

---

---

# 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 a public-private sector  
7 program that authorizes private entities to undertake all or a  
8 portion of the study, planning, design, development, financing,  
9 acquisition, installation, construction, improvement, operation,  
10 or maintenance of transportation systems and facility projects.  
11 This public-private program will benefit both public and private  
12 sectors. Public-private initiatives provide a sound economic  
13 investment opportunity for the private sector. These  
14 initiatives provide the State with increased options to develop  
15 the State's infrastructure and can supplement state  
16 transportation revenues.

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



- 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, management  
9 services, and techniques available in the private  
10 sector;
- 11 (3) Reduce the public cost of project delivery and  
12 services for eligible facilities;
- 13 (4) Expedite project delivery;
- 14 (5) Encourage private investment in public 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 savings to taxpayers, by increasing private  
21 investment in public facilities and enhancing capital  
22 formation for large projects;



- 1 (9) Develop eligible facilities with the cooperation,  
2 consultation, and support of affected communities and  
3 county jurisdictions;
- 4 (10) Solicit, evaluate, negotiate, and administer public-  
5 private agreements with the private sector relating to  
6 the 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 state department of transportation and other agencies in this  
16 Act are in addition to any other powers authorized under  
17 applicable law.

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

21 **"CHAPTER**

22 **PUBLIC-PRIVATE PARTNERSHIP IN TRANSPORTATION**



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

3       "Department" means the state department of transportation.

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

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

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

20       "Public-private partnerships in transportation program" or  
21 "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 as it determines necessary to effectuate this  
7 chapter in accordance with chapter 91.

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
- 21 (7) Any other project delivery method or agreement or  
22 combination of methods or agreements that, in the



1           determination of the department, will serve the public  
2           interest.

3           §   -4   **Posting of conceptual proposals; public comment;**  
4   **public access to procurement records.** (a) Conceptual proposals  
5   submitted in accordance with this chapter to a unit of  
6   government shall be posted by the responsible unit of government  
7   within thirty working days after acceptance of the proposals in  
8   accordance with chapter 103D. In addition to the posting  
9   requirements, at least one copy of each proposal shall be made  
10  available for public inspection. Nothing in this section shall  
11  be construed to prohibit the posting of the conceptual proposals  
12  by additional means to provide maximum notice to the public of  
13  the opportunity to inspect the proposals. Prior to posting or  
14  otherwise disclosing the conceptual proposal, the responsible  
15  unit of government may redact information from the conceptual  
16  proposal to the extent permitted by chapter 92F.

17           (b) In addition to the posting requirements of subsection  
18  (a), for thirty days prior to entering into an interim or  
19  comprehensive agreement, the responsible unit of government  
20  shall provide an opportunity for public comment on the  
21  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) Once an interim agreement or a comprehensive agreement  
4 has been entered into, the responsible unit of government shall  
5 make procurement records available for public inspection, upon  
6 request. For the purposes of this subsection, procurement  
7 records shall not be interpreted to include trade secrets or  
8 confidential information which may be withheld from public  
9 disclosure under chapter 92F.

10 (d) This section shall apply to accepted proposals  
11 regardless of whether the negotiationsx will result in an  
12 interim or a comprehensive agreement.

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

19 § -5 **Public-private partnership agreements.** (a) In any  
20 public-private partnership agreement for any eligible facility  
21 under this chapter, the department may:



- 1 (1) Authorize the private partner to collect user fees,  
2 tolls, fares, or similar charges, including without  
3 limitation provisions:
- 4 (A) Specifying the technology to be used in the  
5 facility;
- 6 (B) Establishing circumstances under which the  
7 department may receive a share of revenues from  
8 such charges; and
- 9 (C) Governing enforcement of tolls, including use of  
10 cameras or other mechanisms to ensure that users  
11 pay tolls that are due, and allowing the private  
12 partner access to relevant state and county  
13 databases to the extent necessary to collect and  
14 enforce tolls;
- 15 (2) Allow for payments to be made by the State to the  
16 private partner, including but not limited to  
17 availability payments or performance-based payments;
- 18 (3) Allow the department to accept payments of money and  
19 share revenues with the private partner;
- 20 (4) Address the method of sharing risk management and  
21 insurance for the project;





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



- 1           those specifications on making a showing of need  
2           satisfactory to the department;
- 3       (14) Require a private partner to provide performance and  
4           payment bonds, parent company guarantees, letters of  
5           credit, and other acceptable forms of security, the  
6           penal sum or amount of which may be less than one  
7           hundred per cent of the value of the contract involved  
8           based upon the department's determination, made on a  
9           facility-by-facility basis, of what is required to  
10          adequately protect the State;
- 11       (15) Authorize the private partner in a partnership  
12           agreement under this chapter to collect user fees,  
13           tolls, fares, or similar charges to cover its costs  
14           and provide for a reasonable rate of return on the  
15           private partner's investment, including without  
16           limitation the following provisions:
- 17           (A) That the charges may be collected directly by the  
18           private partner or by a third party engaged for  
19           that purpose;
- 20           (B) A formula for the adjustment of user fees, tolls,  
21           fares, or similar charges during the term of the  
22           agreement;



