out of the general  
 11 revenues of the State of Hawaii the sum of \$                    or so  
 12 much thereof as may be necessary for fiscal year 2019-2020 and  
 13 the same sum or so much thereof as may be necessary for fiscal  
 14 year 2020-2021 to:

- 15        (1) Establish and operate the department of accounting and
- 16        general services working group; and
- 17        (2) Convert a vacant position in the public works division
- 18        to the state public-private partnership coordinator
- 19        position.

20        The sums appropriated shall be expended by the department  
 21 of accounting and general services for the purposes of this Act.



1 SECTION 7. This Act is not intended to modify, and shall  
2 not be construed to expand or limit, any laws relating to the  
3 subject of this Act, unless expressly stated herein.

4 SECTION 8. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 9. This Act shall take effect on January 1, 2050;  
7 provided that section 2 of this Act shall be repealed on  
8 January 1, 2025.





**Report Title:**

Public-Private Partnership Working Group; Establishment;  
Procurement Code; Appropriation

**Description:**

Establishes the public-private partnership working group and requires an annual report to be submitted to the legislature. Adds public-private partnership project delivery methods and related conditions and requirements to the Hawaii Public Procurement Code. Sunsets the working group on 1/1/2025. Appropriates funds. Effective 1/1/2050. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

