

JAN 27 2021

A BILL FOR AN ACT

RELATING TO CONCESSIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that this Act is
2 necessary due to the significant hardship that Hawaii is
3 experiencing, especially during the ongoing coronavirus disease
4 2019 (COVID-19) pandemic. The legislature further finds that
5 the department of transportation does not have the same powers
6 to grant relief to Hawaii airport concessions that most other
7 airports across the United States have whenever significant
8 hardships occur. Hawaii's airport concessions are currently
9 suffering more significant hardships than many other airport
10 concessions across the United States that are heavily dependent
11 on tourism. Hawaii's chief economist has stated that 2019
12 tourism levels may not return for six years following the
13 beginning of the COVID-19 pandemic in Hawaii, which occurred
14 around March 15, 2020.

15 The legislature recognizes that airport concessions play a
16 major role in supporting Hawaii's public airports.
17 Historically, airport concessions have, on average, provided



1 fifty per cent, and occasionally up to seventy per cent, of the
2 necessary operating revenues for Hawaii's public airports.
3 Hawaii's airports are supported by special funds rather than by
4 taxpayer dollars. Federal Aviation Administration officials
5 have recognized this importance and encouraged airport
6 operators, like the department of transportation, to be creative
7 and think outside the box to provide varied relief measures,
8 other than just temporary rent relief, to airport concessions.
9 The legislature likewise so encourages the department of
10 transportation. The purpose of these relief measures in part is
11 to encourage concessionaires to remain in their current
12 locations in spite of any financial hardships and be ready and
13 able to serve those passengers that are beginning to return to
14 the airports.

15 This Act provides the department with the discretion and
16 powers to address significant hardships as they occur or
17 continue, including those hardships caused by COVID-19, and to
18 not delay until the department of transportation has the
19 discretion and power to take corrective action. The legislature
20 expects that, when exercising this discretionary power, the
21 department of transportation will timely respond to significant



1 hardships in a fashion that is generally fair to all and does
2 not favor one airport tenant or group of tenants, regardless of
3 size, over others unless warranted.

4 Accordingly, the purpose of this Act is not to require any
5 type of relief or action, but rather to provide the department
6 of transportation broad flexibility and broad discretion to
7 timely address significant hardships and to grant relief to
8 airport concessions.

9 SECTION 2. Section 102-10, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**S102-10 Modification of contract terms.** [~~It~~] (a)
12 Notwithstanding any other law to the contrary, if during the
13 term of the contract [and], including [contracts which have] any
14 type of contract that has been executed [and are] or is
15 presently in force[and there], or both:

16 (1) There has been a reduction of fifteen per cent or more
17 in the volume of business of the concessionaire for a
18 period of sixty days or more, computed on the average
19 monthly gross income for the eighteen months [~~just~~
20 ~~prior to~~] immediately preceding the period or [~~as long~~
21 ~~as~~] the length of time that the concessionaire has



1 been in the business, whichever [~~period~~] is shorter,
2 and [~~such~~] the reduction, as determined by the officer
3 letting the contract, is caused by construction work
4 conducted during the period of time on, or within or
5 contiguous to, the public property upon which the
6 concession is located by either the state or county
7 governments, or both, the officer, with the approval
8 of the governor in the case of a state officer and the
9 chief executive of the respective county in the case
10 of a county officer, may modify any of the terms of
11 the contract, including the agreed upon rent, for a
12 period which will allow the concessionaire to recoup
13 the amount lost by [~~such~~] the reduction; [~~provided~~
14 ~~that if~~] and

- 15 (2) A significant hardship is anticipated or has occurred
16 to one or more airport concessions, as determined by
17 the officer letting the contract, the officer, with
18 the approval of the governor, shall have the
19 discretion to grant recoupment for the amount lost as
20 may be applicable for the period that the
21 concessionaire has been in business; provided that the



1 recoupment may periodically include one or more of the
2 following:

3 (A) Entering into a new contract; and

4 (B) Modifying the terms of any type of existing
5 contract, including without limitation holdover
6 agreements or revocable permits; the adjustment
7 of rent; the granting of an extension of the
8 contract's term with or without any further
9 required investments or obligations; permitting
10 the assumption or transfer, or both, of a
11 contract; permitting the withdrawal of the
12 contract without a concessionaire being in
13 default or barred from doing business with the
14 State, or both; and any other form of relief to a
15 concession suffering significant hardship.

