

JAN 22 2007

S.B. NO. 1510

A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

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

1 SECTION 1. The Legislature makes the following findings:

2 (1) It is important for the economic, social, and
3 environmental well-being of the State and the
4 maintenance of a high quality of life that the people
5 of the State have an efficient transportation system.

6 (2) The ability of the State to provide an efficient
7 transportation system can be enhanced by a public-
8 private sector program providing for private entities
9 to undertake all or a portion of the study, planning,
10 design, development, financing, acquisition,
11 installation, construction, improvement, operation, or
12 maintenance of transportation systems and facility
13 projects.

14 (3) A public-private program will provide benefits to both
15 the public and private sectors. Public-private
16 initiatives provide a sound economic investment
17 opportunity for the private sector. Such initiatives

S.B. NO. 1510

1 provide the State with increased options to develop
2 the State's infrastructure and can supplement state
3 transportation revenues.

4 This Act is intended to achieve the following goals through
5 public-private partnerships:

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

S.B. NO. 1510

- 1 projects;
- 2 (8) Foster flexibility in procurement to provide the best
3 value to the State for eligible facilities under this
4 Act;
- 5 (9) Provide better use and leverage of public resources
6 and savings to taxpayers, by increasing private
7 investment in public facilities and enhancing capital
8 formation for large projects;
- 9 (10) Develop eligible facilities with the cooperation,
10 consultation, and support of the affected communities
11 and county jurisdictions;
- 12 (11) Solicit, evaluate, negotiate, and administer public-
13 private agreements with the private sector relating to
14 the planning, financing, development, design,
15 construction, upgrading, reconstruction, operation or
16 maintenance of transportation systems and facilities;
17 and
- 18 (12) Obtain assistance in the development of these
19 transportation systems and facilities from federal
20 programs administered by the United States Department
21 of Transportation.

1 "Private partner" means a person, entity, or organization
2 that is not the federal government, the State, a county, or a
3 unit of government.

4 "Public-private partnership agreement" means any binding
5 agreement transferring rights for the use or control, in whole
6 or in part, of an eligible facility by the department or other
7 unit of government to a private partner in accordance with this
8 chapter.

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

11 "Unit of government" means any department or agency of the
12 State, any department or agency of a county, any public
13 corporation established under state law or county ordinance, or
14 any intergovernmental agency or corporation.

15 **§ -B Rules and guidelines.** The department shall adopt,
16 amend, or repeal rules as it determines necessary to effectuate
17 this chapter. The rules adopted pursuant to chapter 91 shall
18 have the force and effect of law.

19 **§ -C Project delivery methods.** The department is
20 authorized to provide for the development or operation of
21 eligible facilities using a variety of project delivery methods

1 and forms of agreement. Such methods may include a wide range
2 of possibilities, including without limitation:

- 3 (1) Pre-development agreements leading to other
4 implementing agreements;
- 5 (2) A design-build agreement;
- 6 (3) A design-build-maintain agreement;
- 7 (4) A design-build-finance-operate agreement;
- 8 (5) A design-build-operate-maintain agreement;
- 9 (6) An agreement providing for the private partner to
10 design, build, operate, maintain, manage or lease an
11 existing, enhanced, upgraded, or new facility;
- 12 (7) Such other project delivery method or agreement or
13 combination of methods or agreements as in the
14 determination of the department will serve the public
15 interest.

16 **§ -D Procurement.** (a) The department is authorized to
17 procure services under this chapter using any of the following:

- 18 (1) Calls for project proposals;
- 19 (2) Solicitations using, without limitation, requests for
20 qualifications, short-listing of qualified proposers,
21 requests for proposals, negotiations, best and final
22 offers or other procurement procedures;

1 (3) Unsolicited proposals, provided that if the department
2 determines there is sufficient merit to pursue any
3 unsolicited proposal, the department shall provide
4 reasonable opportunity for other entities to submit
5 competing proposals;

6 (4) Request for proposals from the private sector
7 for development and finance plans most suitable for
8 the project,

9 (5) Best value selection request for proposals based upon
10 price financial proposals, or other factors; and

11 (6) Such other procedures as the department determines may
12 further the intent of this Act.

