

JAN 23 2008

A BILL FOR AN ACT

RELATING TO TOLL FACILITIES.

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 PARTNERSHIP IN TRANSPORTATION**

6 § -1 **Definitions.** Whenever used in this chapter, unless
7 the context otherwise requires:

8 "Department" means the state department of transportation.

9 "Toll facility" means any highway, road, bridge, tunnel,
10 overpass, street, or other facility, as well as appurtenant
11 structures, parking, rail yards, or storage facilities,
12 vehicles, rolling stock, or other equipment, items, or property
13 related thereto, developed, operated, or held in accordance with
14 this chapter and used or useful for the safe transport of
15 persons or goods and upon which or in relation to which a toll
16 or fee is charged for the use of vehicular traffic.



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 a toll facility by the department or other unit
7 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 public corporation established under state law or
13 county ordinance, or any intergovernmental agency or
14 corporation.

15 § -2 **Rules.** The department shall adopt, amend, or
16 repeal rules as it determines necessary to effectuate this
17 chapter. The rules adopted pursuant to chapter 91 shall have
18 the force and effect of law.

19 § -3 **Project delivery methods.** The department may
20 provide for the development or operation of toll facilities
21 using a variety of project delivery methods and forms of
22 agreement. Such methods may include without limitation:



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

14 § -4 **Posting of conceptual proposals; public comment;**
15 **public access to procurement records.** (a) Conceptual proposals
16 submitted in accordance with this chapter to a unit of
17 government shall be posted by the responsible unit of government
18 within thirty working days after acceptance of the proposals in
19 accordance with chapter 103D. In addition to the posting
20 requirements, at least one copy of each proposal shall be made
21 available for public inspection. Nothing in this section shall
22 be construed to prohibit the posting of the conceptual proposals



1 by additional means to provide maximum notice to the public of
2 the opportunity to inspect the proposals. Prior to posting or
3 otherwise disclosing the conceptual proposal, the responsible
4 public entity may redact information from the conceptual
5 proposal to the extent permitted by chapter 92F.

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

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

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



1 (e) A responsible unit of government and any independent
2 review panel appointed to review information and advise the
3 responsible unit of government may hold a meeting closed to the
4 public for the purpose of considering records exempt from
5 disclosure; provided that the meetings are held in accordance
6 with the procedural requirements of sections 92-4 and 92-5.

7 § -5 **Public-private partnership agreements.** (a) In any
8 public-private partnership agreement for any toll facility under
9 this chapter, the department may:

10 (1) Authorize the private partner to collect user fees,
11 tolls, fares, or similar charges, including, without
12 limitation, provisions:

13 (A) Specifying the technology to be used in the
14 facility;

15 (B) Establishing circumstances under which the
16 department may receive a share of revenues from
17 such charges; and

18 (C) Governing enforcement of tolls, including use of
19 cameras or other mechanisms to ensure that users
20 pay tolls that are due, and allowing the private
21 partner access to relevant state and county



- 1 databases to the extent necessary to collect and
2 enforce tolls;
- 3 (2) Allow for payments to be made by the State to the
4 private partner, including but not limited to
5 availability payments or performance-based payments;
- 6 (3) Allow the department to accept payments of money and
7 share revenues with the private partner;
- 8 (4) Address the method of sharing risk management and
9 insurance for the project;
- 10 (5) Specify the method of sharing the costs of development
11 of the project;
- 12 (6) Allocate financial responsibility for cost overruns;
- 13 (7) Establish the damages to be assessed for
14 nonperformance;
- 15 (8) Establish performance criteria, incentives, or both;
- 16 (9) Address the acquisition of rights-of-way and other
17 property interests that may be required, including
18 provisions addressing the exercise of eminent domain;
- 19 (10) Establish recordkeeping, accounting, and auditing
20 standards to be used for the project;
- 21 (11) For a project that reverts to public ownership,
22 address responsibility for reconstruction or



- 1 renovations required for a facility to meet all
2 applicable government standards upon reversion of the
3 facility to public ownership;
- 4 (12) Provide for patrolling and law enforcement on public
5 facilities;
- 6 (13) Identify any department specifications that must be
7 satisfied, including allowing the private partner to
8 request and receive authorization to deviate from such
9 specifications on making a showing of need
10 satisfactory to the department;
- 11 (14) Require a private partner to provide performance and
12 payment bonds, parent company guarantees, letters of
13 credit, and other acceptable forms of security, the
14 penal sum or amount of which may be less than one
15 hundred per cent of the value of the contract involved
16 based upon the department's determination, made on a
17 facility-by-facility basis, of what is required to
18 adequately protect the State;
- 19 (15) Authorize the private partner in a partnership
20 agreement under this chapter to collect user fees,
21 tolls, fares, or similar charges to cover its costs
22 and provide for a reasonable rate of return on the



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



1 (iv) Any combinations of, or variations on, the
2 foregoing, or other strategies, that the
3 department may determine appropriate on a
4 facility-by-facility basis;

5 and

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

15 (b) The department may enter into agreements with any
16 private partner that includes provisions as described in
17 subsection (a) notwithstanding any other provision of state law
18 or rule or county ordinance or rule.

