
A BILL FOR AN ACT

RELATING TO INNOVATIVE PROJECT DELIVERY GUIDELINES.

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

1 SECTION 1. The legislature finds that there is a public
2 need for timely design, construction, improvement, renovation,
3 expansion, modernization, equipping, maintenance, operation,
4 implementation, and installation of public infrastructure and
5 state government facilities, as existing public procurement
6 methods are not wholly satisfying this need.

7 The legislature further finds that when considering current
8 and expected fiscal constraints, the legislature must take
9 measures to ensure that Hawaii's immediate and long-term public
10 infrastructure needs are addressed in a timely and cost-
11 effective manner.

12 The legislature also finds that enabling innovative project
13 delivery modalities that allow state agencies to leverage
14 limited resources with private sector capital and expertise may
15 benefit public safety and welfare.

16 The legislature additionally finds that according to the
17 attorney general, the state procurement code does not preclude



1 the use of innovative project delivery models, including design-
2 build-finance-operate-maintain contracts by state agencies.

3 While well-structured innovative project delivery
4 approaches can benefit state and local communities by optimizing
5 risk transfer, accelerating delivery, incentivizing innovation,
6 and ensuring life-cycle asset management at prescribed service
7 levels, the legislature recognizes that these arrangements may
8 also involve long-term, direct, and contingent obligations to
9 the State. Consequently, the application and use of innovative
10 project delivery requires additional consideration by the
11 legislature.

12 The purpose of this Act is to establish adequate
13 safeguards, procedures, and protocols for innovative project
14 delivery arrangements for public infrastructure.

15 SECTION 2. (a) The purpose of this Act is to establish
16 requirements for the development of guidelines and procedures
17 that will enable state agencies to enter into innovative project
18 delivery arrangements for qualified public infrastructure
19 projects.

20 (b) This Act shall only apply to contractual arrangements
21 in which state agencies undertake to engage a delivery partner



1 pursuant to chapter 103D, Hawaii Revised Statutes, for the
2 design, construction, operation, or maintenance of a facility or
3 infrastructure project that serves a public purpose, with the
4 delivery partner assuming all or a substantial part of the risks
5 associated with the financing, delivery, and operation of such
6 project.

7 (c) This Act shall not apply to:

8 (1) Budget-neutral contracting approaches for the design,
9 construction, financing, operation, and maintenance of
10 building improvements that reduce energy and increase
11 operational efficiency; or

12 (2) A facility or infrastructure project serving a public
13 purpose with a capital cost of less than \$10,000,000.

14 SECTION 3. For purposes of this Act:

15 "Delivery partner" means a private entity that has entered
16 into a qualified innovative project delivery agreement with a
17 public entity.

18 "Innovative project delivery" means a contractual
19 arrangement under which a delivery partner carries out the
20 design, rehabilitation, construction, financing, operation, or
21 maintenance of a public purpose facility or infrastructure



1 project over a contractually defined period while assuming all
2 or a substantial part of the risks associated with the delivery
3 and performance of the public purpose facility or infrastructure
4 project. Innovative project delivery may involve any of the
5 following activities or any combination thereof:

- 6 (1) Design, construction, financing, maintenance, or
7 operation of new infrastructure facilities;
- 8 (2) Rehabilitation, modernization, financing, expansion,
9 maintenance, and operation of existing infrastructure
10 facilities; or
- 11 (3) Administration, management, operation, maintenance, or
12 other services pertaining to new or existing
13 infrastructure facilities.

14 The term "innovative project delivery" shall only apply when the
15 delivery partner assumes significant economic risk and when the
16 public sector retains ownership of the public purpose
17 infrastructure asset. The term "innovative project delivery"
18 shall not apply to ground leases on public properties when the
19 development on the property is primarily or materially for
20 private or non-public use.



1 "Private entity" means a natural person, corporation,
2 limited liability company, partnership, joint venture, or other
3 private business entity.

4 "Public entity" means any department, commission, council,
5 board, bureau, authority, committee, institution, legislative
6 body, agency, government corporation, or other establishment or
7 office of the executive, legislative, or judicial branch of the
8 State, including the office of Hawaiian affairs.