13 (b) When the department issues a request for
14 qualifications, request for proposals, or similar solicitation
15 document, the request shall generally set forth the factors that
16 will be evaluated and the manner in which responses will be
17 evaluated.

18 (c) In evaluating proposals, the department may accord
19 such relative weight to factors such as cost; financial
20 commitment; innovative financing; technical, scientific,
21 technological, or socio-economic merit; and other factors as the

1 department deems appropriate to obtain the best value for the
2 State.

3 (d) The department may charge a reasonable administrative
4 fee for the evaluation of an unsolicited project proposal.

5 (e) The department may procure services, award agreements,
6 administer revenues, and generate exemptions as authorized in
7 this chapter notwithstanding any requirements of other state law
8 or rule or county ordinance or rule relating to public bidding
9 or other procurement procedures or other provisions otherwise
10 applicable to public works, services, or utilities.

11 (f) The department may retain financial, legal, and other
12 consultants and experts inside and outside the public sector to
13 assist in the evaluation, negotiation, and development of
14 eligible facilities under this chapter.

15 (g) The department may spend such moneys as may be
16 reasonably necessary for the development and evaluation of
17 concepts or proposals, negotiation of agreements and
18 implementation of agreements for the development or operation of
19 eligible facilities under this chapter.

20 **§ -E Public-private partnership agreements.** (a) In any
21 public-private partnership agreement for any eligible facility
22 under this chapter, the department is authorized to include,

1 without limitation, provisions:

2 (1) Authorizing the private partner to collect user fees,
3 tolls, fares, or similar charges, including, without
4 limitation, provisions:

5 (A) Specifying the technology to be used in the
6 facility;

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

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

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

19 (3) Allowing the department to accept payments of money
20 and share revenues with the private partner;

21 (4) Addressing the method of sharing risk management and
22 insurance for the project;

- 1 (5) Specifying the method of sharing the costs of
2 development of the project;
- 3 (6) Allocating financial responsibility for cost overruns;
- 4 (7) Establishing the damages to be assessed for
5 nonperformance;
- 6 (8) Establishing performance criteria or incentives
7 or both;
- 8 (9) Addressing the acquisition of rights-of-way and other
9 property interests that may be required, including
10 provisions addressing the exercise of eminent domain
11 as provided in section -I of this chapter;
- 12 (10) Establishing recordkeeping, accounting, and auditing
13 standards to be used for the project;
- 14 (11) For a project that reverts to public ownership,
15 addressing 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) Providing for patrolling and law enforcement on
20 public facilities;
- 21 (13) Identifying any department specifications that must be

1 satisfied, including provisions allowing the private
2 partner to request and receive authorization to
3 deviate from such specifications on making a showing
4 of need satisfactory to the department;

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

13 (15) Authorizing the private partner in a partnership
14 agreement under this chapter to collect user fees,
15 tolls, fares, or similar charges to cover its costs
16 and provide for a reasonable rate of return on the
17 private partner's investment including, without
18 limitation, the following provisions:

19 (A) That the charges may be collected directly by the
20 private partner or by a third party engaged for
21 that purpose;

22 (B) A formula for the adjustment of user fees, tolls,

1 fares, or similar charges during the term of the
2 agreement;

3 (C) For an agreement that does not include such a
4 formula, provisions regulating the private
5 partner's return on investment; or

6 (D) A list of variety of traffic management
7 strategies, including without limitation:

8 (i) General purpose toll lanes;

9 (ii) High occupancy vehicle lanes where single
10 or low occupancy vehicles may "buy-in" to
11 use higher occupancy vehicle lanes by paying
12 a toll;

13 (iii) Lanes or facilities where the tolls may vary
14 during the course of the day or week or
15 according to levels of congestion
16 anticipated or experienced; or

17 (iv) Such combinations of, or variations on, the
18 foregoing, or other strategies, as the
19 department may determine appropriate on a
20 facility-by-facility basis; or

21 (16) Specifying remedies available and dispute resolution

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

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

13 (c) The department may approve any request from and
14 authorize another unit of government to procure, fund, develop,
15 operate, or maintain an eligible facility in a manner similar to
16 that authorized for the department under this Act.

