
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 an efficient
2 transportation system can increase the quality of life of a
3 state's residents and the economic, social, and environmental
4 well-being of a state.

5 Authorizing private entities to undertake all or a portion
6 of the study, planning, design, development, financing,
7 acquisition, installation, construction, improvement, operation,
8 or maintenance of transportation systems, and facility projects
9 can improve transportation systems while providing a sound
10 economic investment opportunity for the private sector.

11 The purpose of this Act is to authorize the counties to
12 establish public-private partnerships for transportation to
13 facilitate:

14 (1) Establishing a well-defined mechanism to facilitate
15 the collaboration and creative cost and risk sharing
16 in transportation projects between public and private
17 partners;



- 1 (2) Bringing innovation from the private sector to address
2 transportation needs within the State and access
3 specialized development, financing, design,
4 construction, management, operations, management
5 services, and techniques available in the private
6 sector;
- 7 (3) Reducing the public cost of project delivery and
8 services for eligible facilities;
- 9 (4) Expediting project delivery;
- 10 (5) Increasing private investment in public
11 infrastructure;
- 12 (6) Using funding sources that are financially
13 advantageous and in the public interest;
- 14 (7) Encouraging life-cycle efficiencies in transportation
15 projects;
- 16 (8) Providing savings and better use of public resources
17 by increasing private investment in public facilities
18 and enhancing capital formation for large projects;
- 19 (9) Developing eligible facilities with the cooperation,
20 consultation, and support of affected communities and
21 county jurisdictions;



1 (10) Soliciting, evaluating, negotiating, and administering
 2 public-private agreements with the private sector
 3 relating to the planning, financing, development,
 4 design, construction, upgrading, reconstruction,
 5 operation, or maintenance of transportation systems
 6 and facilities; and

7 (11) Obtaining assistance in the development of
 8 transportation systems and facilities from federal
 9 programs administered by the United States Department
 10 of Transportation.

11 The legislature intends that the powers granted to the
 12 department of transportation and the counties in this Act to be
 13 in addition to any other powers authorized under applicable law.

14 SECTION 2. The Hawaii Revised Statutes is amended by
 15 adding a new chapter to be appropriately designated and to read
 16 as follows:

17 "CHAPTER

18 PUBLIC-PRIVATE PARTNERSHIP IN TRANSPORTATION

19 § -1 Definitions. Whenever used in this chapter, unless
 20 the context otherwise requires:

21 "Department" means the state department of transportation.



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

9 "Private partner" means a person, entity, or organization
10 that is not the federal government, the State, a county, or a
11 unit of government.

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

16 "Unit of government" means any county or agency of that
17 county, any public corporation established under state law or
18 county ordinance, or any intergovernmental agency or
19 corporation.



1 § -2 **Rules.** The department, pursuant to chapter 91, may
2 adopt, amend, or repeal rules as it determines necessary to
3 effectuate this chapter.

4 § -3 **Project delivery methods.** Each county may provide
5 for the development or operation of eligible facilities using a
6 variety of project delivery methods and forms of agreement.

7 These methods may include:

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



1 § -4 Posting of conceptual proposals; public comment;
2 public access to procurement records. (a) Conceptual proposals
3 submitted to a county in accordance with this chapter shall be
4 posted by the responsible unit of government within thirty
5 working days after acceptance of the proposals in accordance
6 with chapter 103D. In addition to the posting requirements, at
7 least one copy of each proposal shall be made available for
8 public inspection. Nothing in this section shall be construed
9 to prohibit the posting of the conceptual proposals by
10 additional means to provide maximum notice to the public of the
11 opportunity to inspect the proposals. Prior to posting or
12 otherwise disclosing the conceptual proposal, the responsible
13 unit of government may redact information from the conceptual
14 proposal to the extent permitted by chapter 92F.

15 (b) In addition to the posting requirements of subsection
16 (a), for thirty days prior to entering into an interim or
17 comprehensive agreement, the responsible unit of government
18 shall provide an opportunity for public comment on the
19 proposals. The public comment period required by this
20 subsection may include a public hearing in the sole discretion
21 of the responsible unit of government.



