
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 there has been
2 activity at the community level supporting the concept of
3 public-private partnerships, including the construction and
4 operation of transportation toll facilities. Before opting to
5 commit to this approach, the State must thoroughly examine what
6 such an enormous change in public policy would mean for Hawaii.

7 According to the United States Department of
8 Transportation, the cost of fixing the nation's highways and
9 bridges exceeds \$495,000,000,000. If railroads and ports are
10 included, the estimated cost would exceed \$1,600,000,000,000.

11 Further, the federal highway trust fund, upon which states,
12 including Hawaii, depend to fund road projects is in serious
13 jeopardy. Funded by the federal fuel tax, the highway fund will
14 be \$4,000,000,000 in debt by 2009. Many feel an increase in the
15 federal fuel tax is long overdue. Raising the tax by three
16 cents per gallon would raise millions in revenue, costing the
17 average driver about \$7.06 per year. Yet, even such an increase



1 in the federal fuel tax would not be sufficient for the nation's
2 transportation needs.

3 There is a growing trend in the United States toward
4 privately financed transportation facilities. For example, the
5 city of Chicago and the state of Indiana recently became parties
6 to public-private partnership agreements relating to their
7 public roads that will remain in effect for ninety-nine and
8 seventy-five years, respectively. Although Chicago and Indiana
9 have forged ahead, other states like Pennsylvania, New Jersey,
10 and Texas continue to oppose the trend toward privatized toll
11 facilities. New Jersey Governor John Corzine is reported to
12 have said: "New Jersey Roadways are not for sale."

13 On the whole, the United States has been more resistant to
14 free-market transportation infrastructure construction than the
15 rest of the world, but as the nation's bridges and roads
16 deteriorate, private investment groups see great opportunity in
17 constructing toll facilities to reap profits over the long term.

18 In Hawaii, many see privately constructed and operated toll
19 facilities as a panacea for persistent traffic problems because
20 these facilities have the potential to increase roadway capacity
21 without raising state taxes. Others encourage the construction



1 of toll facilities as an alternative to current plans for a mass
2 transit system.

3 The legislature finds that the federation of state Public
4 Interest Research Groups (U.S. PIRG), an independent, citizen-
5 funded research group, is working to encourage public support
6 for new public transportation projects and improved service
7 while at the same time making sure that privatization and
8 public-private partnership agreements, including the
9 construction and operation of toll facilities, are made in the
10 public interest. A recent U.S. PIRG report cites the recent
11 multimillion dollar transportation public-private partnership
12 agreements in Chicago and Indiana as having spurred financial
13 investors and consulting firms to promote and market similar
14 agreements with state and local governments in anticipation of
15 huge profits. The U.S. PIRG cautions that privatization would
16 cause public jurisdictions to lose control over transportation
17 policy with no guarantee that transportation toll facilities
18 will deliver their promised value over the years. The U.S. PIRG
19 cites problems such as fragmented road networks, an inability to
20 prevent toll traffic from being diverted to local communities,
21 difficulty changing traffic patterns on toll roads without
22 paying additional compensation to private road operators, and



1 difficulty of ensuring fair public-private partnership contracts
2 that last multiple generations in the face of changing community
3 needs.

4 The legislature finds that the State has a responsibility
5 to protect the public interest. Before allowing the governor or
6 the department of transportation to enter into any
7 transportation public-private partnership agreements to
8 construct or operate transportation facilities, including toll
9 facilities, the State must thoroughly investigate and evaluate
10 this sea change in public policy to ensure that the public
11 interest is protected. With the price of oil threatening to
12 reach \$100 per barrel, selling our roads to put more cars in
13 service would not be the responsible choice.

14 The purpose of this Act is to establish and declare the
15 State's policy with regard to transportation public-private
16 partnerships, including toll facilities.

17 SECTION 2. **Transportation public-private partnerships;**
18 **state policy.** The legislature finds that protection of the
19 public interest is paramount in any transportation public-
20 private partnership entered into by the State to construct,
21 operate, or maintain any transportation facility in the State,
22 including toll facilities. Therefore, as a matter of state



1 policy, in entering into any transportation public-private
2 partnership agreement to construct, operate, or maintain any
3 transportation facility in the State, including toll facilities,
4 the governor and the department of transportation shall ensure
5 that the following best practices are adhered to in evaluating
6 and negotiating any such partnership agreement to ensure that
7 the public interest is protected:

8 (1) The State, as the ultimate owner of any transportation
9 facility, shall:

10 (A) Define the public interest and determine
11 precisely how the public interest is expressed in
12 terms of ensuring safety, controlling traffic
13 congestion, controlling costs to the public,
14 retaining control of jurisdictional and
15 transportation policy, and any other elements of
16 the public interest that may be necessary and
17 appropriate;

18 (B) Determine the risks and benefits that are to be
19 suitably allocated between the public and the
20 private partner including at least the following:

21 (i) Risk of inaccurate or overstated estimates
22 of traffic use and revenues -- determination



1 of ultimate dollar costs and who bears that
2 cost if estimates are inaccurate; and
3 (ii) Risk of uncertainty in agreements with a
4 duration of twenty or more years; and
5 (iii) Any other risks deemed appropriate;
6 (C) Determine and implement appropriate remedies for
7 potential risks including the use of escape
8 clauses if any predetermined risk becomes
9 reality; and
10 (D) Determine the need for department of
11 transportation and other public agency staffing
12 and personnel, and the accompanying public costs
13 required, to operate a transportation facility;
14 (2) The State shall maintain transparency in any
15 transportation public-private partnership and shall
16 involve state residents and county governments, if
17 appropriate, in the process by soliciting public
18 comments and using an independent review panel;
19 (3) The State shall enact legislation to retain any
20 revenue generated by a transportation public-private
21 partnership for transportation uses in the same
22 transportation corridor to ensure that a



1 transportation facility benefits the paying user-
2 customer. An example would be supporting mass transit
3 buses or the like using the same transportation
4 facility corridor; and

5 (4) The State shall prohibit the use of any non-compete
6 clause that limits the ability of the state or county
7 governments to meet current and future mobility and
8 safety standards for the traveling public such as a
9 clause that prohibits the State or a county from
10 building or improving limited access highways within a
11 certain distance from a transportation toll facility.

12 SECTION 3. This Act shall take effect upon its approval.
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Report Title:

Transportation; Public-Private Partnerships; State Policy

Description:

Declares, as state policy, certain best practices to which the governor and the department of transportation must adhere to ensure that the public interest is protected in any transportation public-private partnership agreement.