19 § -6 **Fines; toll evaders.** The department shall adopt
20 rules in accordance with chapter 91 to establish fines for any
21 motorist who violates this chapter by evading the payment of an



1 appropriate levied toll on any toll highway built, operated,
2 owned, or financed under this chapter.

3 § -7 **Police powers; violations of law.** (a) All police
4 officers and other law enforcement officers having police powers
5 of the State and of each affected county shall have the same
6 powers and jurisdiction within the limits of the toll facility
7 that they have in their respective areas of jurisdiction, and
8 these officers shall have access to the toll facility at any
9 time for the purpose of exercising their powers and
10 jurisdiction. This authority shall not extend to the private
11 offices, buildings, garages, and other improvements of the
12 private partner to any greater degree than the police power
13 applies to any other private buildings and improvements.

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



1 § -8 **Funding and financing.** (a) The department may, in
2 connection with providing for the development or operation of a
3 toll facility, allow funding from any lawful source, including
4 without limitation:

5 (1) The proceeds of grant anticipation revenue bonds
6 authorized by 23 United States Code Section 122 or any
7 other applicable federal or state law;

8 (2) Grants, loans, loan guarantees, lines of credit,
9 revolving lines of credit, or other arrangements
10 available under the Transportation Infrastructure
11 Finance and Innovation Act under 23 United States Code
12 Section 181 or any other federal or state law;

13 (3) Federal, state, or county revenues;

14 (4) User fees, tolls, fares, charges, lease proceeds,
15 rents, availability payments, gross or net receipts
16 from sales, proceeds from the sale of development
17 rights, franchise fees, permit fees, or any other
18 lawful form of consideration;

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



1 (6) The county surcharge on state tax under section 46-
2 16.8 for qualifying counties; and

3 (7) Any 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 any other 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 any funds that are available to the 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.



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

6 (f) Any toll facility may be funded in whole or in
7 part by contribution of any funds or property made by any
8 private partner or public-sector partner that is a party to any
9 agreement 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,
12 notwithstanding any other provision of state law or rule or
13 county ordinance or regulation.

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
18 identified information shall be withheld from public disclosure
19 to the extent permitted by chapter 92F.

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



1 if federal funds are used on a toll 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. Section 46-16.8, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§46-16.8 County surcharge on state tax.** (a) Each county
8 may establish a surcharge on state tax at the rates enumerated
9 in sections 237-8.6 and 238-2.6. A county electing to establish
10 this surcharge shall do so by ordinance; provided that:

11 (1) No ordinance shall be adopted until the county has
12 conducted a public hearing on the proposed ordinance;

13 (2) The ordinance shall be adopted prior to December 31,
14 [~~2005~~] 2008; and

15 (3) No county surcharge on state tax that may be
16 authorized under this section shall be levied prior to
17 January 1, 2007.

18 Notice of the public hearing required under paragraph (1) shall
19 be published in a newspaper of general circulation within the
20 county at least twice within a period of thirty days immediately
21 preceding the date of the hearing.



1 (b) A county electing to exercise the authority granted
2 under this section shall notify the director of taxation within
3 ten days after the county has adopted a surcharge on state tax
4 ordinance and, beginning no earlier than January 1, 2007, the
5 director of taxation shall levy, assess, collect, and otherwise
6 administer the county surcharge on state tax.

7 (c) Each county with a population greater than five
8 hundred thousand that adopts a county surcharge on state tax
9 ordinance pursuant to subsection (a) shall ~~[use the surcharges~~
10 ~~received from the State for:~~

11 ~~(1) Operating or capital costs of a locally preferred~~
12 ~~alternative for a mass transit project; and] allow the~~
13 ~~surcharges to be retained by the State for use by the~~
14 ~~State for:~~

15 (1) Operating or capitol costs of a toll facilities
16 project within that respective county with a
17 population greater than five hundred thousand; and

18 (2) Expenses in complying with the Americans with
19 Disabilities Act of 1990 with respect to paragraph
20 (1).

21 ~~[The county surcharge on state tax shall not be used to build or~~
22 ~~repair public roads or highways, bicycle paths, or support~~



1 ~~public transportation systems already in existence prior to the~~
2 ~~effective date of this Act.]~~

3 (d) Each county with a population equal to or less than
4 five hundred thousand that adopts a county surcharge on state
5 tax ordinance pursuant to subsection (a) shall use the
6 surcharges received from the State for:

7 (1) Operating or capital costs of public transportation
8 within each county for public transportation systems,
9 including public roadways or highways, public buses,
10 trains, ferries, pedestrian paths or sidewalks, or
11 bicycle paths; and

12 (2) Expenses in complying with the Americans with
13 Disabilities Act of 1990 with respect to paragraph
14 (1).

15 (e) As used in this section, "capital costs" means
16 nonrecurring costs required to construct a transit or toll
17 facility or system, including debt service, costs of land
18 acquisition and development, acquiring of rights-of-way,
19 planning, design, and construction, and including equipping and
20 furnishing the facility or system."