16 (b) Subsection (a) shall not apply:

17 (1) If the contract includes provisions allowing
18 modification for all of the [above] contingencies~~[~~
19 ~~this section shall not be applicable thereto; provided~~
20 ~~further that this provision shall not apply to] and~~ and
21 types of relief described in this section; and



1 (2) To any particular concession if the application
2 [~~there~~] may impair any contractual obligations with
3 bondholders of the State or counties or with any other
4 parties.

5 (c) For airport concessions, the term of the contract
6 shall not be more than twenty years, which shall include both
7 the remaining term of the contract and any extension thereof.

8 (d) To the extent that the provisions of chapter 171
9 conflict with the purpose and intent of this section, chapter
10 171 shall not apply to airport concessions.

11 (e) For purposes of this section, "significant hardship"
12 includes one or more of the following that may occur or
13 continue, or both, from time to time:

14 (1) A reduction of:

15 (A) Fifteen per cent or more in the volume of
16 business of the concessionaire for a period of
17 sixty days or more, computed on the average
18 monthly gross income for the eighteen months
19 immediately preceding the period or the length of
20 time that the concessionaire has been in
21 business, whichever is shorter; and



1 (B) Ten per cent or more in the volume of business of
2 the concessionaire for a period of one hundred
3 eighty days or more, computed on the average
4 monthly gross income for the period one hundred
5 eighty days immediately preceding the period or
6 the length of time that the concessionaire has
7 been in business, whichever is shorter;

8 (2) A delay of more than ninety days in the anticipated
9 substantial completion of premises being constructed
10 by the State resulting in less time for the
11 concessionaire to construct, occupy, and amortize the
12 concessionaire's tenant improvements over the
13 remaining term of the concessionaire's contract with
14 the State;

15 (3) Unexpected circumstances, including but not limited to
16 rising international tariffs, construction site or
17 design problems, or other circumstances resulting in
18 the infeasibility or other significant hardship for
19 the concessionaire to proceed with the improvements
20 described in the concessionaire's contract with the
21 State;



- 1 (4) Situations in which one or more concession contracts
2 have more favorable relief terms to address financial
3 or operating hardships when compared to the relief
4 terms of other concession contracts;
- 5 (5) Situations in which one or more of a concessionaire's
6 locations are in default, withdrawn, or in the process
7 of being transferred and a sublessee, a joint venture
8 partner, or licensee generating less than twenty-five
9 per cent or less of the total gross receipts of the
10 concessionaire will not be allowed to continue
11 operations and amortize the cost of the sublessee,
12 joint venture partner, or licensee's concession
13 improvements over the remaining term of the sublessee,
14 joint venture partner, or licensee's contract with the
15 concessionaire; or
- 16 (6) Situations in which an extension of time on the
17 contract would assist the concessionaire in the
18 recoupment of the concessionaire's loss or the loss of
19 time for the concessionaire to amortize the cost of
20 the concession improvements, or both, due to the loss



1 of volume of business as described in paragraphs
2 (1)(A) and (1)(B)."

3 SECTION 3. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 4. This Act shall take effect upon its approval.

6 INTRODUCED BY: 



S.B. NO. 1308

Report Title:

DOT; Airport Concessions; Substantial Hardship; Contracts

Description:

Provides the department of transportation with more flexibility and discretion to address substantial hardship situations that impact airport concession contracts.

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