

JAN 23 2014

A BILL FOR AN ACT

RELATING TO THE PUBLIC-PRIVATE FINANCE INITIATIVE.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 PUBLIC-PRIVATE FINANCE INITIATIVE

6 § -1 **Findings and purpose.** The legislature finds that
7 these are difficult economic times for all levels of government,
8 as public service demands for an increasing population put
9 pressure on revenue resources. The State faces the challenge of
10 balancing its budget while addressing escalating infrastructure
11 and service needs. Due to insufficient funding and postponed
12 maintenance, these daily demands continue to increase.

13 Governments around the world have engaged in public-private
14 partnerships to address these economic challenges. State
15 agencies are hamstrung by their limited missions and dwindling
16 resources. Creating a partnership agency to collaborate with
17 all state agencies and private sector entities may help deliver
18 services and facilities more effectively.



1 The legislature further finds that public-private
2 partnerships give governmental entities an additional tool to
3 deliver infrastructure through the ability to finance the design
4 and construction of a building with a private developer. Like
5 any finance tool, there is a price tag which still falls to the
6 taxpayer. That price tag comes in the form of a long-term
7 building lease where the developer can recoup its costs and
8 realize a steady stream of cash through lease payments from a
9 relatively stable tenant: the government.

10 The "hook," or value proposition, on both sides of the
11 contract for the developer and the governmental entity lies
12 squarely on the maintenance and operations terms of the
13 contract. If the developer is contractually required to
14 maintain and operate the building over a long-term period, such
15 as thirty years, an incentive is built in to ensure that the
16 developer balances design quality with the life-cycle
17 performance of the building, including an efficient operational
18 system. This long-term incentive benefits the government, which
19 will assume ownership of the property after expiration of the
20 long-term lease.

21 According to stakeholders with public-private partnership
22 experience in other countries, one of the most remarkable



1 differences with public-private partnership government buildings
2 is that "the buildings always look new." This demonstrates a
3 notable advantage to public-private partnerships for government
4 property owners, where maintenance and operations are
5 contractually mandated and integrated.

6 The purpose of this chapter is to create a means and
7 process to use the skills and assets of both the public and
8 private sectors to deliver services and facilities for the
9 economic, environmental, and social benefit of the people of
10 Hawaii. This chapter establishes the public-private finance
11 initiative to administer appropriate and culturally-sensitive
12 projects. The initiative shall coordinate and administer
13 projects, while ensuring that resources are maintained for the
14 people of Hawaii. The initiative shall identify suitable
15 projects, carry out appropriate analyses, enter into public-
16 private agreements, and provide leadership for the facilitation
17 of financing, improvement, or enhancement of appropriate
18 facilities, operations, and property.

19 § -2 **Definitions.** As used in this chapter, unless the
20 context clearly requires otherwise:

21 "Board" means the board of directors of the public-private
22 finance initiative.



"Cooperative agreement" means an instrument, such as a contract, compact, memorandum of understanding, or agreement, that is signed and binding upon all parties to the agreement.

"Initiative" means the public-private finance initiative.

"Management rights" means the authority to control and manage projects.

"Project" means a specific undertaking related to the operations and properties of any public agency, including but not limited to:

- (1) Development of plans for a public agency; and
- (2) Planning, improvement, construction, rehabilitation, alteration, maintenance, or repair of real property or energy generation facilities.

"Qualified person" means any individual, partnership, corporation, not-for-profit organization, or public agency possessing the competence, expertise, experience, and resources, including financial, personnel, and tangible qualifications, as deemed desirable by the initiative.

§ -3 Public-private finance initiative; established.

(a) There is established the public-private finance initiative, which shall be a public body corporate and politic and an instrumentality and agency of the State. The initiative shall



1 be headed by a board of directors. The initiative shall be
2 placed within the department of business, economic development,
3 and tourism for administrative purposes.

4 The initiative shall:

- 5 (1) Identify projects that are suitable under this
6 chapter;
- 7 (2) Conduct analyses, as appropriate;
- 8 (3) Enter into public-private partnership agreements, as
9 appropriate; and
- 10 (4) Provide leadership for public-private partnership
11 projects.

