

ACT 104

H.B. NO. 1039

A Bill for an Act Relating to Transportation.

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

PART I

SECTION 1. Act 33, Special Session Laws of Hawaii 2009, sought to provide the department of transportation with the discretion and flexibility to provide relief to various airport concessionaires due to sudden, extraordinary, and severe economic events. The legislature recognized that the department of transportation's relief efforts were not fair to all concessionaires, in that some concessionaires had a self-adjusting eighty-five per cent guaranteed rent adjusting formula that provided relief for adverse economic events. Other conces-

sionaires had a guaranteed rent formula that does not allow for fluctuations in economic circumstances.

The legislature finds that the issues prompting the enactment of Act 33 have not been completely resolved as to all airport concessions, so inequities continue among various concessions. In addition, as a result of the recent devastating tsunami and related events taking place in Japan, a number of airport concessionaires are or will experience a sudden, extraordinary, and severe economic hardship as they do not have the same self-adjusting relief provisions of other airport concessionaires. It is estimated that these less fortunate concessions could experience a loss of revenues of about twenty-five per cent for twelve months or longer or until the number of visitors from Japan returns to the level that existed prior to the recent tsunami. Those gross revenue losses would be devastating to an airport concessionaire lacking the self-adjusting rent formula of other concessionaires.

The purpose of this part is to provide rent relief to airport concessionaires that have a guaranteed rent formula with the State.

SECTION 2. Act 33, Special Session Laws of Hawaii 2009, is amended as follows:

1. By adding a new section to read:

“SECTION 2A. The governor, or the director of transportation if so directed by the governor, shall have the discretion and authority to provide additional relief to airport concessionaires that do not have a self-adjusting lease formula as of March 31, 2011.”

2. By amending section 6 to read:

“SECTION 6. This Act shall take effect on July 1, 2009, and shall be repealed on ~~[July 1, 2011.]~~ July 1, 2013.”

PART II

SECTION 3. Section 251-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is levied and shall be assessed and collected each month a rental motor vehicle surcharge tax of ~~[\$2]~~ \$7.50 a day, except that ~~[for the period of September 1, 1999, to August 31, 2011.]~~ after June 30, 2012, the tax shall be \$3 a day, or any portion of a day that a rental motor vehicle is rented or leased. The rental motor vehicle surcharge tax shall be levied upon the lessor; provided that the tax shall not be levied on the lessor if:

- (1) The lessor is renting the vehicle to replace a vehicle of the lessee that is being repaired; and
- (2) A record of the repair order for the vehicle is retained either by the lessor for two years for verification purposes or by a motor vehicle repair dealer for two years as provided in section 437B-16.”

SECTION 4. Section 251-5, Hawaii Revised Statutes, is amended to read as follows:

“[§251-5]] Remittances. All remittances of surcharge taxes imposed under this chapter shall be made by cash, bank draft, cashier's check, money order, or certificate of deposit to the office of the taxation district to which the return was transmitted. The department shall deposit the moneys into the state treasury to the credit of the state highway fund~~[-];~~ provided that of the rental

motor vehicle surcharge taxes assessed and collected pursuant to section 251-2(a), the equivalent of \$4.50 of the tax assessed and collected per day shall be deposited into the state treasury to the credit of the general fund."

SECTION 5. Section 261-7, Hawaii Revised Statutes, is amended to read as follows:

"§261-7 Operation and use privileges. (a) 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.

(b) Except as otherwise provided in this section, in each case mentioned in subsection (a)(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.

(c) The department shall enter into a contract with no more than one person ("contractor") for the sale and delivery of in-bond merchandise at Honolulu International Airport, in the manner provided by law. 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 the contract pursuant to the laws of this State and may take into consideration:

- (1) The payment 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 contractor to ensure its effectiveness. The department shall develop and implement such guidelines as it may find necessary and proper to actively supervise the opera-

tions of the contractor, and shall include guidelines relating to the department's review of the reasonableness of contractor's price schedules, quality of merchandise, merchandise assortment, operations, and service to customers.

