

STAND. COM. REP. NO.

252

Honolulu, Hawaii

FEB 12 , 2021

RE: H.B. No. 1212  
H.D. 1

Honorable Scott K. Saiki  
Speaker, House of Representatives  
Thirty-First State Legislature  
Regular Session of 2021  
State of Hawaii

Sir:

Your Committee on Government Reform, to which was referred  
H.B. No. 1212 entitled:

"A BILL FOR AN ACT RELATING TO PUBLIC-PRIVATE PARTNERSHIPS,"

begs leave to report as follows:

The purpose of this measure is to:

- (1) Establish the Office of Public-Private Partnership to reform state and county agencies with the use of best practices in contracting for public-private partnerships; and
- (2) Add design-build-operate-maintain and design-build-finance-operate-maintain project delivery methods to the State Procurement Code and related conditions and requirements.

Your Committee received testimony in support of this measure from the Office of Planning. Your Committee received comments on this measure from the Department of Accounting and General Services; State Procurement Office; and Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO.

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Your Committee finds that a public-private partnership is a contractual agreement between a public agency and a private entity that allows for the public agency to retain ownership and substantial control but transfers responsibility to the private partner under a single contract. Your Committee further finds that public-private partnership projects will help the State in reforming certain capital improvement projects in a more cost-effective and efficient manner. Your Committee believes that the establishment of Office of Public-Private Partnership will help support state agencies in the use of best practices in contracting for public-private partnerships to deliver and finance public projects at a lower lifecycle cost and more diversified risk than traditional delivery processes.

Your Committee has amended this measure by:

- (1) Restricting the scope of the Office of Public-Private Partnership to support for state agencies, rather than state and county agencies;
- (2) Removing the requirement that the Office of Public-Private Partnership undertake the program relating to centralized engineering and office leasing services;
- (3) Adding a definition of "design-build-finance-maintain" and allowing the use of the design-build-finance-maintain project delivery method under the State Procurement Code and related conditions and requirements;
- (4) Clarifying that under the design-build-finance-operate-maintain project delivery method, no purchasing agency funds shall be appropriated to pay for any part of the services provided by the contractor during the contract period;
- (5) Clarifying that under the design-build-operate-maintain project delivery method, all or a portion of funds required to pay for the services provided by the contractor during the contract period are either appropriated by the purchasing agency prior to award of the contract or secured by the purchasing agency;



- (6) Clarifying the definition of "independent peer reviewer services" to mean additional architectural and engineering services provided to the purchasing agency in design-build-finance-maintain, design-build-operate-maintain, or design-build-finance-operate-maintain procurements;
- (7) Including under the definition of "infrastructure facility" certain vertical and horizontal public infrastructure that contribute to the network of essential facilities and systems that facilitate the economy and enhance the affected community's standard of living;
- (8) Amending the elements that are required to be included in each request for proposal to use the design-build, design-build-finance-maintain, design-build-operate-maintain, or design-build-finance-operate-maintain project delivery method;
- (9) Deleting the provision requiring additional forms of bid security for operations and maintenance services;
- (10) Clarifying that the funds appropriated may also be used to establish and fill an unspecified number of positions subordinate to the State Public-Private Coordinator; allowing for those positions to be added to the position count for the Department of Accounting and General Services; and exempting the positions from chapter 76, Hawaii Revised Statutes;
- (11) Changing its effective date to July 1, 2112, to encourage further discussion; and
- (12) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

Your Committee recognizes the concerns raised in testimony on this measure regarding the home rule authority of any affected county. Due to these concerns, your Committee has amended this measure to restrict the scope of the Office of Public-Private Partnership to state agencies only, thereby preserving the county home rule.



Your Committee further recognizes additional concerns raised in testimony that this measure may have unintended consequences that allow for the private operations of public institutions, including schools, prisons, hospitals, landfills, public roads, and airports. Your Committee respectfully requests your Committee on Consumer Protection & Commerce, should it deliberate on this measure, to examine further limiting the functions of the Office of Public-Private Partnership to address these concerns.

Your Committee also requests the Committee on Consumer Protection & Commerce to examine the proposed amendments of the State Procurement Office and Department of Accounting General Services, as provided in their testimonies, as some of the suggested amendments conflict.

As affirmed by the record of votes of the members of your Committee on Government Reform that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1212, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1212, H.D. 1, and be referred to your Committee on Consumer Protection & Commerce.

Respectfully submitted on  
behalf of the members of the  
Committee on Government Reform,



ANGUS L.K. MCKELVEY, Chair



