

ACT 90

S.B. NO. 2261-82

A Bill for an Act Relating to Transportation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that tourism is the leading source of jobs and income for the people of the State of Hawaii. Therefore, tourism directly and indirectly provides a leading source of all state revenues. The present decline in the sugar and pineapple industries foreshadows an even greater importance of tourism to the State in the near future.

Today, virtually all of Hawaii's visitors arrive by air and make use of the Honolulu International Airport. The legislature finds that the operation of a functional, well-planned, and properly maintained Honolulu International Airport is therefore a matter of compelling interest.

The State of Hawaii receives substantial revenues from the sales of in-bond merchandise to foreign-bound travelers departing from Honolulu International Airport, revenues that go to the administration of the facility and that are vital to its well-being. Additionally, a high-quality, duty-free operation at the Honolulu International Airport can in itself be an attraction of some magnitude to foreign visitors.

Therefore, the legislature finds that the necessity and importance of maintaining a healthy and high-quality, duty-free operation in the State cannot be understated.

However, the legislature also finds that the duty-free industry is as fragile as it is lucrative, subject to great potential harm by the forces and strains of unfettered competition.

Prior to January 1, 1981, the right to sell and deliver in-bond merchandise to foreign-bound travelers departing from Honolulu International Airport was an exclusive one which was granted pursuant to a competitive bid. On January 1, 1981, two competing contractors began to sell and deliver in-bond merchandise to Honolulu International Airport under separate seven and one-half year contracts with the department of transportation.

On September 12, 1981, approximately eight and one-half months after the two contractors had commenced operations, one of the contractors withdrew from the contract because of difficulty meeting its financial guarantee to the State. The recent withdrawal of one of the contractors is a serious concern of the legislature in that the State receives substantial revenues from the sale and delivery of in-bond merchandise at Honolulu International Airport.

The legislature has reexamined Act 243-81 and finds it to be in the best interest of the State to allow the in-bond marketplace to continue to operate under the protection of anti-trust immunity legislation.

Therefore, the legislature finds it is a matter of compelling state interest to displace unfettered business competition in the in-bond merchandise marketplace in order to maintain the health and quality of the industry and the ultimate health of the economy of the entire State.

The purpose of this bill is to provide a means to displace unfettered business competition in the duty-free industry in Hawaii and to effectuate the above-articulated state interests by limiting the number in-bond operations to only contractor, by providing that the department confer no right nor suffer nor allow any person to offer to sell, sell or deliver in-bond merchandise at Honolulu International Airport except as cargo, and by requiring that the State actively supervise the operations as a substitute for the competitive discipline of a free market economy.

SECTION 2. Section 261-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read:

“(a) Under department operation. In operating an airport or air navigation facility owned or controlled by the department of transportation, or in which it has a right or interest, the department may enter into contracts, leases, licenses, and other arrangements with any person:

- (1) Granting the privilege of using or improving the airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes;
- (2) Conferring the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility;
- (3) Making available services, facilities, goods, commodities, or other things to be furnished by the department or its agents at the airport or air navigation facility; or
- (4) Granting the use and occupancy on a temporary basis by license or otherwise any portion of the land under its jurisdiction which for the time being may not be required by the department so that it may put the area to economic use and thereby derive revenue therefrom.

All the arrangements shall contain a clause that the land may be repossessed

by the department when needed for aeronautics purposes upon giving the tenant temporarily occupying the same not less than thirty days' notice in writing of intention to repossess.

Except as otherwise provided in this section, in each case mentioned in paragraphs (1), (2), (3), and (4), the department may establish the terms and conditions of the contract, lease, license, or other arrangement, and may fix the charges, rentals, or fees for the privileges, services, or things granted, conferred, or made available, for the purpose of meeting the expenditures of the statewide system of airports set forth in section 261-5(a), which includes expenditures for capital improvement projects approved by the legislature. Such charges shall be reasonable and uniform for the same class of privilege, service, or thing.

The department shall enter into [separate contracts] a contract with no more than [two persons ("contractors")] one person ("contractor") for the sale and delivery of in-bond merchandise at Honolulu International Airport, in the manner provided by law. [Each such] The contract shall confer the right to operate and maintain commercial facilities within the airport for the sale of in-bond merchandise and the right to deliver to the airport in-bond merchandise for sale to departing foreign-bound passengers.

The department shall grant [such contracts] the contract pursuant to the laws of this State and may take into consideration:

- (1) The payment¹ to be made on in-bond merchandise sold at Honolulu International Airport and on in-bond merchandise displayed or sold elsewhere in the State and delivered to the airport;
- (2) The ability of the applicant to comply with all federal and state rules and regulations concerning the sale and delivery of in-bond merchandise; and
- (3) The reputation, experience, and financial capability of the applicant.

The department shall actively supervise the operation of the [contractors] contractor to insure its effectiveness. The department shall develop and implement such guidelines as it may find necessary and proper to actively supervise the operations of [such contractors,] the contractor, and shall include guidelines relating to the department's review of the reasonableness of [contractors'] contractor's price schedules, quality of merchandise, merchandise assortment, operations, and service to customers.

Apart from the [contracts] contract described above, [during the period ending June 30, 1982,] the department shall confer no right upon nor suffer nor allow any person to offer to sell, sell, or deliver in-bond merchandise at Honolulu International Airport[.]; provided that this section shall not prohibit the delivery of in-bond merchandise as cargo to the Honolulu International Airport."

SECTION 3. Section 5, Act 243, Session Laws of Hawaii 1981, is amended to read as follows:

"SECTION 5. This Act shall take effect upon its approval [and shall expire on June 30, 1982]."

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 5. This Act shall take effect upon its approval.
(Approved May 15, 1982.)

Notes

1. Formerly read "payments".