
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,
2 social, and environmental well-being of the State and the
3 maintenance of a high quality of life for the people of the
4 State require an efficient transportation system.

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

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



- 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
7 access specialized development, financing, design,
8 construction, management, operations, services, and
9 techniques available in the private sector;
- 10 (3) Reduce the public cost of project delivery and
11 services for eligible transportation facilities;
- 12 (4) Expedite transportation project delivery;
- 13 (5) Encourage private investment in public transportation
14 infrastructure;
- 15 (6) Use funding sources that are financially advantageous
16 and in the public interest;
- 17 (7) Encourage life-cycle efficiencies in transportation
18 projects;
- 19 (8) Provide better use and leverage of public resources
20 and increase savings for taxpayers, by increasing
21 private investment in public transportation facilities
22 and enhancing capital formation for large projects;



- 1 (9) Develop eligible transportation facilities with the
- 2 cooperation, consultation, and support of affected
- 3 communities and county jurisdictions;
- 4 (10) Solicit, evaluate, negotiate, and administer public-
- 5 private partnership agreements relating to the
- 6 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
- 13 of Transportation.

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

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

20 **"CHAPTER**

21 **PUBLIC-PRIVATE PARTNERSHIP IN TRANSPORTATION**



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

3 "Department" means the department of transportation.

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

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

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

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



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

5 § -2 **Rules.** The department shall adopt, amend, or
6 repeal rules in accordance with chapter 91 as it determines
7 necessary to carry out the purposes of this chapter.

8 § -3 **Project delivery methods.** The department may
9 provide for the development or operation of eligible facilities
10 using a variety of project delivery methods and forms of
11 agreement. These methods may include, without limitation:

- 12 (1) Predevelopment agreements leading to other
13 implementing agreements;
- 14 (2) A design-build agreement;
- 15 (3) A design-build-maintain agreement;
- 16 (4) A design-build-finance-operate agreement;
- 17 (5) A design-build-operate-maintain agreement;
- 18 (6) An agreement providing for the private partner to
19 design, build, operate, maintain, manage, or lease an
20 existing, enhanced, upgraded, or new facility; and



1 (7) Any other project delivery method or agreement or
2 combination of methods or agreements that the
3 department determines will serve the public interest.

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

18 (b) In addition to the posting requirements of subsection
19 (a), for thirty days prior to entering into an interim or
20 comprehensive agreement, the responsible unit of government
21 shall provide an opportunity for public comment on the
22 proposals. The public comment period required by this



1 subsection may include a public hearing in the sole discretion
2 of the responsible unit of government.

3 (c) No proposed interim or comprehensive agreement can be
4 entered into or become effective unless the legislature first
5 enacts legislation approving any such interim or comprehensive
6 agreement.

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

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

17 (f) A responsible unit of government and any independent
18 review panel appointed to review information and advise the
19 responsible unit of government may hold a meeting closed to the
20 public for the purpose of considering records exempt from
21 disclosure; provided that the meetings are held in accordance
22 with the procedural requirements of sections 92-4 and 92-5.



1 § -5 **Public-private partnership agreements.** (a) In any
2 public-private partnership agreement for any eligible facility
3 under this chapter, the department may:

4 (1) Authorize the private partner to collect user fees,
5 tolls, fares, or similar charges subject to paragraph
6 (15), including without limitation, provisions:

7 (A) Specifying the technology to be used in the
8 facility;

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

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

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

21 (3) Allow the department to accept payments of money and
22 share revenues with the private partner;



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



1 request and receive authorization to deviate from
2 those specifications on making a showing of need
3 satisfactory to the department;

4 (14) Require a private partner to provide performance and
5 payment bonds, parent company guarantees, letters of
6 credit, and other acceptable forms of security, the
7 penal sum or amount of which may be less than one
8 hundred per cent of the value of the contract involved
9 based upon the department's determination, made on a
10 facility-by-facility basis, of what is required to
11 adequately protect the State;

12 (15) Authorize the private partner in a partnership
13 agreement under this chapter to collect user fees,
14 tolls, fares, or similar charges to cover its costs
15 and provide for a reasonable rate of return on the
16 private partner's investment; provided that the
17 charging of user fees, tolls, fares, or similar
18 charges shall apply only to the construction of new
19 transportation facilities and shall under no
20 circumstance apply to existing transportation
21 facilities already in operation; provided further that
22 a county with a population of less than five hundred



1 thousand residents may choose to charge user fees,
2 tolls, fares, or similar charges, by enacting a county
3 ordinance, for new transportation lanes created by
4 expanding shoulder lanes or set-backs, or by acquiring
5 easements or rights-of-way on existing transportation
6 facilities. The department may authorize, without
7 limitation, the following provisions:

