

DAVID Y. IGE  
GOVERNOR



SARAH ALLEN  
ADMINISTRATOR  
BONNIE KAHAKUI  
ASSISTANT ADMINISTRATOR

**STATE OF HAWAII**  
**STATE PROCUREMENT OFFICE**

P.O. Box 119  
Honolulu, Hawaii 96810-0119  
Tel: (808) 586-0554  
email: [state.procurement.office@hawaii.gov](mailto:state.procurement.office@hawaii.gov)  
<http://spo.hawaii.gov>  
Twitter: [@hawaiispo](https://twitter.com/hawaiispo)

TESTIMONY  
OF  
SARAH ALLEN, ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE  
ON  
GOVERNMENT OPERATIONS

March 19, 2019, 2:45 P.M.

HB889, HD1  
RELATING TO PUBLIC-PRIVATE PARTNERSHIPS

Chair Thielen, Vice-Chair Inouye, and members of the committee, thank you for the opportunity to submit testimony on HB889, HD1. The State Procurement Office (SPO) supports the intent of this bill that will create an office of public-private partnership, who will develop educational and advisory programs that enhance the public-private partnership procurement process. This bill also proposes to add public-private partnership methods to the procurement code.

The SPO supports the intent of bill because it identifies the need to clarify options and procurement guidance for public infrastructure projects. However, it also proposes to amend sections in the procurement code (code), specifically competitive sealed proposals which is typically the method used to contract for Public-Private Partnerships (P3). The code does not preclude the use of innovative project delivery models, including design-build-finance-operate-maintain contracts.

The SPO recommends the creation of a task force as proposed in SB1003, SD1 relating to project delivery task guidelines. It would be in the best interest of the state to conduct research and develop institutional framework and tools to support state agencies in identifying, implementing and overseeing innovative project delivery arrangements such as P3.

As part of the task force, SPO recommends an additional \$150,000 to engage a subject matter expert to help facilitate the task force in developing guidance and collecting the information. In addition, SPO recommends funding of \$3,000 per task force member for P3 training and education. It behooves task force members to understand the intricacies of this complex method before developing Rules, which the PPB must approve, with no real P3 experience.

Thank you.



**TESTIMONY BY:**

JADE T. BUTAY  
DIRECTOR

Deputy Directors  
LYNN A.S. ARAKI-REGAN  
DEREK J. CHOW  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN

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

March 19, 2019  
2:45 p.m.  
State Capitol, Room 225

**H.B. 889, H.D. 1**  
**RELATING TO PUBLIC-PRIVATE PARTNERSHIPS.**

Senate Committee on Government Operations

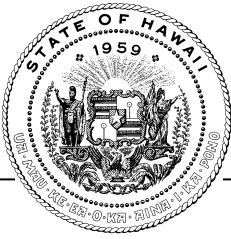
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The Department of Transportation (DOT) **supports** the intent of this bill which proposes to establish within the Department of Accounting and General Services (DAGS) an Office of Public-Private Partnership and the position of State Office of Public-Private Partnership Coordinator. Adds public-private partnership project delivery methods and related conditions and requirements to the Procurement Code; appropriates funds; and requires report to the legislature.

The proposed language appears to create a public-private partnership office with a support and advisory role, to provide best practices, coordination and guidance, rather than management and oversight. This approach allows each agency entering into public-private partnerships greater autonomy in furthering its mission.

The DOT supports the proposed revisions to Hawaii Revised Statutes (HRS) 103D-104 which add and define new terms independent peer reviewer services, infrastructure facility, and public-private partnership. However, the DOT would propose that the public-private partnership (P3) method of procurement be created as separate and distinct from the Competitive Sealed Proposals HRS 103D-303 method of procurement as the requirements of the Competitive Sealed Proposals method do not allow some of the P3 proposed requirements such as negotiations of the statement of work, and negotiations of contract price.

Thank you for the opportunity to provide testimony.



# OFFICE OF PLANNING STATE OF HAWAII

DAVID Y. IGE  
GOVERNOR

DIRECTOR  
OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846  
Fax: (808) 587-2824  
Web: <http://planning.hawaii.gov/>

Statement of  
**RODNEY FUNAKOSHI**  
Planning Program Administrator, Office of Planning  
before the  
**SENATE COMMITTEE ON GOVERNMENT OPERATIONS**  
Tuesday, March 19, 2019  
2:45 PM  
State Capitol, Conference Room 225

in consideration of  
**HB 889, HD 1**  
**RELATING TO PUBLIC-PRIVATE PARTNERSHIPS.**

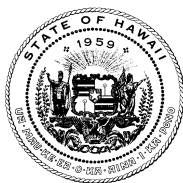
Chair Thielen, Vice Chair Inouye, and Members of the Senate Committee on Government Operations.

