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



1 "CHAPTER

2 PUBLIC-PRIVATE PARTNERSHIP IN TRANSPORTATION

3 § -1 Definitions. Whenever used in this chapter, unless  
4 the context otherwise requires:

5 "Department" means the state department of transportation.

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

15 "Private partner" means a person, entity, or organization  
16 that is not the federal government, the State, a county, or a  
17 unit of government.

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



1 "Public-private partnerships in transportation program" or  
2 "program" means the program as provided in this chapter.

3 "Unit of government" means any department or agency of the  
4 State, any public corporation established under state law or  
5 county ordinance, or any intergovernmental agency or  
6 corporation.

7 **§ -2 Rules.** The department shall adopt, amend, or  
8 repeal rules as it determines necessary to effectuate this  
9 chapter. The rules adopted pursuant to chapter 91 shall have  
10 the force and effect of law.

11 **§ -3 Project delivery methods.** The department may  
12 provide for the development or operation of eligible facilities  
13 using a variety of project delivery methods and forms of  
14 agreement. Such methods may include without limitation:

- 15 (1) Predevelopment agreements leading to other  
16 implementing agreements;
- 17 (2) A design-build agreement;
- 18 (3) A design-build-maintain agreement;
- 19 (4) A design-build-finance-operate agreement;
- 20 (5) A design-build-operate-maintain agreement;



1 (6) An agreement providing for the private partner to  
2 design, build, operate, maintain, manage, or lease an  
3 existing, enhanced, upgraded, or new facility; and

4 (7) Such other project delivery method or agreement or  
5 combination of methods or agreements as in the  
6 determination of the department will serve the public  
7 interest.

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



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

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

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

18           (e) A responsible unit of government and any independent  
19 review panel appointed to review information and advise the  
20 responsible unit of government may hold a meeting closed to the  
21 public for the purpose of considering records exempt from



1 disclosure; provided that the meetings are held in accordance  
2 with the procedural requirements of sections 92-4 and 92-5.

3       **§ -5 Public-private partnership agreements.** (a) In any  
4 public-private partnership agreement for any eligible facility  
5 under this chapter, the department may:

6       (1) Authorize the private partner to collect user fees,  
7       tolls, fares, or similar charges, including, without  
8       limitation, provisions:

9           (A) Specifying the technology to be used in the  
10          facility;

11          (B) Establishing circumstances under which the  
12          department may receive a share of revenues from  
13          such charges; and

14          (C) Governing enforcement of tolls, including use of  
15          cameras or other mechanisms to ensure that users  
16          pay tolls that are due, and allowing the private  
17          partner access to relevant state and county  
18          databases to the extent necessary to collect and  
19          enforce tolls;

20       (2) Allow for payments to be made by the State to the  
21       private partner, including but not limited to  
22       availability payments or performance-based payments;



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



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



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



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

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

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

19 **§ -7 Police powers; violations of law.** (a) All police  
20 officers and other law enforcement officers having police powers  
21 of the State and of each affected county shall have the same  
22 powers and jurisdiction within the limits of the eligible



1 facility that they have in their respective areas of  
2 jurisdiction, and these officers shall have access to the  
3 eligible facility at any time for the purpose of exercising  
4 their powers and jurisdiction. This authority shall not extend  
5 to the private offices, buildings, garages, and other  
6 improvements of the private partner to any greater degree than  
7 the police power applies to any other private buildings and  
8 improvements.

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

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



- 1 (1) The proceeds of grant anticipation revenue bonds  
2 authorized by 23 United States Code Section 122 or any  
3 other applicable federal or state law;
- 4 (2) Grants, loans, loan guarantees, lines of credit,  
5 revolving lines of credit, or other arrangements  
6 available under the Transportation Infrastructure  
7 Finance and Innovation Act under 23 United States Code  
8 Section 181 or any other federal or state law;
- 9 (3) Federal, state, or county revenues;
- 10 (4) User fees, tolls, fares, charges, lease proceeds,  
11 rents, availability payments, gross or net receipts  
12 from sales, proceeds from the sale of development  
13 rights, franchise fees, permit fees, or any other  
14 lawful form of consideration;
- 15 (5) Private activity bonds as described by 26 United  
16 States Code Section 142(a)(15) and other forms of  
17 private capital; and
- 18 (6) Any other forms of public and private capital as may  
19 be available.
- 20 (b) As security for the payment of financing described in  
21 this section, the revenues from the project may be pledged, but  
22 no such pledge of revenues shall constitute in any manner or to



1 any extent a general obligation of the State or any county. Any  
2 financing may be structured on a senior, parity, or subordinate  
3 basis to any other financing.

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

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

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

20 (f) Any eligible facility may be funded in whole or in



1 part by contribution of any funds or property made by any  
2 private partner or public-sector partner that is a party to any  
3 agreement entered into under this chapter.

4 (g) Federal, state, and county funds may be combined with  
5 any private-sector funds for any project purposes,  
6 notwithstanding any other provision of state law or rule or  
7 county ordinance or regulation.

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

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

22 SECTION 3. This Act shall take effect on July 1, 2020.



**Report Title:**

Public Private Partnerships; Transportation

**Description:**

Allows the State to enter into agreements with private entities to build, operate, own, or finance transportation facilities including toll highways. (HB70 HD3)