- 1 (C) For an agreement that does not include such a
- 2 formula, provisions regulating the private
- 3 partner's return on investment; or
- 4 (D) A list of various traffic management strategies,
- 5 including without limitation:
- 6 (i) General purpose toll lanes;
- 7 (ii) High occupancy vehicle lanes where single or
- 8 low occupancy vehicles may "buy-in" to use
- 9 higher occupancy vehicle lanes by paying a
- 10 toll;
- 11 (iii) Lanes or facilities where the tolls may vary
- 12 during the course of the day or week or
- 13 according to levels of congestion
- 14 anticipated or experienced; or
- 15 (iv) Any combinations of, or variations on, the
- 16 foregoing, or other strategies, that the
- 17 department may determine appropriate on a
- 18 facility-by-facility basis;

19 and

- 20 (16) Specify remedies available and dispute resolution
- 21 procedures, including but not limited to the right of
- 22 the private partner to institute legal proceedings to



1 obtain an enforceable judgment or award against the  
2 department in the event of a default by the  
3 department, and procedures for use of dispute review  
4 boards, mediation, facilitated negotiation,  
5 arbitration, and other alternative dispute resolution  
6 procedures.

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

11 § -6 **Fines; toll evaders.** The department shall adopt  
12 rules in accordance with chapter 91 to establish fines for any  
13 motorist who violates this chapter by evading the payment of an  
14 appropriate levied toll on any toll highway built, operated,  
15 owned, or financed under this chapter.

16 § -7 **Police powers; violations of law.** (a) All police  
17 officers and other law enforcement officers having police powers  
18 of the State and of each affected county shall have the same  
19 powers and jurisdiction within the limits of the eligible  
20 facility that they have in their respective areas of  
21 jurisdiction, and these officers shall have access to the  
22 eligible facility at any time for the purpose of exercising



1 their powers and jurisdiction. This authority shall not extend  
2 to the private offices, buildings, garages, and other  
3 improvements of the private partner to any greater degree than  
4 the police power applies to any other private buildings and  
5 improvements.

6 (b) To the extent the transportation facility is a road,  
7 bridge, tunnel, overpass, or similar transportation facility for  
8 motor vehicles, the traffic and motor vehicle laws of the State  
9 or, if applicable, any county jurisdiction, shall be the same as  
10 those applying to conduct on similar transportation facilities  
11 in the state or a county. Punishment for offenses shall be as  
12 prescribed by law for conduct occurring on similar  
13 transportation facilities in the State or a county.

14 § -8 **Funding and financing.** (a) The department, in  
15 connection with providing for the development or operation of an  
16 eligible facility, may allow funding from any lawful source,  
17 including without limitation:

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

21 (2) Grants, loans, loan guarantees, lines of credit,  
22 revolving lines of credit, or other arrangements



1 available under the Transportation Infrastructure  
2 Finance and Innovation Act under 23 United States Code  
3 Section 181 or any other federal or state law;  
4 (3) Federal, state, or county revenues;  
5 (4) User fees, tolls, fares, charges, lease proceeds,  
6 rents, availability payments, gross or net receipts  
7 from sales, proceeds from the sale of development  
8 rights, franchise fees, permit fees, or any other  
9 lawful form of consideration;  
10 (5) Private activity bonds as described by 26 United  
11 States Code Section 142(a)(15) and other forms of  
12 private capital; and  
13 (6) Any other forms of public and private capital as may  
14 be available.  
15 (b) As security for the payment of financing described in  
16 this section, the revenues from the project may be pledged, but  
17 no such pledge of revenues shall constitute in any manner or to  
18 any extent a general obligation of the State or any county. Any  
19 financing may be structured on a senior, parity, or subordinate  
20 basis to any other financing.



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

4 (d) The department may accept from the United States or  
5 any of its agencies any funds that are available to the State or  
6 to any other unit of government for carrying out the purposes of  
7 this chapter, whether the funds are made available by grant,  
8 loan, or other financing arrangement. The department may enter  
9 into any agreements and other arrangements with the United  
10 States or any of its agencies that may be necessary, proper, and  
11 convenient for carrying out the purposes of this chapter.

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

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

21 (g) Federal, state, and county funds may be combined with  
22 any private-sector funds for any project purposes,



1 notwithstanding any other provision of state law or rule or  
2 county ordinance or rule.

3       §   -9   **Confidentiality and public disclosure.**  A proposer  
4 shall identify those portions of a proposal or other submission  
5 that the proposer considers to be trade secrets or confidential  
6 commercial, financial, or proprietary information.  The  
7 identified information shall be withheld from public disclosure  
8 to the extent permitted by chapter 92F.

9       §   -10   **Federal laws.**  If no federal funds are used on an  
10 eligible facility, the laws of the State, including this  
11 chapter, shall govern.  Notwithstanding any provisions of this  
12 chapter, if federal funds are used on an eligible facility and  
13 applicable federal statutes or regulations conflict with this  
14 chapter or require provisions or procedures inconsistent with  
15 this chapter, the applicable federal statutes or regulations  
16 shall govern."

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





**Report Title:**

Public Private Partnerships; Transportation

**Description:**

Allows the State to enter into agreements with private entities to build, operate, own, or finance newly constructed transportation facilities including toll highways. (HB139 HD1)