12 (b) The board of directors of the public-private finance
13 initiative shall consist of five voting members and one non-
14 voting member. The voting members shall include:

- 15 (1) The comptroller, or the first deputy to the
16 comptroller, or a designated representative;
- 17 (2) The director of finance, or a designated
18 representative;
- 19 (3) The director of business, economic development, and
20 tourism, or a designated representative;
- 21 (4) One member to be appointed by the speaker of the house
22 of representatives; and



1 (5) One member to be appointed by the president of the
2 senate.

3 The ex officio, non-voting member shall be the aha moku advisory
4 committee member of the moku in which the project is sited.

5 The members appointed by the speaker of the house of
6 representatives and the president of the senate shall possess
7 sufficient knowledge, experience, and proven expertise in small
8 and large businesses within the development or recreation
9 industries, banking, real estate, finance, promotion, marketing,
10 or management.

11 The term of office of the members appointed by the speaker
12 of the house of representatives and the president of the senate
13 shall be four years.

14 Three members shall constitute a quorum, and a minimum of
15 three votes shall be necessary for all actions by the board.

16 (c) The board shall appoint an executive director, who
17 shall serve at the pleasure of the board and shall be exempt
18 from chapter 76. The salary of the executive director shall be
19 established by the board.

20 (d) The board, through its executive director, may appoint
21 officers, agents, and employees; prescribe their duties and



1 qualifications; and establish their salaries, without regard to
2 chapter 76.

3 § -4 Powers; generally. Except as otherwise limited by
4 this chapter, the initiative may:

- 5 (1) Sue and be sued;
- 6 (2) Have a seal and alter the same at its pleasure;
- 7 (3) Make and alter bylaws for its organization and
8 internal management;
- 9 (4) Adopt rules under chapter 91 necessary to implement
10 this chapter in connection with its projects;
- 11 (5) Make and execute contracts, leases, and all other
12 instruments necessary or convenient for the exercise
13 of its powers and functions under this chapter;
- 14 (6) Develop guidelines to provide a fair and uniform
15 process that enables private partners to properly
16 assess the risks and rewards for engagement in public-
17 private partnerships;
- 18 (7) Manage projects by itself or in partnership with
19 qualified persons or other governmental agencies;
- 20 (8) Receive, examine, and determine the acceptability of
21 applications of qualified persons for public-private
22 partnerships;



1 (9) Encourage communication between design professionals
2 and the government end user during the request for
3 proposals phase so the government end user may provide
4 direct, meaningful input to the competitor design
5 teams developing the proposed designs;

6 (10) Enable small businesses to compete by:

7 (A) Restricting the use of design competitions; or

8 (B) Limiting the number of competitors required to
9 provide designs during the request for proposal
10 phase;

11 and rewarding reasonable stipends to unsuccessful
12 bidders;

13 (11) Coordinate its activities with any federal or state
14 programs;

15 (12) Provide advisory, consultative, training, and
16 educational services and technical assistance to any
17 person, partnership, or corporation, either public or
18 private, to carry out the purposes of this chapter,
19 and engage the services of consultants on a
20 contractual basis for rendering professional and
21 technical assistance and advice;



1 (13) Procure insurance against any loss in connection with
2 its property and other assets and operations in
3 amounts and from insurers as it deems desirable;

4 (14) Accept gifts or grants in any form from any public
5 agency or any other source;

6 (15) Coordinate with any public agency;

7 (16) Recommend to the appropriate public agency the
8 acquisition of any privately owned real or personal
9 property that may be appropriate for the purposes of
10 this chapter; and

11 (17) Do all things necessary or proper to carry out the
12 purposes of this chapter.

13 § -5 **Projects and plans.** (a) The initiative may
14 develop plans and implement projects on behalf of public
15 agencies, as appropriate.

16 (b) The initiative may enter into a cooperative agreement
17 with any public agency to implement projects on behalf of the
18 public agency.

19 (c) The initiative may enter into cooperative agreements
20 with persons or public agencies when the powers, services, and
21 capabilities of the persons or agencies are deemed necessary and
22 appropriate.



1 (d) The initiative shall have an independent consultant or
2 in-house expert in facilities planning, design, and construction
3 assess the long-term projected needs of the government before
4 considering the use of public-private partnerships. This
5 individual shall advise the government before the solicitation
6 of interest from private partners and may remain as advisor
7 throughout the planning, design, and construction.

8 (e) The initiative shall include a long-term maintenance
9 and operations scope in a public-private partnership.