9 SECTION 4. (a) There is created the innovative project
10 delivery guidelines task force within the department of
11 accounting and general services to establish guidelines to
12 institute safeguards, procedures, and protocols around the use
13 of innovative project delivery arrangements for public
14 infrastructure, in protection of the public interest.

15 (b) The innovative project delivery guidelines task force
16 shall be composed of eight members, as follows:

17 (1) Comptroller or the comptroller's designee, who shall
18 serve as chair of the innovative project delivery
19 guidelines task force;

20 (2) Director of finance, or the director's designee;



- 1 (3) Director of business, economic development, and
- 2 tourism, or the director's designee;
- 3 (4) Administrator of the state procurement office, or the
- 4 administrator's designee;
- 5 (5) Two members appointed by the governor, as follows:
- 6 (A) One representative of the business community; and
- 7 (B) One professional or expert with extensive private
- 8 or public sector advisory experience relating to
- 9 innovative project delivery of public purpose
- 10 infrastructure involving private financing;
- 11 (6) One member appointed by the president of the senate;
- 12 and
- 13 (7) One member appointed by the speaker of the house of
- 14 representatives.
- 15 (c) In reviewing innovative project delivery and
- 16 developing guidelines, the innovative project delivery
- 17 guidelines task force shall consider, at a minimum, the
- 18 following:
- 19 (1) Scope of application;
- 20 (2) Allowable contract modalities;



- 1 (3) Non-eligible public purpose projects and other
- 2 exclusions;
- 3 (4) Asset ownership considerations;
- 4 (5) Contract term requirements;
- 5 (6) Financial rights and interests;
- 6 (7) Conditions for the use of private or blended financing
- 7 for public purpose projects;
- 8 (8) Funding requirements and disclosures;
- 9 (9) Allowable compensation structures;
- 10 (10) Screening and approval processes;
- 11 (11) Allowable procurement procedures;
- 12 (12) Requirements of the innovative project delivery
- 13 agreement;
- 14 (13) Requirements and procedures for the financial review
- 15 and analysis of innovative project delivery projects,
- 16 including but not limited to:
- 17 (A) Public needs assessment;
- 18 (B) Financing and delivery options analysis;
- 19 (C) Public benefits analysis;
- 20 (D) Value for money assessment; and



- 1 (E) Consideration of the results of all other
2 feasibility studies and analyses related to the
3 proposed innovative project delivery project;
- 4 (14) Institutional framework and tools to support state
5 agencies with identifying, implementing, and
6 overseeing innovative project delivery arrangements;
- 7 (15) Governance and oversight considerations, including the
8 management of contingent liabilities deriving from
9 innovative project delivery agreements;
- 10 (16) Reporting requirements; and
- 11 (17) Internal and external audit requirements for
12 innovative project delivery arrangements.
- 13 (d) The department of accounting and general services
14 shall provide technical and administrative support to the
15 innovative project delivery guidelines task force.
- 16 (e) The innovative project delivery guidelines task force
17 shall solicit public feedback and feedback on innovative project
18 delivery guidelines as part of its deliberations.
- 19 (f) The innovative project delivery guidelines task force
20 shall submit its final recommendations to the legislature no
21 later than twenty days prior to the convening of the regular



1 session of 2020, at which time the innovative project delivery
2 guidelines task force shall be dissolved.

3 (g) The department of accounting and general services
4 shall be responsible for adopting rules pursuant to chapter 91,
5 Hawaii Revised Statutes, based on the recommendations of the
6 innovative project delivery task force for the use of innovative
7 project delivery approaches by state agencies.

8 SECTION 5. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$200,000 or so much
10 thereof as may be necessary for fiscal year 2019-2020 for the
11 procurement, hiring, or securing of experts and professional
12 advisory services to assist in the implementation of this Act.

13 The sum appropriated shall be expended by the department of
14 accounting and general services for the purposes of this Act.

15 SECTION 6. This Act shall take effect on July 1, 2019.



Report Title:

Innovative Project Delivery Guidelines Task Force; Public Infrastructure; Procurement; Department of Accounting and General Services; Appropriation

Description:

Establishes the temporary innovative project delivery guidelines task force to establish guidelines around the use of innovative project delivery arrangements for public infrastructure. Requires report to the legislature. Appropriates funds. (SD1)

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