
A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

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

1 SECTION 1. The legislature finds that the economic, social,
2 and environmental well-being of the state and the maintenance of a
3 high quality of life for the people of the state require an
4 efficient transportation system.

5 The ability of the State to provide an efficient
6 transportation system can be enhanced by a public-private sector
7 program providing for private entities to undertake all or a
8 portion of the study, planning, design, development, financing,
9 acquisition, installation, construction, improvement, operation,
10 or maintenance of transportation systems and facility projects.
11 This public-private program will provide benefits to both the
12 public and private sectors. Public-private initiatives provide a
13 sound economic investment opportunity for the private sector.
14 Such initiatives provide the State with increased options to
15 develop the State's infrastructure and can supplement state
16 transportation revenues.

17 The purpose of this Act is to achieve the following goals
18 through public-private partnerships:



- 1 (1) Provide a well-defined mechanism to facilitate the
2 collaboration and creative cost and risk sharing in
3 transportation projects between public and private
4 partners;
- 5 (2) Bring innovative thinking from the private sector to
6 bear on transportation needs within the state and access
7 specialized development, financing, design,
8 construction, management, operations, management
9 services, and techniques available in the private
10 sector;
- 11 (3) Reduce the public cost of project delivery and services
12 for eligible facilities;
- 13 (4) Expedite project delivery;
- 14 (5) Encourage private investment in public infrastructure;
- 15 (6) Use funding sources, where financially advantageous and
16 in the public interest;
- 17 (7) Encourage life cycle efficiencies in transportation
18 projects;
- 19 (8) Provide better use and leverage of public resources and
20 savings to taxpayers, by increasing private investment
21 in public facilities and enhancing capital formation for
22 large projects;



- 1 (9) Develop eligible facilities with the cooperation,
2 consultation, and support of affected communities and
3 county jurisdictions;
- 4 (10) Solicit, evaluate, negotiate, and administer public-
5 private agreements with the private sector relating to
6 the planning, financing, development, design,
7 construction, upgrading, reconstruction, operation, or
8 maintenance of transportation systems and facilities;
9 and
- 10 (11) Obtain assistance in the development of these
11 transportation systems and facilities from federal
12 programs administered by the United States Department of
13 Transportation.

14 The legislature intends that the powers granted to the state
15 department of transportation and other agencies in this Act are in
16 addition to any other powers authorized under applicable law.

17 SECTION 2. The Hawaii Revised Statutes is amended by adding
18 a new chapter to be appropriately designated and to read as
19 follows:



1 "CHAPTER

2 PUBLIC-PRIVATE PARTNERSHIP IN TRANSPORTATION

3 § -1 Definitions. Whenever used in this chapter, unless
4 the context otherwise requires:

5 "Department" means the state department of transportation.

6 "Eligible facility" means any facility developed, operated,
7 or held in accordance with this chapter, including any existing,
8 enhanced, upgraded, or new facility used or useful for the safe
9 transport of people or goods via one or more modes of transport,
10 whether involving highways, boats, vessels, inter-modal or multi-
11 modal systems, or any other mode of transport, as well as
12 facilities, structures, parking, rail yards, or storage
13 facilities, vehicles, rolling stock, or other equipment, items, or
14 property related thereto.

15 "Private partner" means a person, entity, or organization
16 that is not the federal government, the State, a county, or a unit
17 of government.

18 "Public-private partnership agreement" means any binding
19 agreement transferring rights for the use or control, in whole or
20 in part, of an eligible facility by the department or other unit
21 of government to a private partner in accordance with this
22 chapter.



1 "Public-private partnerships in transportation program" or
2 "program" means the program as provided in this chapter.

3 "Unit of government" means any department or agency of the
4 State, any public corporation established under state law or
5 county ordinance, or any intergovernmental agency or corporation.

6 § -2 Rules. The department shall adopt, amend, or repeal
7 rules as it determines necessary to effectuate this chapter. The
8 rules adopted pursuant to chapter 91 shall have the force and
9 effect of law.

