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# A BILL FOR AN ACT

RELATING TO THE PUBLIC-PRIVATE FINANCE INITIATIVE.

**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 FINANCE INITIATIVE**

6           §   -1 **Findings and purpose.** The legislature finds that  
7 these are difficult economic times for all levels of government,  
8 as public service demands for an increasing population put  
9 pressure on revenue resources. The State faces the challenge of  
10 balancing its budget while addressing escalating infrastructure  
11 and service needs. Due to insufficient funding and postponed  
12 maintenance, these daily demands continue to increase.

13           Governments around the world have engaged in public-private  
14 partnerships to address these economic challenges. State  
15 agencies are hamstrung by their limited missions and dwindling  
16 resources. Creating a partnership agency to collaborate with  
17 all state agencies and private sector entities may help deliver  
18 services and facilities more effectively.



1           The legislature further finds that public-private  
2 partnerships give governmental entities an additional tool to  
3 deliver infrastructure through the ability to finance the design  
4 and construction of a building with a private developer. Like  
5 any finance tool, there is a price tag that still falls to the  
6 taxpayer. That price tag comes in the form of a long-term  
7 building lease where the developer can recoup its costs and  
8 realize a steady stream of cash through lease payments from a  
9 relatively stable tenant: the government.

10           The "hook," or value proposition, on both sides of the  
11 contract for the developer and the governmental entity lies  
12 squarely on the maintenance and operations terms of the  
13 contract. If the developer is contractually required to  
14 maintain and operate the building over a long-term period, such  
15 as thirty years, an incentive is built in to ensure that the  
16 developer balances design quality with the life-cycle  
17 performance of the building, including an efficient operational  
18 system. This long-term incentive benefits the government, which  
19 will assume ownership of the property after expiration of the  
20 long-term lease.

21           According to stakeholders with public-private partnership  
22 experience in other countries, one of the most remarkable



1 differences with public-private partnership government buildings  
2 is that "the buildings always look new." This demonstrates a  
3 notable advantage to public-private partnerships for government  
4 property owners, where maintenance and operations are  
5 contractually mandated and integrated.

6 The purpose of this chapter is to create a means and  
7 process to use the skills and assets of both the public and  
8 private sectors to deliver services and facilities for the  
9 economic, environmental, and social benefit of the people of  
10 Hawaii. This chapter establishes the public-private finance  
11 initiative to administer appropriate and culturally-sensitive  
12 projects. The initiative shall coordinate and administer  
13 projects, while ensuring that resources are maintained for the  
14 people of Hawaii. The initiative shall identify suitable  
15 projects, carry out appropriate analyses, enter into public-  
16 private agreements, and provide leadership for the facilitation  
17 of financing, improvement, or enhancement of appropriate  
18 facilities, operations, and property.

19 **§ -2 Definitions.** As used in this chapter, unless the  
20 context clearly requires otherwise:

21 "Board" means the board of directors of the public-private  
22 finance initiative.



1 "Cooperative agreement" means an instrument, such as a  
2 contract, compact, memorandum of understanding, or agreement,  
3 that is signed and binding upon all parties to the agreement.

4 "Initiative" means the public-private finance initiative.

5 "Management rights" means the authority to control and  
6 manage projects.

7 "Project" means a specific undertaking related to the  
8 operations and properties of any public agency, including but  
9 not limited to:

- 10 (1) Development of plans for a public agency; and  
11 (2) Planning, improvement, construction, rehabilitation,  
12 alteration, maintenance, or repair of real property or  
13 energy generation facilities.

14 "Qualified person" means any individual, partnership,  
15 corporation, not-for-profit organization, or public agency  
16 possessing the competence, expertise, experience, and resources,  
17 including financial, personnel, and tangible qualifications, as  
18 deemed desirable by the initiative.

19 **§ -3 Public-private finance initiative; established.**

20 (a) There is established the public-private finance initiative,  
21 which shall be a public body corporate and politic and an  
22 instrumentality and agency of the State. The initiative shall



1 be headed by a board. The initiative shall be placed within the  
2 department of business, economic development, and tourism for  
3 administrative purposes.

4 The initiative shall:

- 5 (1) Identify projects that are suitable under this  
6 chapter;
- 7 (2) Conduct analyses, as appropriate;
- 8 (3) Enter into public-private partnership agreements, as  
9 appropriate; and
- 10 (4) Provide leadership for public-private partnership  
11 projects.

12 (b) The board shall consist of five voting members and one  
13 nonvoting member. The voting members shall include:

- 14 (1) The comptroller or the first deputy to the  
15 comptroller, or a designated representative;
- 16 (2) The director of finance or a designated  
17 representative;
- 18 (3) The director of business, economic development, and  
19 tourism, or a designated representative;
- 20 (4) One member to be appointed by the speaker of the house  
21 of representatives; and



1           (5) One member to be appointed by the president of the  
2           senate.

