
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 all levels of government face difficult economic times, as
8 public service demands for an increasing population put pressure
9 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 an agency to collaborate with all state
17 agencies and private sector entities may help deliver government
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 an appropriate and culturally-sensitive
12 project. The initiative shall coordinate and administer the
13 project, while ensuring that resources are maintained for the
14 people of Hawaii. The initiative shall identify a suitable
15 project, 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 a project.

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 a project that is 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 a public-private partnership
11 project.

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

- 14 (1) The comptroller, or deputy comptroller, or a
15 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 (e) The initiative shall have an independent consultant or
4 in-house expert in facilities planning, design, and construction
5 to assess the long-term projected needs of the government before
6 considering the use of public-private partnerships. The
7 individual shall advise the government before private partners
8 are solicited and may remain as advisor throughout the planning,
9 design, and construction.

10 **§ -4 Powers, duties; generally.** (a) Except as
11 otherwise limited by this chapter, the initiative may:

- 12 (1) Sue and be sued;
- 13 (2) Have a seal and alter the same at its pleasure;
- 14 (3) Make and alter bylaws for its organization and
15 internal management;
- 16 (4) Adopt rules under chapter 91 necessary to implement
17 this chapter in connection with its project;
- 18 (5) Make and execute contracts, leases, and all other
19 instruments necessary or convenient for the exercise
20 of its powers and functions under this chapter;
- 21 (6) Make lease payments to developers and public agencies;



- 1 (7) Develop guidelines to provide a fair and uniform
2 process that enables private partners to properly
3 assess the risks and rewards for engagement in public-
4 private partnerships;
- 5 (8) Manage the project by itself or in partnership with
6 qualified persons or other governmental agencies;
- 7 (9) Receive, examine, and determine the acceptability of
8 applications of qualified persons for public-private
9 partnerships;
- 10 (10) Encourage communication between bidders and the
11 government end user during the request for proposals
12 phase so the government end user may provide direct,
13 meaningful input to the bidders in their development
14 of bid proposals;
- 15 (11) Enable small businesses to compete by limiting the
16 number of bidders allowed to submit proposals during
17 the request for proposals phase and awarding
18 reasonable stipends to unsuccessful bidders;
- 19 (12) Coordinate its activities with any federal or state
20 programs;
- 21 (13) Provide advisory, consultative, training, and
22 educational services and technical assistance to any



1 person, partnership, or corporation, either public or
2 private, to carry out the purposes of this chapter,
3 and engage the services of consultants on a
4 contractual basis for rendering professional and
5 technical assistance and advice;

6 (14) Procure insurance against any loss in connection with
7 its property and other assets and operations in
8 amounts and from insurers as it deems desirable;

9 (15) Accept gifts or grants in any form from any public
10 agency or any other source;

11 (16) Coordinate with any public agency;

12 (17) Recommend to the appropriate public agency the
13 acquisition of any privately owned real or personal
14 property that may be appropriate for the purposes of
15 this chapter; and

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

18 (b) Upon the termination or dissolution of the initiative,
19 the department of business, economic development, and tourism
20 shall succeed to all the rights and the duties of the initiative
21 arising out of the public-private partnership agreements,



1 including leases and long-term operations and maintenance
2 agreements.

3 **§ -5 Project and plans.** (a) The initiative may develop
4 plans and implement one project on behalf of a public agency, as
5 appropriate.

6 (b) The initiative may enter into a cooperative agreement
7 with any public agency to implement the project on behalf of the
8 public agency.

9 (c) The initiative may enter into cooperative agreements
10 with qualified persons or public agencies when the powers,
11 services, and capabilities of the qualified persons or agencies
12 are deemed necessary and appropriate.

13 (d) The initiative shall include a long-term maintenance
14 and operations agreement in a public-private partnership.

15 (e) Prior to implementing any project, the initiative
16 shall submit the proposed plan for the project, together with
17 any amendments, to the board for its approval and to the
18 executive head of any affected public agency.