10 § -3 Project delivery methods. The department may provide
11 for the development or operation of eligible facilities using a
12 variety of project delivery methods and forms of agreement. Such
13 methods may include a wide range of possibilities, including
14 without limitation:

- 15 (1) Predevelopment agreements leading to other implementing
16 agreements;
- 17 (2) A design-build agreement;
- 18 (3) A design-build-maintain agreement;
- 19 (4) A design-build-finance-operate agreement;
- 20 (5) A design-build-operate-maintain agreement;



1 (6) An agreement providing for the private partner to
2 design, build, operate, maintain, manage, or lease an
3 existing, enhanced, upgraded, or new facility; and

4 (7) Such other project delivery method or agreement or
5 combination of methods or agreements as in the
6 determination of the department will serve the public
7 interest.

8 § -4 Posting of conceptual proposals; public comment;
9 public access to procurement records. (a) Conceptual proposals
10 submitted in accordance with this chapter to a unit of government
11 shall be posted by the responsible unit of government within
12 thirty working days after acceptance of the proposals in
13 accordance with chapter 103D. In addition to the posting
14 requirements, at least one copy of the proposals shall be made
15 available for public inspection. Nothing in this section shall be
16 construed to prohibit the posting of the conceptual proposals by
17 additional means so as to provide maximum notice to the public of
18 the opportunity to inspect the proposals. Prior to posting or
19 otherwise disclosing the conceptual proposal, the responsible
20 public entity may redact information from the conceptual proposal
21 to the extent permitted by chapter 92F.



1 (b) In addition to the posting requirements of subsection
2 (a), for thirty days prior to entering into an interim or
3 comprehensive agreement, the responsible unit of government shall
4 provide an opportunity for public comment on the proposals. The
5 public comment period required by this subsection may include a
6 public hearing in the sole discretion of the responsible public
7 entity.

8 (c) Once an interim agreement or a comprehensive agreement
9 has been entered into, the responsible unit of government shall
10 make procurement records available for public inspection, upon
11 request. For the purposes of this subsection, procurement records
12 shall not be interpreted to include trade secrets or confidential
13 information which may be withheld from public disclosure under
14 chapter 92F.

15 (d) This section shall apply to accepted proposals
16 regardless of whether the process of bargaining will result in an
17 interim or a comprehensive agreement.

18 (e) A responsible unit of government and any independent
19 review panel appointed to review information and advise the
20 responsible unit of government may hold a meeting closed to the
21 public for the purpose of considering records exempt from



1 disclosure; provided that the meetings are held in accordance with
2 the procedural requirements of sections 92-4 and 92-5.

3 **§ -5 Public-private partnership agreements.** (a) In any
4 public-private partnership agreement for any eligible facility
5 under this chapter, the department may:

6 (1) Authorize the private partner to collect user fees,
7 tolls, fares, or similar charges, including, without
8 limitation, provisions:

9 (A) Specifying the technology to be used in the
10 facility;

11 (B) Establishing circumstances under which the
12 department may receive a share of revenues from
13 such charges; and

14 (C) Governing enforcement of tolls, including use of
15 cameras or other mechanisms to ensure that users
16 pay tolls that are due, and allowing the private
17 partner access to relevant state and county
18 databases to the extent necessary to collect and
19 enforce tolls;

20 (2) Allow for payments to be made by the State to the
21 private partner, including but not limited to
22 availability payments or performance-based payments;



- 1 (3) Allow the department to accept payments of money and
2 share revenues with the private partner;
- 3 (4) Address the method of sharing risk management and
4 insurance for the project;
- 5 (5) Specify the method of sharing the costs of development
6 of the project;
- 7 (6) Allocate financial responsibility for cost overruns;
- 8 (7) Establish the damages to be assessed for nonperformance;
- 9 (8) Establish performance criteria, incentives, or both;
- 10 (9) Address the acquisition of rights-of-way and other
11 property interests that may be required, including
12 provisions addressing the exercise of eminent domain;
- 13 (10) Establish recordkeeping, accounting, and auditing
14 standards to be used for the project;
- 15 (11) For a project that reverts to public ownership, address
16 responsibility for reconstruction or renovations
17 required for a facility to meet all applicable
18 government standards upon reversion of the facility to
19 public ownership;
- 20 (12) Provide for patrolling and law enforcement on public
21 facilities;