1 (c) Once an interim agreement or a comprehensive agreement
2 has been executed, the responsible unit of government shall make
3 procurement records available for public inspection, upon
4 request. For the purposes of this subsection, procurement
5 records shall not be interpreted to include trade secrets or
6 confidential information that may be withheld from public
7 disclosure under chapter 92F.

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

11 § -5 Public-private partnership agreements. (a) In any
12 public-private partnership agreement for any eligible facility
13 under this chapter, each county may:

14 (1) Authorize the private partner to collect user fees,
15 tolls, fares, or similar charges, including without
16 limitation provisions that:

17 (A) Specify the technology to be used in the
18 facility;

19 (B) Establish circumstances under which the county
20 may receive a share of revenues from the user
21 fees, tolls, fares, or similar charges; and



- 1 (C) Govern enforcement of tolls, including the use of
2 cameras or other mechanisms to ensure that users
3 pay tolls that are due, and allowing the private
4 partner access to relevant state and county
5 databases to the extent necessary to collect and
6 enforce tolls;
- 7 (2) Allow for payments to be made by the county to the
8 private partner, including availability payments or
9 performance-based payments;
- 10 (3) Allow the county to accept payments of money and share
11 revenues with the private partner;
- 12 (4) Address the method of sharing risk management and
13 insurance for the project;
- 14 (5) Specify the method of sharing the costs of development
15 of the project;
- 16 (6) Allocate financial responsibility for cost overruns;
- 17 (7) Establish the damages to be assessed for
18 nonperformance;
- 19 (8) Establish performance criteria, incentives, or both;



- 1 (9) Address the acquisition of rights-of-way and other
2 property interests that may be required, including
3 provisions addressing the exercise of eminent domain;
- 4 (10) Establish recordkeeping, accounting, and auditing
5 standards to be used for the project;
- 6 (11) For a project that reverts to public ownership,
7 address responsibility for reconstruction or
8 renovations necessary for a facility to meet all
9 applicable government standards upon reversion of the
10 facility to public ownership;
- 11 (12) Provide for security and law enforcement;
- 12 (13) Identify any county specifications that must be
13 satisfied, including allowing the private partner to
14 request and receive authorization to deviate from
15 those specifications on a showing of need satisfactory
16 to the county;
- 17 (14) Require a private partner to provide performance and
18 payment bonds, parent company guarantees, letters of
19 credit, and other acceptable forms of security, the
20 penal sum or amount of which may be less than one
21 hundred per cent of the value of the contract involved



1 based upon the county's determination, made on a
2 facility-by-facility basis, of what is required to
3 adequately protect the State;

4 (15) Authorize the private partner to collect user fees,
5 tolls, fares, or similar charges to cover its costs
6 and provide for a reasonable rate of return on the
7 private partner's investment; provided that the
8 partnership agreement may include, but not be limited
9 to:

10 (A) Provisions for the charges to be collected
11 directly by the private partner or by a third
12 party engaged for that purpose;

13 (B) A formula for the adjustment of user fees, tolls,
14 fares, or similar charges during the term of the
15 agreement;

16 (C) A partnership agreement that does not include an
17 adjustment formula, provisions regulating the
18 private partner's return on investment; or

19 (D) A list of various traffic management strategies,
20 including without limitation:

21 (i) General purpose toll lanes;



- 1 (ii) High occupancy vehicle lanes where single or
- 2 low occupancy vehicles may "buy-in" to use
- 3 higher occupancy vehicle lanes by paying a
- 4 toll;
- 5 (iii) Lanes or facilities where the tolls may vary
- 6 during the course of the day or week or
- 7 according to levels of congestion
- 8 anticipated or experienced;
- 9 (iv) Any other traffic management strategies that
- 10 the county may determine appropriate on a
- 11 facility-by-facility basis; or
- 12 (v) Any combination of or variation on the
- 13 above; and
- 14 (16) Specify remedies available and dispute resolution
- 15 procedures, including but not limited to the right of
- 16 the private partner to institute legal proceedings to
- 17 obtain an enforceable judgment or award against the
- 18 county if a default by the county occurs, and
- 19 procedures for use of dispute review boards,
- 20 mediation, facilitated negotiation, arbitration, and
- 21 other alternative dispute resolution procedures.