10 (f) Prior to implementing any project, the initiative
11 shall submit the proposed plan for the project, together with
12 any amendments, to and obtain the approval of the board and the
13 executive of any affected public agency.

14 § -6 **Suitability tests.** For projects exceeding
15 \$60,000,000, a centralized governmental entity with expertise in
16 delivery and financial modeling for public-private partnerships
17 shall perform a suitability test by comparing the value of long-
18 term leases to existing project delivery models before issuing
19 any request for qualifications or proposals. Combining smaller,
20 separate projects to meet the \$60,000,000 threshold is
21 prohibited.



1 § -7 **Approval of projects.** All projects to be
2 undertaken by the initiative shall be approved by the board and
3 the executive of any affected public agency.

4 § -8 **Transfer of management rights.** (a)
5 Notwithstanding chapter 171 or any provision of this chapter to
6 the contrary, any public agency may transfer, subject to the
7 approval of the board or executive of the public agency,
8 management rights for projects under its jurisdiction to the
9 initiative for purposes of this chapter.

10 (b) If the initiative finds that projects under the
11 control and management of any public agency are suitable for its
12 purposes under this chapter, the initiative may lease properties
13 from or agree to manage the properties of the agency having
14 jurisdiction, upon terms and conditions as agreed to by the
15 parties.

16 (c) Notwithstanding subsection (b) to the contrary, no
17 property shall be leased to the initiative if the lease would
18 impair any covenant between the State or any county, or any
19 department or board thereof, and the holders of bonds issued by
20 the State or the county, or any department or board thereof.

21 § -9 **Public-private partnership revenues.** Any revenues
22 generated by or on behalf of the initiative from public-private



1 partnership projects and plans undertaken pursuant to this
2 chapter shall be deposited into the general fund.

3 § -10 **Exemption from taxation.** The initiative shall not
4 be required to pay state taxes of any kind.

5 § -11 **Application of chapter.** The initiative and all
6 projects implemented under this chapter shall comply with all
7 state laws, other than with chapter 171 for the transfer of
8 management rights identified in section -8 and the exemption
9 from state taxes in section -10.

10 § -12 **Reports and evaluation.** (a) The initiative shall
11 submit a complete and detailed annual report of its plans and
12 activities as follows:

13 (1) To the governor no later than twenty days prior to the
14 convening of each regular legislative session; and

15 (2) To the legislature, no later than sixty days after the
16 submission of the report as required in paragraph (1).

17 (b) The board shall submit to the governor and the
18 legislature, no later than twenty days prior to the convening of
19 each regular session, an evaluation of the executive director
20 appointed pursuant to section -3."

21 SECTION 2. After the adoption of rules pursuant to section
22 -4(4), Hawaii Revised Statutes, established by section 1 of



1 this Act, the public-private finance initiative shall initiate a
2 pilot project on state lands in Wahiawa, city and county of
3 Honolulu, identified as tax map keys 74004071, 74004001,
4 74006012, and 74004070, pursuant to chapter , Hawaii
5 Revised Statutes, established by section 1 of this Act.

6 SECTION 3. The public-private finance initiative shall
7 include in its annual report to the governor and the legislature
8 required by section -12, Hawaii Revised Statutes, a detailed
9 report on the status of the pilot project established pursuant
10 to section 2 of this Act.

11 The public-private finance initiative shall notify the
12 governor and the legislature upon the completion of the pilot
13 project and, within ninety days of its completion, submit a
14 report to the governor and the legislature containing a review
15 and evaluation of the pilot project and any recommendations to
16 improve the effectiveness of chapter , Hawaii Revised
17 Statutes.

18 SECTION 4. The public-private finance initiative shall
19 neither plan nor implement any projects other than the pilot
20 projects identified in this Act nor enter into any agreements or
21 contracts related to the planning or implementation of any
22 projects other than the pilot projects identified in this Act.



SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2014-2015 for:

(1) The establishment and operation of the public-private finance initiative pursuant to section 1 of this Act; and

(2) The funding of three staff positions.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 6. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.



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S.B. NO. 3066

Report Title:

Public-private Finance Initiative; Pilot Project; Appropriation

Description:

Establishes the public-private finance initiative (PPIA).
Requires the PPIA to initiate a pilot project. Appropriates
funds for the PPIA. Repeals on 07/01/2018.

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