

1 advance projects already scheduled and appropriated for, using
2 funds provided by public-private partnerships or private
3 entities to be reimbursed from department funds for the project.

4 (b) The department shall by rule adopted pursuant to
5 chapter 91, establish an application fee for the submission of
6 proposals under this section. The fee shall be sufficient to
7 pay the costs of evaluating the proposals. The department may
8 engage the services of private consultants to assist in the
9 evaluation. Before approval, the department shall determine
10 that the proposed project:

- 11 (1) Is in the public's best interest;
- 12 (2) Would not require state funds to be used unless the
13 project is on the state highway system; and
- 14 (3) Would have adequate safeguards in place to ensure that
15 no additional costs or service disruptions would be
16 realized by the traveling public and residents of the
17 State in the event of default or cancellation of the
18 agreement by the department.

19 (c) The department shall ensure that all reasonable costs
20 to the State, related to transportation facilities that are not
21 part of the state highway system, are borne by the private
22 entity. The department shall also ensure that all reasonable



1 costs to the State and substantially affected county governments
2 and utilities, related to the private transportation facility,
3 are borne by the private entity for transportation facilities
4 that are owned by private entities. For projects on the state
5 highway system, the department may use state resources to
6 participate in funding and financing the project as provided for
7 under the department's authority.

8 § -3 **Toll highways.** Agreements entered into pursuant to
9 this chapter may authorize the private entity to impose tolls or
10 fares for the use of the facility. However, the amount and use
11 of toll or fare revenues shall be regulated by the department to
12 avoid unreasonable costs to users of the facility.

13 § -4 **Compliance.** Each private transportation facility
14 constructed pursuant to this chapter shall comply with all
15 requirements of:

- 16 (1) Federal, state, and county laws, rules, and
17 regulations;
- 18 (2) State, regional, and county comprehensive plans;
- 19 (3) Department rules, policies, procedures, and standards
20 for transportation facilities; and
- 21 (4) Any other conditions that the department determines to
22 be in the public's best interest.



1 § -5 **Eminent domain.** The department may exercise any
2 power possessed by it, including the power of eminent domain,
3 with respect to the development and construction of state
4 transportation projects to facilitate the development and
5 construction of transportation projects pursuant to this
6 chapter. The department may provide services to the private
7 entity. Agreements for maintenance, law enforcement, and other
8 services entered into pursuant to this chapter shall provide for
9 full reimbursement for services rendered for projects not on the
10 state highway system.

11 § -6 **Noninterference.** Except as provided in this
12 chapter, this chapter is not intended to amend existing laws by
13 granting additional powers to, or further restricting, county
14 governmental entities from regulating and entering into
15 cooperative arrangements with the private sector for the
16 planning, construction, and operation of transportation
17 facilities.

18 § -7 **Request for proposals; notice.** (a) The department
19 may request proposals from private entities for public-private
20 transportation projects or, if the department receives an
21 unsolicited proposal, the department shall publish a notice in a
22 newspaper of general circulation at least once a week for two



1 weeks stating that the department has received the proposal and
2 will accept, for sixty days after the initial date of
3 publication, other proposals for the same project purpose. A
4 copy of the notice shall be mailed to each county government in
5 the affected area.

6 (b) After the public notification period has expired, the
7 department shall rank the proposals in order of preference. In
8 ranking the proposals, the department may consider factors,
9 including, but not limited to:

- 10 (1) Professional qualifications;
- 11 (2) General business terms;
- 12 (3) Innovative engineering or cost-reduction terms;
- 13 (4) Finance plans; and
- 14 (5) The need for state funds to deliver the project.

15 (c) If the department is not satisfied with the results of
16 the negotiations, the department, at its sole discretion, may
17 terminate negotiations with the proposer. If these negotiations
18 are unsuccessful, the department may proceed to the second-
19 ranked and lower-ranked firms, in order, using this same
20 procedure. If only one proposal is received, the department may
21 negotiate in good faith and, if the department is not satisfied
22 with the results of the negotiations, the department, at its



1 sole discretion, may terminate negotiations with the proposer.
2 Notwithstanding this subsection, the department, at its
3 discretion, may reject all proposals at any point in the process
4 up to completion of a contract with the proposer.

5 § -8 Toll facilities revolving trust fund; advances to

6 **counties.** (a) The toll facilities revolving trust fund is
7 established within the state treasury for the purpose of
8 encouraging the development and enhancing the financial
9 feasibility of revenue-producing road projects undertaken by
10 county governmental entities in a county.