1 (b) Notwithstanding any other provision of state law or
2 rule or county ordinance or rule, each county may enter into
3 agreements with any private partner that includes provisions
4 described in subsection (a).

5 § -6 **Fines; toll evaders.** Each county that provides for
6 the development or operation of eligible facilities shall
7 establish fines for any motorist who evades the payment of an
8 appropriate levied toll on any toll highway built, operated,
9 owned, or financed under this chapter.

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



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

9 § -8 Funding and financing. (a) The development or
10 operation of an eligible facility may be funded from any lawful
11 source, including:

- 12 (1) The proceeds of grant anticipation revenue bonds
13 authorized by 23 United States Code Section 122 or any
14 other applicable federal or state law;
- 15 (2) Grants, loans, loan guarantees, lines of credit,
16 revolving lines of credit, or other arrangements
17 available under the Transportation Infrastructure
18 Finance and Innovation Act under 23 United States Code
19 Section 601 or any other federal or state law;
- 20 (3) Federal, state, or county revenues;



1 (4) User fees, tolls, fares, charges, lease proceeds,
2 rents, availability payments, gross or net receipts
3 from sales, proceeds from the sale of development
4 rights, franchise fees, permit fees, or any other
5 lawful form of consideration;

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

9 (6) Any other forms of public and private capital as may
10 be available.

11 (b) As security for the payment of financing described in
12 this section, the revenues from the project may be pledged, but
13 no pledge of revenues shall constitute in any manner or to any
14 extent a general obligation of the State or any county. Any
15 financing may be structured on a senior, parity, or subordinate
16 basis to any other financing.

17 (c) Each county, and any other unit of government
18 authorized by a county, may issue toll revenue bonds to provide
19 funds for any project under this chapter.

20 (d) Each county may accept from the United States or any
21 of its agencies any funds that are available to the State or to



1 any other unit of government for carrying out the purposes of
2 this chapter, whether the funds are made available by grant,
3 loan, or other financing arrangement. Each county may enter
4 into any agreements and other arrangements with the United
5 States or any of its agencies that may be necessary, proper, and
6 convenient for carrying out the purposes of this chapter.

7 (e) Each county may accept from any source any grant,
8 donation, gift, or other form of conveyance of land, money,
9 other real or personal property, or other valuable thing made to
10 the State, the county, or another unit of government for
11 carrying out the purposes of this chapter.

12 (f) Any eligible facility may be funded in whole or in
13 part by contribution of any funds or property made by any
14 private partner or public sector partner that is a party to any
15 agreement under this chapter.

16 (g) Notwithstanding any other provision of state law or
17 rule or county ordinance or rule, federal, state, and county
18 funds may be combined with any private sector funds for any
19 project purposes.

20 § -9 Confidentiality and public disclosure. A proposer
21 of a public-private partnership agreement shall identify those

1 portions of the proposal or other submission that the proposer
 2 considers to be trade secrets or confidential commercial,
 3 financial, or proprietary information. The identified
 4 information shall be withheld from public disclosure to the
 5 extent permitted by chapter 92F.

6 § -10 Federal laws. If no federal funds are used to
 7 fund an eligible facility, the laws of the State, including this
 8 chapter, shall govern. Notwithstanding any provisions of this
 9 chapter, if federal funds are used to fund an eligible facility
 10 and applicable federal statutes or regulations conflict with
 11 this chapter or require provisions or procedures inconsistent
 12 with this chapter, the applicable federal statutes or
 13 regulations shall govern."

14 SECTION 3. This Act shall take effect on July 1, 2016.

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INTRODUCED BY:

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JAN 22 2016



H.B. NO. 2064

Report Title:

Public Private Partnerships; Transportation; Counties

Description:

Allows each county to enter into agreements with private entities to build, operate, own, or finance newly constructed transportation facilities including toll highways.

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