

EXECUTIVE CHAMBERS

HONOLULU

June 24, 2002

STATEMENT OF OBJECTIONS TO SENATE BILL NO., 2306

Honorable Members
Twenty-First Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 2306, entitled "A Bill for an Act Relating to Transportation."

The purposes of this bill are to provide rent relief to state airport concessionaires and authorize the State to assess passenger facility charges.

HISTORY. In response to the severe financial losses suffered by airport concessionaires as a result of the decline in air travel caused by the September 11, 2001, terrorist attacks, I called the State Legislature into special session to provide emergency relief. The Legislature responded by passing emergency legislation that I signed into law. This emergency legislation, which expired on April 30, 2002, provided \$26.5 million in rent relief to the airport concessionaires.

At the 2002 regular legislative session, lobbyists for the airport concessionaires lobbied the Legislature for more emergency rent relief. The State Administration, through its Department of Transportation, proposed extending the emergency legislation, which expired on April 30, 2002, for another six months. The proposal was rejected by the airport concessionaires, who instead proposed legislation that would give them permanent relief. In spite of warnings by the State that the proposed legislation was unacceptable because it would put the State at a severe disadvantage, the Legislature approved

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Senate Bill No. 2306 -- the bill favored by the airport concessionaires.

OBJECTIONS. This bill is objectionable because it mandates the State to take actions designed to virtually guarantee that airport concessions stay in business at the expense of the public. In other words, the State is being required to create a new favored business class by guaranteeing that they do not fail.

The bill mandates the State to provide rent relief to the airport concessionaires, while taking away the State's discretion to determine if such rent relief is appropriate and on what terms. It makes rent relief a virtual entitlement to the concessionaires, whether or not that relief would jeopardize the financial integrity of the State's airport system and it does not fully address concerns raised by the Federal Aviation Administration.

As the property owner or lessor, in cases in which the lessee seeks to renegotiate the terms of a contract obtained by competitive bid, the State should have the discretion to determine if relief requested is warranted and at what level. These rights are basic to the renegotiation of any contract. Senate Bill No. 2306 denies the State these rights.

If the State does not have the discretion to determine the appropriateness of rent relief, it would be virtually impossible for the State to guarantee the financial integrity of the Airport Revenue Fund, to avoid possible sanctions by the Federal Aviation Administration, and to maintain its agreements with bond holders.

Although the bill requires that actions taken must not jeopardize the State's ability to receive federal aid or comply with obligations owed to bondholders, there are no express limits on the amount or duration of relief, which means the State could be forced to drain its airport fund to ensure that airport concessions stay in business.

Moreover, if the State cannot grant rent relief without threatening the financial integrity of the Airport Fund and the State's Airports System, the airport concessionaires can then demand that the State terminate their contracts without forfeiture of their performance bonds and that they be allowed to bid if a new contract is again put out to bid. Although the State can replace an airport concessionaire that demanded its contract be terminated, the State can do so only if it finds a new concessionaire that is willing to pay at least ten percent more in rent -- otherwise the contract must be rebid.

It should be noted that three of the eighteen airport concessionaires affected have leases that can be terminated without penalty and with only 30 days' notice to the State. The other concessionaires are all multi-national enterprises with overall annual sales in the range of tens or hundreds of millions of dollars. These concessionaires have already benefited from the \$26.5 million in rent relief granted by the State and have the ability to withstand the post September 11, 2001, downturn in our economy far better than the thousands of other Hawaii businesses, big and small, which have not had any rent relief.


It is difficult to understand how a bill that puts the State at such a great disadvantage could be justified.

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Legislators who object to my veto of this bill should ask themselves whether they would subject their private employers, their own businesses, or any other private entity to which they have some relationship to the same terms and conditions that this bill imposes on the State of Hawaii. I can think of no conditions under which they would.

For the foregoing reasons, I am returning Senate Bill No. 2306 without my approval.

Respectfully,


BENJAMIN J. CAYETANO
Governor of Hawaii

P R O C L A M A T I O N

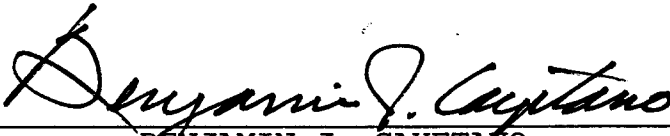
WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented to the Governor after adjournment sine die of the Legislature; and

WHEREAS, Senate Bill No. 2306, entitled "A Bill for an Act Relating to Transportation," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 2306 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, BENJAMIN J. CAYETANO, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 2306 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 24th day
of June, 2002.


BENJAMIN J. CAYETANO
Governor of Hawaii