
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 like airports on the
2 continental United States, the department of transportation
3 needs flexibility and discretion to grant relief to airport
4 concessions in times of hardship, such as the coronavirus
5 disease 2019 (COVID-19) pandemic. The current lack of
6 flexibility resulted in the department of transportation not
7 being able to grant the same relief to all airport concessions
8 who suffered through the COVID-19 pandemic. This resulted in
9 unfair treatment as some concessions received an extension on
10 their contracts, while others did not receive any form of
11 relief.

12 The legislature further finds that unlike Hawaii, some
13 airports in the continental United States are granted the
14 flexibility needed to offset any hardship faced by concessions,
15 such as offering an extension of a contract or authorizing a
16 modification to an existing contract to allow extra time to
17 recoup its losses due to an unexpected crisis. Other airports



1 have recognized that in times of crises, if a concession closes
2 it will take a long period of time to find a replacement to
3 service passengers. For Hawaii, it typically takes eighteen to
4 twenty-four months, or longer, to find and replace a concession.
5 In addition, temporary operators with temporary facilities often
6 generate more complaints and problems.

7 The legislature also finds that the State's antiquated laws
8 and contract provisions must be modified to address any unfair
9 treatment of concessions and to allow the department of
10 transportation the ability to better support airport
11 concessions.

12 The legislature recognizes airport concession revenues are
13 very important. Historically, airport concessions have averaged
14 about fifty per cent of airport operation revenues, and has, at
15 least on one occasion, reached as high as seventy per cent.

16 The legislature further recognizes that concessions are
17 unique and very challenging businesses as they have term limits,
18 are dependent on travelers, and cannot appeal to the general
19 public like other local businesses. Airport concessions have
20 suffered devastating losses, and the levels of pre-COVID-19



1 passengers are not expected to return until the beginning of
2 2026, according to the State's chief economist.

3 The legislature additionally finds that the unpredictable
4 and devastating hardships of COVID-19 and its variants are a
5 wakeup call and require the development of new business models
6 between airports and concessions. While the department of
7 transportation expeditiously utilized direct federal relief
8 funds to support airport concessions, the legislature is
9 concerned that the department has not yet moved forward in the
10 development of new concession-business models. In June 2021,
11 this position was strongly advocated for all continental United
12 States airports by national organizations such as American
13 Association for Airport Executives, Airports Council
14 International - North America, and the Airport Restaurant and
15 Retail Association.

16 The intent of this Act is to give the department of
17 transportation flexibility and discretion to grant relief like
18 other continental United States airports in times of crisis.
19 While this Act does not mandate that the department of
20 transportation provide any relief, it gives the department the
21 option to consider all types of relief opportunities.



1 Accordingly, the purpose of this Act is to provide the
2 department of transportation flexibility and discretion to
3 provide fair and important relief to concessions who are
4 struggling in times of unpredictable crisis to remain in place
5 and provide services to passengers.

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

8 "**§102-10 Modification of contract terms.** [~~It~~] (a)
9 Notwithstanding any other law to the contrary, if during the
10 term of the contract [and], including [contracts which have] any
11 type of contract that has been executed [and are] or is
12 presently in force[and there]:

13 (1) There has been a reduction of fifteen per cent or more
14 in the volume of business of the concessionaire for a
15 period of sixty days or more, computed on the average
16 monthly gross income for the eighteen months [~~just~~
17 ~~prior to~~] immediately preceding the period or [~~as long~~
18 ~~as~~] the length of time that the concessionaire has
19 been in the business, whichever period is shorter, and
20 [~~such~~] the reduction, as determined by the officer
21 letting the contract, is caused by construction work



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

12 (2) A significant hardship has occurred to one or more
13 airport concession, as determined by the officer
14 letting the contract, the officer, with the approval
15 of the governor, shall have the discretion to grant,
16 in any form as may be applicable, recoupment for the
17 amount lost as may be applicable for the period that
18 the concessionaire has been in business; provided that
19 the form of recoupment may periodically include one or
20 more of the following:

21 (A) Entering into a new contract;



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

13 (C) A requirement for the airport concession to
14 recall employees who were laid off due to an act
15 of God.

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~~
21 types of relief described in this section; and



1 (2) To any particular concession if the application
2 [thereto] 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 any contract
6 shall not be more than years, which shall include the
7 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 burden for the
19 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 paragraphs (1) (A)
2 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 on July 1, 2050.

6



H.B. NO. 1953
H.D. 2

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. Effective 7/1/2050. (HD2)

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