3 The ex officio, nonvoting member shall be the aha moku advisory  
4 committee member of the moku in which the project is sited.

5           The members appointed by the speaker of the house of  
6 representatives and the president of the senate shall possess  
7 sufficient knowledge, experience, and proven expertise in small  
8 and large businesses within the development or recreation  
9 industries, banking, real estate, finance, promotion, marketing,  
10 or management.

11           The term of office of the members appointed by the speaker  
12 of the house of representatives and the president of the senate  
13 shall be four years.

14           Three members shall constitute a quorum, and a minimum of  
15 three votes shall be necessary for all actions by the board.

16           (c) The board shall appoint an executive director, who  
17 shall serve at the pleasure of the board and shall be exempt  
18 from chapter 76. The salary of the executive director shall be  
19 established by the board.

20           (d) The board, through its executive director, may appoint  
21 officers, agents, and employees; prescribe their duties and



1 qualifications; and establish their salaries, without regard to  
2 chapter 76.

3       **§ -4 Powers; generally.** Except as otherwise limited by  
4 this chapter, the initiative may:

5       (1) Sue and be sued;

6       (2) Have a seal and alter the same at its pleasure;

7       (3) Make and alter bylaws for its organization and  
8       internal management;

9       (4) Adopt rules under chapter 91 necessary to implement  
10       this chapter in connection with its projects;

11       (5) Make and execute contracts, leases, and all other  
12       instruments necessary or convenient for the exercise  
13       of its powers and functions under this chapter;

14       (6) Develop guidelines to provide a fair and uniform  
15       process that enables private partners to properly  
16       assess the risks and rewards for engagement in public-  
17       private partnerships;

18       (7) Manage projects by itself or in partnership with  
19       qualified persons or other governmental agencies;

20       (8) Receive, examine, and determine the acceptability of  
21       applications of qualified persons for public-private  
22       partnerships;



- 1           (9) Encourage communication between design professionals  
2           and the government end user during the request for  
3           proposals phase so the government end user may provide  
4           direct, meaningful input to the competitor design  
5           teams developing the proposed designs;
- 6           (10) Enable small businesses to compete by:  
7           (A) Restricting the use of design competitions; or  
8           (B) Limiting the number of competitors required to  
9           provide designs during the request for proposal  
10           phase;  
11           and rewarding reasonable stipends to unsuccessful  
12           bidders;
- 13           (11) Coordinate its activities with any federal or state  
14           programs;
- 15           (12) Provide advisory, consultative, training, and  
16           educational services and technical assistance to any  
17           person, partnership, or corporation, either public or  
18           private, to carry out the purposes of this chapter,  
19           and engage the services of consultants on a  
20           contractual basis for rendering professional and  
21           technical assistance and advice;





1 (13) Procure insurance against any loss in connection with  
2 its property and other assets and operations in  
3 amounts and from insurers as it deems desirable;

4 (14) Accept gifts or grants in any form from any public  
5 agency or any other source;

6 (15) Coordinate with any public agency;

7 (16) Recommend to the appropriate public agency the  
8 acquisition of any privately owned real or personal  
9 property that may be appropriate for the purposes of  
10 this chapter; and

11 (17) Do all things necessary or proper to carry out the  
12 purposes of this chapter.

13 **§ -5 Projects and plans.** (a) The initiative may  
14 develop plans and implement projects on behalf of public  
15 agencies, as appropriate.

16 (b) The initiative may enter into a cooperative agreement  
17 with any public agency to implement projects on behalf of the  
18 public agency.

19 (c) The initiative may enter into cooperative agreements  
20 with persons or public agencies when the powers, services, and  
21 capabilities of the persons or agencies are deemed necessary and  
22 appropriate.



1 (d) The initiative shall have an independent consultant or  
2 in-house expert in facilities planning, design, and construction  
3 to assess the long-term projected needs of the government before  
4 considering the use of public-private partnerships. This  
5 individual shall advise the government before the solicitation  
6 of interest from private partners and may remain as advisor  
7 throughout planning, design, and construction.

8 (e) The initiative shall include a long-term maintenance  
9 and operations scope in a public-private partnership.

10 (f) Prior to implementing any project, the initiative  
11 shall submit the proposed plan for the project, together with  
12 any amendments, to and obtain the approval of the board and the  
13 executive of any affected public agency.

14 § -6 **Suitability tests.** For projects exceeding  
15 \$60,000,000, a centralized governmental entity with expertise in  
16 delivery and financial modeling for public-private partnerships  
17 shall perform a suitability test by comparing the value of long-  
18 term leases to existing project delivery models before issuing  
19 any request for qualifications or proposals. Combining smaller,  
20 separate projects to meet the \$60,000,000 threshold shall be  
21 prohibited.



