

ACT 201

S.B. NO. 3080

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 the September 11, 2001, terrorist attacks on the United States resulted in immediate decreases in the number of visitors to Hawaii. The attacks also increased the level of security and changed the way travelers are processed at Hawaii's airports.

Airport concessions depend in large part on passengers and visitors traveling through Hawaii's airports. The precipitous declines in the number of visitors to Hawaii and in the volume of pedestrian traffic allowed through the airport facilities had an immediate and drastic impact on various airport concessions following the events of September 11, 2001. While the department of transportation has taken steps to grant relief under its recent concession leases, there are still some concession leases in force that do not provide similar relief.

The legislature encourages the governor and department of transportation to provide fair and reasonable lease terms for airport concessions that provide concessionaires with relief in times of economic emergencies. The legislature believes that

this Act provides the governor and department with the discretion and additional flexibility necessary to grant relief.

The purpose of this Act is to:

- (1) Give the governor the ability to grant relief in times of economic emergency, by waiving or modifying the terms of an airport concessionaire's lease and obligations to the State, for those airport concession leases which do not contain provisions for relief; and
- (2) Provide the department of transportation with flexibility to negotiate airport florist and lei greeting service concession leases.

SECTION 2. Section 102-2, Hawaii Revised Statutes, is amended, by amending subsection (b) to read as follows:

“(b) The bidding requirements of subsection (a) shall not apply to concessions or space on public property set aside for the following purposes:

- (1) For operation of ground transportation services and parking lot operations at airports, except for motor vehicle rental operations under chapter 437D;
- (2) For lei vendors;
- (3) For airline and aircraft operations;
- (4) For automatic teller machines and vending machines, except vending machines located at public schools operated by blind or visually handicapped persons in accordance with section 302A-412;
- (5) For operation of concessions set aside without any charge;
- (6) For operation of concessions by handicapped or blind persons; except concessions operated in the public schools by blind or visually handicapped persons in accordance with section 302A-412;
- (7) For operation of concessions on permits revocable on notice of thirty days or less; provided that no such permits shall be issued for more than a one year period;
- (8) For operation of concessions or concession spaces for a beach service association dedicated to the preservation of the Hawaii beachboy tradition, incorporated as a nonprofit corporation in accordance with state law, and whose members are appropriately licensed or certified as required by law;
- (9) For operation of concessions at county zoos, botanic gardens, or other county parks which are environmentally, culturally, historically, or operationally unique and are supported, by nonprofit corporations incorporated in accordance with state law solely for purposes of supporting county aims and goals of the zoo, botanic garden, or other county park, and operating under agreement with the appropriate agency solely for such purposes, aims, and goals;
- (10) For operation of concessions that furnish goods or services for which there is only one source, as determined by the head of the awarding government agency in writing that shall be included in the contract file; ~~[and]~~
- (11) For operation of concession or concession spaces at the convention center under chapter 201B[-]; and
- (12) For airport florist services, lei greeting services, or florist and lei greeting services.’’

SECTION 3. Notwithstanding any law to the contrary, the governor may waive or modify a concessionaire's obligations to the State for airport concession leases in effect prior to September 11, 2001, which remain in effect as of the effective date of this Act and do not provide for adjustment of lease obligations in

response to adverse economic circumstances other than construction. Any relief granted shall be in amounts and upon such terms and conditions as determined by the governor, in the governor's sole discretion. As part of the authority granted to the governor hereunder, the governor or the department of transportation as authorized by the governor, may:

- (1) Renegotiate airport concession leases with concessionaires; and
- (2) Waive or modify any lease obligation or term upon such terms and conditions as the governor shall deem necessary to grant relief.

SECTION 4. If deemed necessary by the governor to implement the grant of relief in section 3, the governor may waive the effect of section 171-13, Hawaii Revised Statutes, to the extent necessary to implement the grant of relief.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval and shall be repealed on July 1, 2005; provided that section 102-2(b), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the approval of this Act.

(Approved July 10, 2004.)