8 (A) That the charges may be collected directly by the
9 private partner or by a third party engaged for
10 that purpose;

11 (B) A formula for the adjustment of user fees, tolls,
12 fares, or similar charges during the term of the
13 agreement;

14 (C) For an agreement that does not include such a
15 formula, provisions regulating the private
16 partner's return on investment; and

17 (D) A list of various traffic management strategies,
18 including without limitation:

19 (i) General purpose toll lanes;

20 (ii) High occupancy vehicle lanes where single or
21 low occupancy vehicles may "buy-in" to use



1 higher occupancy vehicle lanes by paying a
2 toll;

3 (iii) Lanes or facilities where the tolls may vary
4 during the course of the day or week or
5 according to levels of congestion
6 anticipated or experienced; or

7 (iv) Any combinations of, or variations on, the
8 foregoing, or other strategies, that the
9 department may determine appropriate on a
10 facility-by-facility basis; and

11 (16) Specify remedies available and dispute resolution
12 procedures, including but not limited to the right of
13 the private partner to institute legal proceedings to
14 obtain an enforceable judgment or award against the
15 department in the event of a default by the
16 department, and procedures for use of dispute review
17 boards, mediation, facilitated negotiation,
18 arbitration, and other alternative dispute resolution
19 procedures.

20 (b) Upon the termination of any transportation public-
21 private partnership agreement for any eligible facility entered
22 into under this chapter, ownership of the eligible facility



1 shall revert to the State or the relevant unit of government who
2 shall be responsible for its continued operation and
3 maintenance.

4 (c) Any transportation public-private partnership
5 agreement entered into under this chapter for the design or
6 construction of an eligible facility shall include a per
7 cent preference for the hiring of labor and services to be
8 provided by residents of the State.

9 (d) All public bus transportation shall be exempt from any
10 user fees, tolls, fares, or similar charges that may be imposed
11 for the use of any eligible facility that is the subject of a
12 transportation public-private partnership agreement entered into
13 under this chapter.

14 (e) If the governor declares that a state of emergency
15 exists, all motor vehicles ordinarily charged a user fee, toll,
16 fare, or similar charge for the use of any eligible facility
17 that is the subject of a transportation public-private
18 partnership agreement entered into under this chapter shall be
19 allowed to use the facility free of charge until the governor
20 declares the termination of the state of emergency.

21 (f) The department may enter into agreements with any
22 private partner that include provisions as described in



1 subsection (a) notwithstanding any other provision of state law
2 or rule or county ordinance or rule.

3 § -6 **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 appropriately levied toll on any toll highway built, operated,
7 owned, or financed under this chapter.

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

20 (b) To the extent the transportation facility is a road,
21 bridge, tunnel, overpass, or similar transportation facility for
22 motor vehicles, the traffic and motor vehicle laws of the State



1 or, if applicable, any county jurisdiction, shall be the same as
2 those applying to conduct on similar transportation facilities
3 in the State or a county. Punishment for offenses shall be as
4 prescribed by law for conduct occurring on similar
5 transportation facilities in the State or a county.

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

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



1 rights, franchise fees, permit fees, or any other
2 lawful form of consideration;

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

6 (6) Any other forms of public and private capital as may
7 be available.

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

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

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



1 States or any of its agencies that may be necessary, proper, and
2 convenient for carrying out the purposes of this chapter.

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

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

12 (g) Federal, state, and county funds may be combined with
13 any private-sector funds for any project purposes,
14 notwithstanding any other state law or rule or county ordinance
15 or regulation.

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



1 **§ -10 Federal laws.** If no federal funds are used to
2 fund an eligible facility, the laws of the State, including this
3 chapter, shall govern. Notwithstanding any provisions of this
4 chapter, if federal funds are used on an eligible facility and
5 applicable federal statutes or regulations conflict with this
6 chapter or require provisions or procedures inconsistent with
7 this chapter, the applicable federal statutes or regulations
8 shall govern."

9 SECTION 3. This Act shall take effect on July 1, 2009.

10

INTRODUCED BY: *John T. J. Cuttella*

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[Signature]

JAN 21 2008

Report Title:

Transportation; Public Private Partnerships

Description:

Allows public-private partnership agreements to build, operate, own, or finance transport facilities. Exempts bus operations. Requires prior legislative approval. Tolls apply only to new facilities. Imposes % in-state hiring preference. Facilities revert to State upon agreement termination.