21 SECTION 3. Section 248-2.6, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "[\$248-2.6] **County surcharge on state tax; disposition of**
2 **proceeds.** (a) If adopted by county ordinance, all county
3 surcharges on state tax collected by the director of taxation
4 shall be paid into the state treasury quarterly, within ten
5 working days after collection, and shall be placed by the
6 director of finance in special accounts. Out of the revenues
7 generated by county surcharges on state tax paid into each
8 respective state treasury special account, the director of
9 finance shall deduct ten per cent of the gross proceeds of a
10 respective county's surcharge on state tax to reimburse the
11 State for the costs of assessment, collection, and disposition
12 of the county surcharge on state tax incurred by the State.
13 Amounts retained shall be general fund realizations of the
14 State.

15 (b) The amounts deducted for costs of assessment,
16 collection, and disposition of county surcharges on state tax
17 shall be withheld [~~from payment to the counties~~] by the State
18 out of the county surcharges on state tax collected for the
19 current calendar year.

20 (c) For the purpose of this section, the costs of
21 assessment, collection, and disposition of the county surcharges
22 on state tax shall include any and all costs, direct or



1 indirect, that are deemed necessary and proper to effectively
2 administer this section and sections 237-8.6 and 238-2.6.

3 (d) After the deduction and withholding of the costs under
4 subsections (a) and (b), the director of finance shall ~~pay~~:

5 (1) Pay the remaining balance on ~~[+]a[+]~~ quarterly basis
6 to the director of finance of each county with a
7 population equal to or less than five hundred thousand
8 that has adopted a county surcharge on state tax under
9 section 46-16.8. The quarterly payments shall be made
10 after the county surcharges on state tax have been
11 paid into the state treasury special accounts or after
12 the disposition of any tax appeal, as the case may be.
13 ~~[All county]~~ County surcharges on state tax collected
14 in each county with a population equal to or less than
15 five hundred thousand shall be distributed by the
16 director of finance to the county in which the county
17 surcharge on state tax is generated and shall be a
18 general fund realization of the county, to be used for
19 the purposes specified in section ~~[46-16.8]~~ 46-16.8(d)
20 ~~[by each of the counties]~~.

21 (2) Transfer the remaining balance on a quarterly basis to
22 the department of transportation on behalf of each



1 county with a population greater than five hundred
2 thousand that has adopted a county surcharge on state
3 tax under section 46-16.8, to be used for the purposes
4 specified in section 46-16.8(c). The quarterly
5 transfers shall be made after the county surcharges on
6 state tax have been paid into the state treasury
7 special accounts or after the disposition of any tax
8 appeal, as the case may be. County surcharges on
9 state tax collected in each county with a population
10 greater than five hundred thousand shall be used by
11 the director of transportation within the county in
12 which the county surcharge on state tax is generated."

13 SECTION 4. Act 247, Session Laws of Hawaii 2005, is
14 amended by amending section 9 to read as follows:

15 "SECTION 9. This Act shall take effect upon its approval;
16 provided that:

- 17 (1) If none of the counties of the State adopt an
18 ordinance to levy a county surcharge on state tax by
19 December 31, 2005, this Act shall be repealed and
20 section 437D-8.4, Hawaii Revised Statutes, shall be
21 reenacted in the form in which it read on the day
22 prior to the effective date of this Act;



1 (2) If any county does not adopt an ordinance to levy a
 2 county surcharge on state tax by December 31, 2005, it
 3 shall be prohibited from adopting such an ordinance
 4 pursuant to this Act, unless otherwise authorized by
 5 the legislature through a separate legislative act;

6 (3) If an ordinance to levy a county surcharge on state
 7 tax is adopted by December 31, 2005:

8 (A) The ordinance shall be repealed on [~~December 31,~~
 9 ~~2022,~~] July 1, 2018;


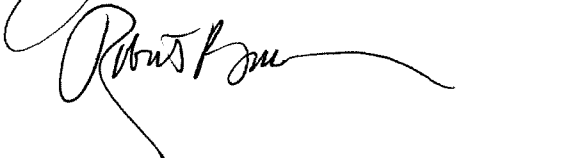
10 (B) This Act shall be repealed on [~~December 31,~~
 11 ~~2022,~~] July 1, 2018; and

12 (C) [~~Section~~] On July 1, 2018, section 437D-8.4,
 13 Hawaii Revised Statutes, shall be reenacted in
 14 the form in which it read on the day prior to the
 15 effective date of this Act."

16 SECTION 7. Statutory material to be repealed is bracketed
 17 and stricken. New statutory material is underscored.

18 SECTION 8. This Act shall take effect upon its approval.

19

INTRODUCED BY: 




Report Title:

Relating to Toll Facilities; Amends Surcharge

Description:

Authorizes the State to enter into agreements with private entities to build, operate, or finance toll facilities. Amends authority of counties to charge general excise tax surcharge.