19 **§ -6 Suitability tests.** For a project exceeding
20 \$60,000,000, the initiative shall perform a suitability test by
21 comparing the value of long-term leases to existing project
22 delivery models before issuing any request for qualifications or



1 proposals. Combining smaller, separate projects to meet the
2 \$60,000,000 threshold is prohibited.

3 **§ -7 Approval of a project.** A project to be undertaken
4 by the initiative shall be approved by the board and the
5 executive head of any affected public agency.

6 **§ -8 Transfer of management rights.** (a)

7 Notwithstanding chapter 171 or any provision of this chapter to
8 the contrary, any public agency may transfer, subject to the
9 approval of the board or executive of the public agency,
10 management rights for a project under its jurisdiction to the
11 initiative for purposes of this chapter.

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

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



1 **§ -9 Public-private partnership revenues.** Any revenues
2 generated by or on behalf of the initiative from the public-
3 private partnership project and plans undertaken pursuant to
4 this chapter shall be deposited into the general fund.

5 **§ -10 Exemption from taxation.** The initiative shall not
6 be required to pay state taxes of any kind.

7 **§ -11 Application of chapter.** The initiative and the
8 project implemented under this chapter shall comply with all
9 state laws, other than with:

- 10 (1) Chapter 171 for the transfer of management rights
11 identified in section -8 and for leases;
12 (2) Chapter 103D for procurement activities; and
13 (3) State taxes as exempted under section -10.

14 **§ -12 Reports and evaluation.** (a) The initiative shall
15 submit a complete and detailed annual report of its plans and
16 activities as follows:

- 17 (1) To the governor no later than twenty days prior to the
18 convening of each regular legislative session; and
19 (2) To the legislature, no later than sixty days after the
20 submission of the report as required in paragraph (1).

21 (b) The board shall submit to the governor and the
22 legislature, no later than twenty days prior to the convening of



1 each regular session, an evaluation of the executive director
2 appointed pursuant to section -3."

3 SECTION 2. After the adoption of rules pursuant to section
4 -4(4), Hawaii Revised Statutes, established by section 1 of
5 this Act, the public-private finance initiative shall initiate a
6 pilot project on state lands in to be administered in
7 accordance with chapter , Hawaii Revised Statutes,
8 established by section 1 of this Act. The pilot project shall
9 terminate not later than October 1, 2017.

10 SECTION 3. The public-private finance initiative shall
11 include in its annual report to the governor and the legislature
12 required by section -12(a), Hawaii Revised Statutes, a
13 detailed report on the status of the pilot project established
14 pursuant to section 2 of this Act.

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



1 SECTION 4. The public-private finance initiative shall
2 neither plan nor implement any projects other than the pilot
3 project identified in this Act nor enter into any agreements or
4 contracts related to the planning or implementation of any
5 projects other than the pilot project identified in this Act.

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

9 (1) The establishment and operation of the public-private
10 finance initiative pursuant to section 1 of this Act;
11 and

12 (2) The funding of three staff positions.

13 The sum appropriated shall be expended by the department of
14 business, economic development, and tourism for the purposes of
15 this Act.

16 SECTION 6. If any provision of this Act, or the
17 application thereof to any person or circumstance, is held
18 invalid, the invalidity does not affect other provisions or
19 applications of the Act that can be given effect without the
20 invalid provision or application, and to this end the provisions
21 of this Act are severable.



1 SECTION 7. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 8. This Act shall take effect on July 1, 2050, and
5 shall be repealed on July 1, 2018.



Report Title:

Public-private Finance Initiative; Pilot Project; Appropriation

Description:

Establishes the public-private finance initiative (PPIA). Requires the PPIA to initiate a pilot project. Appropriates funds for the PPIA. Effective July 1, 2050. Repeals on July 1, 2018. (SB3066 HD1)

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