11 (b) The department of transportation is authorized to
12 advance funds for preliminary engineering, traffic and revenue
13 studies, environmental impact studies, financial advisory
14 services, engineering design, right-of-way map preparation,
15 other appropriate project-related professional services, and
16 advance right-of-way acquisition to counties or other
17 governmental entities that desire to undertake revenue-producing
18 road projects.

19 (c) No funds shall be advanced pursuant to this section
20 unless the following is documented to the department:



1 (1) The proposed facility is consistent with the adopted
2 transportation plan of the appropriate metropolitan
3 planning organization; and

4 (2) A proposed two-year budget detailing the use of the
5 cash advance and a project schedule consistent with
6 the budget.

7 (d) Prior to receiving any moneys for advance right-of-way
8 acquisition, it shall be shown that the right-of-way will
9 substantially appreciate prior to construction and that savings
10 will result from its advance purchase. Any request for moneys
11 for advance right-of-way acquisition shall be accompanied by a
12 preliminary engineering study, environmental impact study,
13 traffic and revenue study, and right-of-way maps along with a
14 negotiated contract for purchase of the right-of-way, which
15 shall include a clause stating that it is subject to funding by
16 the department or the legislature, or an appraisal of the
17 subject property for purpose of condemnation proceedings.

18 (e) Each advance pursuant to this section shall require
19 repayment out of the initial bond issue revenue or, at the
20 discretion of the department, repayment shall begin no later
21 than seven years after the date of the advance; provided
22 repayment shall be completed no later than twelve years after



1 the date of the advance. However, the election for later
2 repayment shall be made at the time of the initial bond issue,
3 and, if repayment is to be made during the time period referred
4 to above, a schedule of the repayment shall be submitted to the
5 department.

6 (f) No amount in excess of \$1,500,000 annually shall be
7 advanced pursuant to this section without specific appropriation
8 by the legislature.

9 (g) Funds may not be advanced for funding final design
10 costs beyond sixty per cent completion until an acceptable plan
11 to finance all project costs, including the reimbursement of
12 outstanding trust fund advances, is approved by the department.

13 (h) The department may advance funds sufficient to defray
14 shortages in toll revenues of facilities receiving funds
15 pursuant to this section for the first five years of operation,
16 up to a maximum of \$5,000,000 per year, to be reimbursed to the
17 toll facilities revolving trust fund within five years of the
18 last advance hereunder. Any advance under this subsection shall
19 require specific appropriation by the legislature.

20 (i) No county or other local governmental entity shall be
21 eligible to receive any advance under this section if the county
22 or other local governmental entity has failed to repay any



1 previous advances as required by law or by agreement with the
2 department.

3 (j) Repayment of funds advanced shall not include
4 interest. However, interest accruing to county governmental
5 entities from the investment of advances shall be paid to the
6 department.

7 (k) Any repayment of prior or future advances made from
8 the state highway fund that are used to fund any project phase
9 of a toll facility shall be deposited in the toll facilities
10 revolving trust fund.

11 (l) The department shall adopt rules pursuant to chapter
12 91, necessary for the implementation of this section, including
13 rules for project selection and funding.

14 § -9 Toll facilities revolving trust fund; loans to
15 private entities; eligibility. The department may lend funds
16 from the toll facilities revolving trust fund to private
17 entities that construct projects on the state highway system
18 containing toll facilities that are approved under this chapter.
19 To be eligible, a private entity shall comply with section -8
20 and shall provide an indication from a nationally recognized
21 rating agency that the senior bonds for the project will be
22 investment grade, or shall provide credit support such as a



1 letter of credit or other means acceptable to the department, to
2 ensure that the loans will be fully repaid.

3 § -10 Fines; toll evaders. The department shall adopt
4 rules in accordance with chapter 91 to establish fines for any
5 motorist who violates this chapter by evading the payment of an
6 appropriate levied toll on any toll highway built, operated,
7 owned, or financed under this chapter."

8 SECTION 2. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$, or so much
10 thereof as may be necessary for fiscal year 2007-2008, and the
11 same sum, or so much thereof as may be necessary for fiscal year
12 2008-2009, for deposit into the toll facilities revolving trust
13 fund.

14 The appropriated amounts shall be expended by the
15 department of transportation.

16 SECTION 3. This Act shall take effect on July 1, 2007.
17

INTRODUCED BY:

[Handwritten signatures: Pida P. Cabanilla, Calvin K. Jay, Raymond D. ...]



Report Title:

Public Private Partnership; Toll Facilities Revolving Trust Fund

Description:

Allows State to enter into agreements with private entities to build, operate, own, or finance transportation facilities including toll highways. Appropriates \$ and \$ for FY 2007-2008 and FY 2008-2009, respectively.

