

ACT 204

S.B. NO. 2461

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 although motor vehicle rental concessions at Hawaii's public airports contribute over \$30,000,000 a year in concession revenues to support Hawaii's public airports, the legislature in 2008 recognized that no facility improvements to those concessions would be made considering other airport priorities as to the use of the funds. Thus, in spite of years of discussions, the facilities over time have deteriorated and have not kept pace with motor vehicle rental facilities and services provided to visitors and residents at other public airports across the United States.

As a result, the legislature in 2008 passed Act 226, Session Laws of Hawaii 2008 (Act 226), which established a rental motor vehicle customer facility charge program similar to programs at more than one hundred other airports across the United States. Act 226 established a rental motor vehicle customer facility charge of \$1 per day. Act 226 also appropriated \$10,000,000 for planning, design, and some improvements. Recognizing the importance of the program to Hawaii's construction industry and economy, the legislature required the department of transportation to provide annual reports and timelines to ensure the "fast-tracking" of the facility projects and services.

The department has sought to fast-track the program in keeping with the legislative directive and, with the assistance of planners, designers, and other consultants, has completed initial designs and plans for the statewide program. The intent of this Act is to continue the fast-tracking by taking the program to the next level by increasing the rental motor vehicle customer facility charge to \$4.50 daily as recommended by consultants.

According to reports prepared by consultants, the increased charge of \$1 daily to \$4.50 daily is expected to fund the planned statewide program with no anticipated future increases. This fee and one-time step up is comparable to similar charges and programs at other airports. Delayed generation of revenues by stepping up these charges as proposed by some could likely result in the fee rising higher than \$5 daily, a scenario which must be avoided.

The charge of \$4.50 daily and revenues generated will strongly support the program as well as the bonds to finance the related construction projects, which will total about \$500,000,000, excluding finance charges. To avoid program delays, it is very important that the program have strong financing and a stream of revenues to attract the buyers of the bonds during these turbulent economic times. The one-time-increased charge, as opposed to stepped-up charges, will also result in as much as \$300,000,000 saved in finance costs. By fast-tracking the projects, it is anticipated that the program will benefit from about thirty per cent to forty per cent in construction cost savings.

As reported by consultants, the increased charge to \$4.50 daily is expected to have no adverse impact on rental motor vehicles at public airports or on public airport revenues. Other cities and airports have studied similar concerns and the studies have repeatedly found no correlation or adverse impact related to an increased charge. In fact, airports generally have seen an increase in revenues since the facilities attract motor vehicle rental companies to conduct their business at the airport.

The program does not require visitors and residents to rent a car at a public airport. Individuals will have the opportunity to rent vehicles from off-airport locations and thereby avoid having to pay the rental motor vehicle customer facility charge. To minimize the impact to travel agents and others marketing travel packages and quoting prices, this measure delays implementation of the increased rental motor vehicle customer facility charge until September 1, 2010.

While the goal of fast-tracking was to start the construction of the Honolulu international airport facility as early as the first quarter of 2010 and thereby provide critical jobs and support for Hawaii's economy, the failure to date of increasing the charge to \$4.50 daily has delayed the implementation of this start date as well as any related sale of bonds. Although this Act provides that the department has the discretion to raise and adjust the rental motor vehicle customer facility charge to meet the program's goals notwithstanding any law to the contrary, the department recently commented that the law needs to be clarified and that it cannot increase charges without proceeding through the administrative rulemaking process, which could take twelve months or longer. The legislature finds that it is preferable that it mandate the increase in charges so such minimum amount of customer facility charge fees, as recommended by the consultants, are collected by the department no later than September 1, 2010, to avoid and ensure that there are no further delays to the program if the department is not collecting the minimum customer facility charge fees by that date.

The intent of this Act is to continue the fast-tracking of this program and its projects, thereby providing critical jobs to Hawaii's residents and stimulating Hawaii's suffering economy by:

- (1) Raising the initial rental motor vehicle customer facility charge, as established by Act 226, Session Laws of Hawaii 2008, from \$1 daily

- to \$4.50 daily as recommended by consultants, so that the strength of the program can be maintained and the program can benefit from various anticipated costs savings;
- (2) Clarifying that the department of transportation can adjust the rental motor vehicle customer facility charge for companies without a concession at a state airport without having to utilize the administrative rulemaking process, as recently reported by the department; and
 - (3) Appropriating out of the rental motor vehicle customer facility charge special fund for rental car improvements statewide, the sum of \$71,800,000 for fiscal year 2010-2011, for planning, land and utility acquisition, design and program management, and construction to provide consolidated car rental facilities for the car rental agencies and other related improvements for the department of transportation's airport modernization program.

SECTION 2. Section 261-5.6, Hawaii Revised Statutes, is amended to read as follows:

“[H]§261-5.6 [H] Rental motor vehicle customer facility charge special fund.

(a) There is established in the state treasury the rental motor vehicle customer facility charge special fund to be administered by the director, into which shall be deposited all proceeds from the rental motor vehicle customer facility charge.