The Office of Planning (OP) **supports** HB 889, HD 1, which establishes an Office of Public-Private Partnership and the position of State Office of Public-Private Partnership Coordinator within the Department of Accounting and General Services, and adds definitions and revisions to Chapter 103D, the State Procurement Code, to facilitate implementation of public-private partnerships (P3s).

As lead agency for State Transit-Oriented Development (TOD) and co-chair of the Hawaii Interagency Council for Transit-Oriented Development (TOD Council), OP has been actively promoting the use of P3s through educational and information workshops over the past two years. Experience with P3s nationally and internationally shows that using this approach delivers projects on-time, under budget and exceeds quality expectations. This contracting method provides the public agency with cost certainty and transfers the risks of cost, schedule and performance to the private sector while maintaining public ownership of the asset.

In the TOD Council's *State TOD Strategic Plan*, revised August 2018, action items recommended to improve TOD implementation include "Support legislation and funding to establish a Public-Private Partnership Office", and authorize standards of practice for P3 or alternative or innovative financing delivery systems. This bill does just that. Accordingly, we support this measure and urge your favorable consideration.

Thank you for this opportunity to testify.



DAVID Y. IGE  
GOVERNOR

STACEY A. ALDRICH  
STATE LIBRARIAN

STATE OF HAWAII  
HAWAII STATE PUBLIC LIBRARY SYSTEM  
OFFICE OF THE STATE LIBRARIAN  
44 MERCHANT STREET  
HONOLULU, HAWAII 96813



**SENATE COMMITTEE ON GOVERNMENT OPERATIONS**

**Tuesday, March 19, 2019**

**2:45 p.m.**

**Conference Room 225**

**State Capitol**

**By**

**Stacey A. Aldrich**

**State Librarian**

**H.B. 889 H.D. 1 – Relating to Public-Private Partnerships**

To: Chair Laura H. Thielen  
Vice Chair Lorraine R. Inouye  
Members of the Senate Committee on Government Operations

The Hawaii State Public Library System (HSPLS) **supports the intent of** H.B. 889 H.D.1, which proposes to establish the office of public-private partnership to help the State and counties undertake certain capital improvement projects in a more efficient and cost-effective manner through innovative project delivery methods.

HSPLS respectfully requests that public library facilities be included in the proposed definition of “infrastructure facility” to provide HSPLS with additional options for upgrading its facilities.

Thank you for the opportunity to comment on this measure.

**HB-889-HD-1**

Submitted on: 3/16/2019 1:56:51 PM

Testimony for GVO on 3/19/2019 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
John Bickel	Individual	Oppose	No

Comments:

I have not forgotten failed private library book buying contract, or failed police privatized speed ticketing or private prisons. Let's do less of this profit motive corruption of public policy not more.

**HB-889-HD-1**

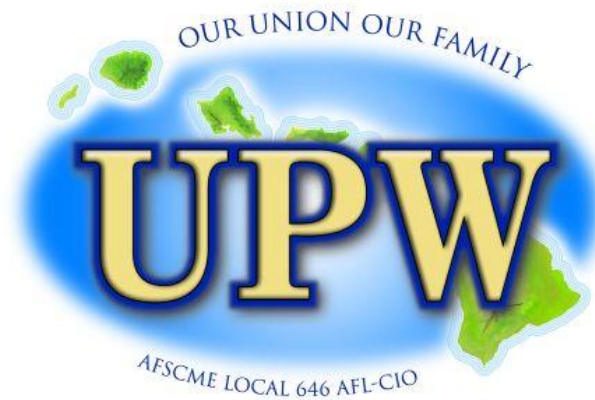
Submitted on: 3/16/2019 11:55:49 PM

Testimony for GVO on 3/19/2019 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mary Smart	Individual	Oppose	No

Comments:

Vote no. Until you eliminate some functions and positions, do not consider establishing new offices. Do not pass HB889 HD1.