- 1 (13) Identify any department specifications that must be
2 satisfied, including allowing the private partner to
3 request and receive authorization to deviate from such
4 specifications on making a showing of need satisfactory
5 to the department;
- 6 (14) Require a private partner to provide performance and
7 payment bonds, parent company guarantees, letters of
8 credit, and other acceptable forms of security, the
9 penal sum or amount of which may be less than one
10 hundred per cent of the value of the contract involved
11 based upon the department's determination, made on a
12 facility-by-facility basis, of what is required to
13 adequately protect the State;
- 14 (15) Authorize the private partner in a partnership agreement
15 under this chapter to collect user fees, tolls, fares,
16 or similar charges to cover its costs and provide for a
17 reasonable rate of return on the private partner's
18 investment, including, without limitation, the following
19 provisions:
- 20 (A) That the charges may be collected directly by the
21 private partner or by a third party engaged for
22 that purpose;



- 1 (B) A formula for the adjustment of user fees, tolls,
2 fares, or similar charges during the term of the
3 agreement;
- 4 (C) For an agreement that does not include such a
5 formula, provisions regulating the private
6 partner's return on investment; or
- 7 (D) A list of variety of traffic management strategies,
8 including without limitation:
 - 9 (i) General purpose toll lanes;
 - 10 (ii) High occupancy vehicle lanes where single or
11 low occupancy vehicles may "buy-in" to use
12 higher occupancy vehicle lanes by paying a
13 toll;
 - 14 (iii) Lanes or facilities where the tolls may vary
15 during the course of the day or week or
16 according to levels of congestion anticipated
17 or experienced; or
 - 18 (iv) Such combinations of, or variations on, the
19 foregoing, or other strategies, as the
20 department may determine appropriate on a
21 facility-by-facility basis;

22 or



1 (16) Specifying remedies available and dispute resolution
 2 procedures, including but not limited to the right of
 3 the private partner to institute legal proceedings to
 4 obtain an enforceable judgment or award against the
 5 department in the event of a default by the department,
 6 and procedures for use of dispute review boards,
 7 mediation, facilitated negotiation, arbitration, and
 8 other alternative dispute resolution procedures.

9 (b) The department may enter into agreements with any
 10 private partner which includes provisions as described in section
 11 -6(a) notwithstanding any other provision of state law or rule
 12 or county ordinance or rule.

13 (c) With the prior approval of the governor, notwithstanding
 14 any other provision of state law or rule, an agreement under this
 15 chapter may exempt activities of a private partner directly
 16 related to, or income directly derived from, property developed,
 17 operated, or held by a private partner under a partnership
 18 agreement pursuant to this chapter from any and all taxes under
 19 title 14, for a period not to exceed ten years from the date of
 20 execution of the partnership agreement.

21 **§ -6 Fines; toll evaders.** The department shall adopt
 22 rules in accordance with chapter 91 to establish fines for any



1 motorist who violates this chapter by evading the payment of an
2 appropriate levied toll on any toll highway built, operated,
3 owned, or financed under this chapter.

4 **§ -7 Police powers; violations of law.** (a) All police
5 officers and other law enforcement officers having police powers
6 of the State and of each affected county shall have the same
7 powers and jurisdiction within the limits of the qualifying
8 transportation facility that they have in their respective areas
9 of jurisdiction, and these officers shall have access to the
10 qualifying transportation facility at any time for the purpose of
11 exercising their powers and jurisdiction. This authority shall
12 not extend to the private offices, buildings, garages, and other
13 improvements of the private entity to any greater degree than the
14 police power extends to any other private buildings and
15 improvements.