(b) Moneys in the rental motor vehicle customer facility charge special fund shall be used for enhancement, renovation, operation, and maintenance of existing rental motor vehicle customer facilities and the development of new rental motor vehicle customer facilities and related services at state airports, including:

- (1) Acquisition and maintenance of property or property rights for rental motor vehicle purposes;
- (2) Acquisition of equipment for and operation of a unified shuttle bus system to and from passenger terminals and the rental motor vehicle customer facilities;
- (3) Consultant fees;
- (4) Management, operation, and maintenance fees for rental motor vehicle customer facilities; and
- (5) Conceptual plans, plans, design, construction, operation, and maintenance of, or allocable to, the approved rental motor vehicle customer facilities and related services.

In planning the future needs and expenditures of these moneys, the director, or deputy designated by the director, shall, at least once a year, consult with lessors, as defined in section 437D-3, who are using or who in the future may use the facilities and services. No moneys shall be expended to plan, design, improve, enhance, acquire, or construct rental motor vehicle customer facilities, equipment, or services shared or to be shared by rental motor vehicle concessions at a state airport except as determined by the director; provided that the director shall not approve the expenditure of any moneys except for planning and design purposes to improve or construct rental [H]motor vehicle[H] customer facilities and related services located at an airport until a concession bid for rental motor vehicle concessions located at the public airport as of July 1, 2008, is first advertised, bid upon, and awarded by the department of transportation.

(c) The rental motor vehicle customer facility charge special fund shall be exempt from sections 36-30 and 103-8.5.

(d) Any resolution or certificate authorizing any issue of bonds relating to the use of the rental motor vehicle customer facility charge for an airport capital improvement program project approved by the legislature may establish other accounts within the rental motor vehicle customer facility charge special fund and require the transfer of the rental motor vehicle customer facility charge into the other accounts to pay debt service on the related bonds.”

SECTION 3. Section 261-7, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) Notwithstanding any laws to the contrary, the department may establish, levy, assess, and collect rental motor vehicle customer facility charges[; which] without regard to chapter 91, which shall be paid to the department periodically as determined by the department[; These charges] and shall be used to pay for, or finance on a long-term basis or other-term basis where appropriate, the design, planning, construction, and other uses of the rental motor vehicle customer facility charges as set forth by the rental motor vehicle customer facility charge special fund in section 261-5.6.

The rental motor vehicle customer facility charges shall be levied, assessed, and collected from all rental motor vehicle customers who benefit from the use of any type of rental motor vehicle facility or service provided by the department at a state airport.

Beginning September 1, 2010, the department shall levy, assess, and collect a rental motor vehicle customer facility charge of \$4.50 per day, or any portion of a day that a rental motor vehicle is rented or leased, by a rental motor vehicle concession where customers pick up and return rental vehicles to a facility at a state airport as determined by the director.

All rental motor vehicle customer facility charges shall be collected by lessors as defined in section 437D-3 and who operate a [ear] rental motor vehicle concession awarded by the department at a state airport; provided that customers of lessors, as defined in section 437D-3, who do not operate a [ear] rental motor vehicle concession at a state airport but whose customers benefit from the use of a [ear] rental motor vehicle facility or service at a state airport paid for by rental motor vehicle customer facility charges, shall collect from [such ear] rental motor vehicle customers, rental motor vehicle customer facility charges in an amount determined by the department in its sole discretion that represents a fair share of the cost and ongoing expenses relating to customer use of [such a] the facility or service[-] notwithstanding any law to the contrary and without regard to the requirements of chapter 91. All rental motor vehicle customer facility charges collected by [such] the lessor shall be paid to the department.

Notwithstanding any law to the contrary, the department may negotiate and contract the management, maintenance, and operations of the facility and related services with one or more airport concessions or their designee that share in the use of a rental motor vehicle customer facility at a state airport.”

SECTION 4. Act 226, Session Laws of Hawaii 2008, is amended by repealing section 9.

[“SECTION 9. Notwithstanding section 7 of this Act, the department of transportation, as of September 1, 2008, shall levy, assess, and collect a rental motor vehicle customer facility charge of \$1 per day, or any portion of a day that a rental motor vehicle is rented or leased, by a rental motor vehicle concession where customers pick up and return rental vehicles to a facility at a state airport as determined by the director. Moneys shall continue to be collected only until such time that the sum of \$25,000,000 is collected and deposited into the rental motor vehicle customer facility charge special fund.

~~The provisions of this section shall not impair, limit, or restrict the department of transportation from levying, assessing, establishing, and collecting rental motor vehicle customer facility charges as set forth in section 7 of this Act.”]~~

SECTION 5. There is appropriated out of the rental motor vehicle customer facility charge special fund established by section 261-5.6, Hawaii Revised Statutes, for rental car improvements statewide, the sum of \$71,800,000 or so much thereof as may be necessary for fiscal year 2010-2011, for planning, land and utility acquisition, design and program management, and construction to provide consolidated car rental facilities for the car rental agencies and other related improvements for the department of transportation’s airport modernization program; provided that the sum appropriated shall be reduced by any moneys appropriated by the legislature in the supplemental budget act of 2010 for such purposes.

The sum appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2010.

(Became law on July 6, 2010, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)