**THE HAWAII STATE SENATE**

The Thirtieth Legislature  
Regular Session of 2019

**Committee on Government Operations**

Senator Laura H. Thielen, Chair  
Senator Lorraine R. Inouye, Vice Chair

Date of Hearing: Tuesday, March 19, 2019  
Time of Hearing: 2:45 p.m.  
Place of Hearing: Conference Room 225

**TESTIMONY ON HB889, HD1 RELATING TO PUBLIC-PRIVATE PARTNERSHIPS**

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

My name is Dayton M. Nakanelua, the State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive bargaining representative for approximately 14,000 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 four counties. The UPW also represents about 1,500 members in the private sector.

HB889, HD1 establishes the Office of Public-Private Partnership and adds P3 project delivery methods and related conditions to the Hawaii Public Procurement Code. There have been varying successes and failures of Public-Private Partnerships with the pros and cons of P3 expounded many times over. The UPW limits its testimony at this time to the possible effects of any form of P3 arrangement regarding public employees affected by P3 and the lack of provisions to resolve or correct any negative employment conditions e.g. lack of opportunities for skills development and job growth, employment security, promotional opportunities and more, upon public workers within the civil service system.

UPW comments:

Page 4, line 12 to 19. This section does not analyze the employment status and effect on civil service employees especially in maintenance and operation. There is no provision for the possibility of the transfer of technology where possible to develop public employees and departments to gain new skills and knowledge for the long-term benefit of government and the public. The analysis must be a balanced one where both benefits and negative effects including risk factors are openly and factually described.

Page 7, line 6. does mention “personnel impacts” after the fact but offers no provision to avoid negative “personnel impacts” before the project begins. There is no provision to comply with HRS 89 (collective bargaining) or HRS 76 (civil service). These are serious omissions and are unacceptable.

According to writings on P3, “If the expertise in the partnership lies heavily on the private side, the government is at an inherent disadvantage.” Overtime, if government skills, expertise and knowledge are not advanced and government relies heavily on private companies too much, these private companies, will eventually have some control or excessive influence or affect over government policies. Government could become only a broker of procurement services and not a provider of core government services. Is this in the public interest?

We look to the success of China that compels many foreign businesses that desire to conduct business in China to transfer technology, processes, information and to train Chinese workers; it is now an economic giant. The state of Hawaii should have policies requiring private contractors and vendors to develop and strengthen the delivery and quality of core government services through technology and information transfer, including training of public employees if Public-Private-Partnerships are implemented.

The UPW **strongly opposes** HB889, HD1 as written.

Thank you for the opportunity to submit this testimony.





**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
AFSCME Local 152, AFL-CIO

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

The Thirtieth Legislature, State of Hawaii  
The Senate  
Committee on Government Operations

Testimony by  
Hawaii Government Employees Association

March 19, 2019

H.B. 889, H.D. 1 – RELATING TO PUBLIC-PRIVATE PARTNERSHIPS

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO raises strong concerns over the intent of H.B. 889, H.D. 1 which establishes and appropriates funding for the Office of Public-Private Partnership within the Department of Accounting and General Services to plan and coordinate collaboration amongst state and county agencies to develop and implement public-private partnership projects and adds public-private partnership delivery methods to the Procurement Code.

While we acknowledge that there can be benefit to certain public-private partnerships (P3s) in securing and leveraging private funds for the public's use, there are also many examples of inefficiencies, failures and negative impacts to public assets and the public's trust in government as a result of P3s. As drafted, we respectfully raise strong 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.

Additionally, we raise strong concerns over the implications of a project delivery system that allows any combination of design, build, finance, operate, or maintain, as it may enable the private operation of any and all of the state's facilities, including public schools, prisons, hospitals, water treatment plants, collection systems, landfills, public roads, parking lots, airports, and highways, among others. H.B. 889 is overly broad and all encompassing, and we prefer policy that strictly limits the scope of P3s to securing a fusion of private sector funding.

Before we consider committing funds and state agency efforts for another "new fix," we respectfully suggest the Legislature prioritize its efforts in determining areas where government inefficiency is resulting in lost resources and revenues, as well as rely on the expertise and suggestions of its workforce.

Thank you for the opportunity to raise concerns on the broad scope of H.B. 889, H.D. 1.

