

JAN 21 2022

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

11 The legislature further finds that unlike Hawaii, some
12 airports on the mainland are granted the flexibility needed to
13 offset any hardship faced by concessions, such as offering an
14 extension of a contract or authorizing a modification to an
15 existing contract to allow extra time to recoup its losses due
16 to an unexpected crisis. Other airports have recognized that in
17 times of crises, if a concession closes it will take a long



S.B. NO. 2402

1 period to find a replacement to service passengers. For Hawaii,
2 it typically takes eighteen to twenty-four months, or longer, to
3 find and replace a concession. In addition, temporary operators
4 with temporary facilities often generate more complaints and
5 problems.

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

11 The legislature recognizes airport concession revenues are
12 very important. Historically, airport concessions have averaged
13 about fifty per cent of airport operation revenues, and one time
14 going as high as seventy per cent.

15 The legislature further recognizes that concessions are
16 unique and very challenging businesses as they have term limits,
17 are dependent on travelers, and cannot appeal to the general
18 public like other local businesses. Airport concessions have
19 suffered devastating losses and the levels of pre-COVID-19
20 passengers are not expected to return until the beginning of
21 2026, according to the State's chief economist.



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

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

20 Accordingly, the purpose of this Act is to provide the
21 department of transportation flexibility and discretion to



1 provide fair and important relief to concessions who are
2 struggling in times of unpredictable crisis to remain in place
3 and provide services to passengers.

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

6 "**§102-10 Modification of contract terms.** [~~It~~] (a)
7 Notwithstanding any other law to the contrary, if during the
8 term of the contract [and], including [contracts which have] any
9 type of contract that has been executed [and are] or is
10 presently in force[and there] by verbal agreement, or both:

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



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

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

19 (A) Entering into a new contract; and

20 (B) Modifying the terms of any type of existing
21 contract, including without limitation holdover



1 agreements, revocable permits, or by verbal
2 agreement; the adjustment of rent; granting of an
3 extension of the contract's term with or without
4 any further required investments or obligations;
5 permitting the assumption or transfer, or both,
6 of a contract; permitting the withdrawal of the
7 contract without a concessionaire being in
8 default or barred from doing business with the
9 State, or both; and any other form of relief to a
10 concession suffering significant hardship.

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

12 (1) If the contract includes provisions allowing
13 modification for all of the [above] contingencies[
14 this section shall not be applicable thereto; provided
15 further that this provision shall not apply to] and
16 types of relief described in this section; and

17 (2) To any particular concession if the application
18 [thereto] may impair any contractual obligations with
19 bondholders of the State or counties or with any other
20 parties.



S.B. NO. 2402

1 (c) For airport concessions, the term of the contract
2 shall not be more than twenty-five years, which shall include
3 the remaining term of the contract and any extension thereof.

4 (d) To the extent that the provisions of chapter 171
5 conflict with the purpose and intent of this section, chapter
6 171 shall not apply to airport concessions.

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

10 (1) A reduction of:

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

18 (B) Ten per cent or more in the volume of business of
19 the concessionaire for a period of one hundred
20 eighty days or more, computed on the average
21 monthly gross income for the period one hundred



1 eighty days immediately preceding the period or
2 the length of time that the concessionaire has
3 been in business, whichever is shorter;

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

11 (3) Unexpected circumstances, including but not limited to
12 rising international tariffs, construction site or
13 design problems, or other circumstances resulting in
14 the infeasibility or other significant burden for the
15 concessionaire to proceed with the improvements
16 described in the concessionaire's contract with the
17 State;

18 (4) Situations in which one or more concession contracts
19 have more favorable relief terms to address financial
20 or operating hardships when compared to the relief
21 terms of other concession contracts;



1 (5) Situations in which one or more of a concessionaire's
2 locations are in default, withdrawn, or in the process
3 of being transferred and a sublessee, a joint venture
4 partner, or licensee generating less than twenty-five
5 per cent or less of the total gross receipts of the
6 concessionaire will not be allowed to continue
7 operations and amortize the cost of the sublessee,
8 joint venture partner, or licensee's concession
9 improvements over the remaining term of the sublessee,
10 joint venture partner, or licensee's contract with the
11 concessionaire; or

12 (6) Situations in which an extension of time on the
13 contract would assist the concessionaire in the
14 recoupment of the concessionaire's loss or the loss of
15 time for the concessionaire to amortize the cost of
16 the concession improvements, or both, due to the loss
17 of volume of business as described paragraphs (1) (A)
18 and (1) (B)."

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

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



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INTRODUCED BY:

Clem



S.B. NO. 2402

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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