17 (d) With the prior approval of the governor,
18 notwithstanding any other provision of state law or rule, an
19 agreement under this chapter may exempt activities of a private
20 partner directly related to, or income directly derived from,
21 property developed, operated or held by a private partner under
22 a partnership agreement pursuant to this chapter from any and

1 all taxes under Title 14, for a period not to exceed ten years
2 from the date of execution of the partnership agreement.

3 § -F 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,
6 including 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,
17 rents, availability payments, gross or net receipts
18 from sales, proceeds from the sale of development
19 rights, franchise fees, permit fees, or any other
20 lawful form of consideration;
- 21 (5) Private activity bonds as described by 26 United

1 States Code section 142(a)(15) and other forms of
2 private capital; and

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

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

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

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

22 (e) The department may accept from any source any grant,

1 donation, gift, or other form of conveyance of land, money,
2 other real or personal property, or other valuable thing made to
3 the State, the department, or another unit of government for
4 carrying out the purposes of this chapter.

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

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

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

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

S.B. NO. 1510

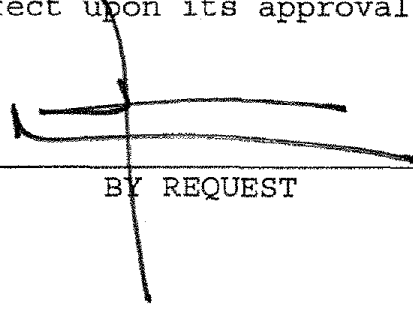
1 applicable federal statutes or regulations conflict with this
2 chapter or require provisions or procedures inconsistent with
3 this chapter, the applicable federal statutes or regulations
4 shall govern."

5 SECTION 3. In codifying the new sections added by section
6 2 of this Act, the revisor of statutes shall substitute
7 appropriate section numbers for the letters used in designating
8 the new sections in this Act.

9 SECTION 4. This Act shall take effect upon its approval.

10

INTRODUCED BY:



BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Transportation

TITLE: A BILL FOR AN ACT RELATING TO TRANSPORTATION.

PURPOSE: To authorize the Department of Transportation (DOT) and county agencies authorized by DOT to negotiate public-private partnership agreements under which private partners can assess tolls, fares, or other user fees as compensation for the private finance, planning, design, construction, operation, or maintenance of transportation improvements on public property.

MEANS: Add a new chapter to the Hawaii Revised Statutes.

JUSTIFICATION: Public-private partnerships, using public and private funds, provide an option that may be used to finance highway capacity improvements. The proposed bill would also allow use of public-private partnership agreements to finance transportation improvements.

Impact on the public: The public would have the option to pay a fee for the right to use toll facilities. Tolls could be flexibly adjusted to manage traffic congestion on toll facilities. Diversion of traffic to toll facilities would reduce traffic and congestion on other highways.

Impact on the department and other agencies: DOT, and county agencies authorized by DOT, could enter into agreements for private funding, development, operation, or maintenance of toll facilities. Tolls would not be regulated except as provided in public-private partnership agreements. Tolls would be waived for emergency services and could be waived for transit use of highways.

GENERAL FUND: None.

OTHER FUNDS: Although the proposed bill would allow sharing of toll revenues, no public revenues are anticipated from public-private partnership agreements in Hawaii.

PPBS PROGRAM DESIGNATION: TRN 595

OTHER AFFECTED AGENCIES: Any agency which might wish to negotiate a public-private partnership agreement to finance highway or other transportation improvements.

EFFECTIVE DATE: Upon approval.