1           **§ -7 Approval of projects.** All projects to be  
2 undertaken by the initiative shall be approved by the board and  
3 the executive of any affected public agency.

4           **§ -8 Transfer of management rights.** (a)  
5 Notwithstanding chapter 171 or any provision of this chapter to  
6 the contrary, any public agency may transfer, subject to the  
7 approval of the board or executive of the public agency,  
8 management rights for projects under its jurisdiction to the  
9 initiative for purposes of this chapter.

10           (b) If the initiative finds that projects under the  
11 control and management of any public agency are suitable for its  
12 purposes under this chapter, the initiative may lease properties  
13 from or agree to manage the properties of the agency having  
14 jurisdiction, upon terms and conditions as agreed to by the  
15 parties.

16           (c) Notwithstanding subsection (b) to the contrary, no  
17 property shall be leased to the initiative if the lease would  
18 impair any covenant between the State or any county, or any  
19 department or board thereof, and the holders of bonds issued by  
20 the State or the county, or any department or board thereof.

21           **§ -9 Public-private partnership revenues.** Any revenues  
22 generated by or on behalf of the initiative from public-private



1 partnership projects and plans undertaken pursuant to this  
2 chapter shall be deposited into the general fund.

3       **§ -10 Exemption from taxation.** The initiative shall not  
4 be required to pay state taxes of any kind.

5       **§ -11 Application of chapter.** The initiative and all  
6 projects implemented under this chapter shall comply with all  
7 state laws, other than with chapter 171 for the transfer of  
8 management rights identified in section -8 and the exemption  
9 from state taxes in section -10.

10       **§ -12 Reports and evaluation.** (a) The initiative shall  
11 submit a complete and detailed annual report of its plans and  
12 activities as follows:

13           (1) To the governor, no later than twenty days prior to  
14           the convening of each regular legislative session; and

15           (2) To the legislature, no later than sixty days after the  
16           submission of the report as required in paragraph (1).

17           (b) The board shall submit to the governor and the  
18 legislature, no later than twenty days prior to the convening of  
19 each regular session, an evaluation of the executive director  
20 appointed pursuant to section -3."

21       SECTION 2. After the adoption of rules pursuant to section  
22 -4(4), Hawaii Revised Statutes, the public-private finance



1 initiative shall initiate a pilot project on state lands in  
2 Wahiawa, city and county of Honolulu, identified as tax map keys  
3 74004071, 74004001, 74006012, and 74004070, pursuant to  
4 chapter , Hawaii Revised Statutes.

5 SECTION 3. The public-private finance initiative shall  
6 include in its annual report to the governor and the legislature  
7 required by section -12, Hawaii Revised Statutes, a detailed  
8 report on the status of the pilot project established pursuant  
9 to section 2 of this Act.

10 The public-private finance initiative shall notify the  
11 governor and the legislature upon the completion of the pilot  
12 project and, within ninety days of its completion, submit a  
13 report to the governor and the legislature containing a review  
14 and evaluation of the pilot project and any recommendations to  
15 improve the effectiveness of chapter , Hawaii Revised  
16 Statutes.

17 SECTION 4. The public-private finance initiative shall  
18 neither plan nor implement any projects other than the pilot  
19 projects identified in this Act nor enter into any agreements or  
20 contracts related to the planning or implementation of any  
21 projects other than the pilot projects identified in this Act.



1 SECTION 5. There is appropriated out of the general  
2 revenues of the State of Hawaii the sum of \$ or so much  
3 thereof as may be necessary for fiscal year 2014-2015 for:

4 (1) The establishment and operation of the public-private  
5 finance initiative pursuant to section 1 of this Act;  
6 and

7 (2) The funding of three staff positions.

8 The sum appropriated shall be expended by the department of  
9 business, economic development, and tourism for the purposes of  
10 this Act.

11 SECTION 6. If any provision of this Act, or the  
12 application thereof to any person or circumstance, is held  
13 invalid, the invalidity does not affect other provisions or  
14 applications of the Act that can be given effect without the  
15 invalid provision or application, and to this end the provisions  
16 of this Act are severable.

17 SECTION 7. This Act does not affect rights and duties that  
18 matured, penalties that were incurred, and proceedings that were  
19 begun before its effective date.

20 SECTION 8. This Act shall take effect on January 20, 2050,  
21 and shall be repealed on July 1, 2018.



**Report Title:**

Public-private Finance Initiative; Pilot Project; Appropriation

**Description:**

Establishes the public-private finance initiative (PPFI). Requires the PPFI to initiate a pilot project. Appropriates an unspecified amount of funds for the PPFI. Effective January 20, 2050. Repeals on July 1, 2018. (HB2127 HD1)

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