Respectfully submitted,

  
for Randy Perreira  
Executive Director



**TESTIMONY TO THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS  
State Capitol, Conference Room 225  
415 South Beretania Street  
2:45 PM**

March 19, 2019

RE: HOUSE BILL NO. 889 HD 1, RELATING TO PUBLIC-PRIVATE-PARTNERSHIPS

Chair Thielen, Vice Chair Inouye, and members of the committee:

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

BIA-Hawaii **supports the intent** of H.B. 889 HD 1, which proposes to establish the Office of Public-Private Partnership and the position of State Office of Public-Private Partnership Coordinator. The bill also adds public-private partnership project delivery methods and related conditions and requirements to the Hawaii Public Procurement Code.

We understand that public-private-partnership (P3s) are gaining popularity around the world primarily due to the lack of government funds to develop infrastructure. We believe that one of the first objectives of this office should be to create enabling legislation that would provide the process government agencies would follow in entering into a P3 arrangement, and more importantly, identify revenue sources to pay the investor. We also suggest that the new office have the ability to lease government lands, which is not a part of Chapter 103D HRS. Typically, investors in P3s are provided with some type of security for their investment through either a contract or some type of lease-back agreement, with the investor having ownership of the improvement until such time as they are able to recoup their investment and the government agency would end up owning the improvement.

We appreciate the opportunity provide comments on H.B. 889 HD 1.

# AMERICAN INSTITUTE OF ARCHITECTS

March 19, 2019

Honorable Laura H. Thielen, Chair  
Senate Committee on Government Operations

## **Re: House Bill 889 HD1 Relating to Public-Private Partnerships**

Dear Chair Thielen and Members of the Committee

My name is Daniel Chun Government Affairs Commissioner of the American Institute of Architects Hawaii State Council (AIA) providing **COMMENTS** on House Bill 889 HD1.

### **Amend definition of "public private partnership" in SECTON 3**

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

AIA requests striking out the word "any" in the definition:

1. There already is significant confusion between "design-build" of construction projects and P3 or "public -private partnerships." Our national discussion for Public-Private Partnerships considers P3 as broad combination.
2. If you do not strike out "any" you create confusion between existing design-build procurement process and P3..
3. P3 goes beyond design-build as it is largely a financing process when governments lack enough bonding / tax collection capacity to pay for projects: HART being a local example.
4. According to national AIA information, cost of designing and building is about 11% of project life-time cost. The other 89% is cost of financing, maintaining and operating a project. A lot of of savings come from privatizing long-term maintenance and operation. Hence opposition expressed by public employee unions.

### **Contractually-defined lease period could be very long-term**

Leases by the state for private facilities have annual terms. Several years ago Hawaii constitutional amendment had to be passed to allow the state Department of Education to enter long-term lease agreement with private sector for new school construction. Our understanding is because such agreement would have been unconstitutional as constraining ability of future legislatures to

oversee state budgets. Our understanding is that the amendment was limited to the state Department of Education. So simple question is whether broadly applicable P3 procurement is allowed by state constitution or county charters?

Thank you for this opportunity to **COMMENT** on House Bill 889 HD1



# Chamber of Commerce HAWAII

*The Voice of Business*

**Testimony to the House Committee on Government Operations  
Tuesday, March 19, 2019 at 2:45 P.M.  
Conference Room 225, State Capitol**

**LATE**

**RE: HB 889 HD 1, RELATED TO PUBLIC-PRIVATE-PARTNERSHIPS (P3's)**

Chair Thielen, Vice Chair Inouye, and Members of the Committee:

The Chamber of Commerce Hawaii (“The Chamber”) **supports the intent** of H.B. 889 HD 1, which proposes to establish the Office of Public-Private Partnership and the position of State Office of Public-Private Partnership Coordinator. The bill also adds public-private partnership project delivery methods and related conditions and requirements to the Hawaii Public Procurement Code.

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.

We understand that public-private-partnership (P3’s) are gaining popularity around the world primarily due to the lack of government funds to develop social infrastructure. We believe that one of the first objectives of this office should be to create enabling legislation that would provide the process government agencies would follow in entering into a P3 arrangement. We also suggest that the new office have the ability to lease government lands, which is not a part of Chapter 103D HRS. Typically, investors in P3’s are provided with some type of security for their investment through either a contract or some type of lease-back agreement with the investor having ownership of the improvement until such time as they are able to recoup their investment and the government agency would end up owning the improvement.

Thank you for the opportunity to provide comments on HB 889 HD1.