16 (b) To the extent the transportation facility is a road,
17 bridge, tunnel, overpass, or similar transportation facility for
18 motor vehicles, the traffic and motor vehicle laws of the State
19 or, if applicable, any county jurisdiction shall be the same as
20 those applying to conduct on similar transportation facilities in
21 the state or a county. Punishment for offenses shall be as



1 prescribed by law for conduct occurring on similar transportation
2 facilities in the state or a county.

3 **§ -8 Funding and financing.** (a) The department may, in
4 connection with providing for the development or operation of an
5 eligible facility, allow funding from any lawful source, including
6 without limitation:

- 7 (1) The proceeds of grant anticipation revenue bonds
8 authorized by 23 United States Code Section 122 or any
9 other applicable federal or state law;
- 10 (2) Grants, loans, loan guarantees, lines of credit,
11 revolving lines of credit, or other arrangements
12 available under the Transportation Infrastructure
13 Finance and Innovation Act under 23 United States Code
14 Section 181 or any other federal or state law;
- 15 (3) Federal, state, or county revenues;
- 16 (4) User fees, tolls, fares, charges, lease proceeds, rents,
17 availability payments, gross or net receipts from sales,
18 proceeds from the sale of development rights, franchise
19 fees, permit fees, or any other lawful form of
20 consideration;



1 (5) Private activity bonds as described by 26 United States
2 Code Section 142(a)(15) and other forms of private
3 capital; and

4 (6) Such other forms of public and private capital as may be
5 available.

6 (b) As security for the payment of financing described in
7 this section, the revenues from the project may be pledged, but no
8 such pledge of revenues shall constitute in any manner or to any
9 extent a general obligation of the State or any county. Any
10 financing may be structured on a senior, parity, or subordinate
11 basis to any other financing.

12 (c) The department, and another unit of government
13 authorized by the department, may issue toll revenue bonds to
14 provide funds for any project under this chapter.

15 (d) The department may accept from the United States or any
16 of its agencies such funds as are available to this State or to
17 any other unit of government for carrying out the purposes of this
18 chapter, whether the funds are made available by grant, loan, or
19 other financing arrangement. The department may enter into such
20 agreements and other arrangements with the United States or any of
21 its agencies as may be necessary, proper, and convenient for
22 carrying out the purposes of this chapter.



1 (e) The department may accept from any source any grant,
2 donation, gift, or other form of conveyance of land, money, other
3 real or personal property, or other valuable thing made to the
4 State, the department, or another unit of government for carrying
5 out the purposes of this chapter.

6 (f) Any eligible facility may be funded in whole or in
7 part by contribution of any funds or property made by any private
8 entity or public sector partner that is a party to any agreement
9 entered into under this chapter.

10 (g) Federal, state, and county funds may be combined with
11 any private sector funds for any project purposes, notwithstanding
12 any other provision of state law or rule or county ordinance or
13 rule.

14 § -9 **Confidentiality and public disclosure.** A proposer
15 shall identify those portions of a proposal or other submission
16 that the proposer considers to be trade secrets or confidential
17 commercial, financial, or proprietary information. The identified
18 information shall be withheld from public disclosure to the extent
19 permitted by chapter 92F.

20 § -10 **Federal laws.** If no federal funds are used on an
21 eligible facility, the laws of this State, including this chapter,
22 shall govern. Notwithstanding any provisions of this chapter, if



1 federal funds are used on an eligible facility and applicable
2 federal statutes or regulations conflict with this chapter or
3 require provisions or procedures inconsistent with this chapter,
4 the applicable federal statutes or regulations shall govern."

5 SECTION 3. This Act shall take effect upon its approval.



Report Title:

Public Private Partnership; Toll roads.

Description:

Allows the State to enter into agreements with private entities to build, operate, own, or finance transportation facilities including toll highways. (HB70 HD2)