Apart from the contract described in this subsection, 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.

(d) The department, by contract, lease, or other arrangement, upon a consideration fixed by it, may grant to any qualified person the privilege of operating, as agent of the State or otherwise, any airport owned or controlled by the department; provided that no such person shall be granted any authority to operate the airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the department might not have undertaken under subsection (a).

(e) The department may fix and regulate, from time to time, reasonable landing fees for aircraft, including the imposition of landing surcharges or differential landing fees, and other reasonable charges for the use and enjoyment of the airports and the services and facilities furnished by the department in connection therewith, including the establishment of a statewide system of airports landing fees, a statewide system of airports support charges, and joint use charges for the use of space shared by users, which fees and charges may vary among different classes of users such as foreign carriers, domestic carriers, inter-island carriers, air taxi operators, helicopters, and such other classes as may be determined by the director, 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.

In setting airports rates and charges, including landing fees, the director may enter into contracts, leases, licenses, and other agreements with aeronautical users of the statewide system of airports containing such terms, conditions, and provisions as the director deems advisable.

If the director has not entered into contracts, leases, licenses, and other agreements with any or fewer than all of the aeronautical users of the statewide system of airports prior to the expiration of an existing contract, lease, license, or agreement, the director shall set and impose rates, rentals, fees, and charges pursuant to this subsection without regard to the requirements of chapter 91; provided that a public informational hearing shall be held on the rates, rentals, fees, and charges.

The director shall develop rates, rentals, fees, and charges in accordance with a residual methodology so that the statewide system of airports shall be, and always remain, self-sustaining. The rates, rentals, fees, and charges shall be set at such levels as to produce revenues which, together with aviation fuel taxes, shall be at least sufficient to meet the expenditures of the statewide system of airports set forth in section 261-5(a), including expenditures for capital improvement projects approved by the legislature, and to comply with covenants and agreements with holders of airport revenue bonds.

The director may develop and formulate methodology in setting the various rates, rentals, fees, and charges imposed and may determine usage of space, estimate landed weights, and apply such portion of nonaeronautical revenue deemed appropriate in determining the rates, rentals, fees, and charges applicable to aeronautical users of the statewide system of airports.

The rates, rentals, fees, and charges determined by the director in the manner set forth in this subsection shall be those charges payable by the aeronautical users for the periods immediately following the date of expiration of the

existing contract, lease, license, or agreement. If fees are established pursuant to this section, the department shall prepare a detailed report on the circumstances and rates and charges that have been established, and shall submit the report to the legislature no later than twenty days prior to the convening of the next regular session.

If a schedule of rates, rentals, fees, and charges developed by the director in accordance with this section is projected by the department to produce revenues which, together with aviation fuel taxes, will be in excess of the amount required to meet the expenditures of the statewide system of airports set forth in section 261-5(a), including expenditures for capital improvement projects approved by the legislature, and to comply with covenants and agreements with holders of airport revenue bonds, the department shall submit the schedule of rates, rentals, fees, and charges to the legislature prior to the convening of the next regular session of the legislature. Within forty-five days after the convening of the regular session, the legislature may disapprove any schedule of rates, rentals, fees, and charges required to be submitted to it by this section by concurrent resolution. If no action is taken by the legislature within the forty-five-day period the schedule of rates, rentals, fees, and charges shall be deemed approved. If the legislature disapproves the schedule within the forty-five-day period, the director shall develop a new schedule of rates, rentals, fees, and charges in accordance with this section within seventy-five days of the disapproval. Pending the development of a new schedule of rates, rentals, fees, and charges, the schedule submitted to the legislature shall remain in force and effect.

Notwithstanding any other provision of law to the contrary, the department may waive landing fees and other aircraft charges established under this section at any airport owned or controlled by the State whenever:

- (1) The governor declares a state of emergency; and
- (2) The department determines that the waiver of landing fees and other charges for the aircraft is consistent with assisting in the delivery of humanitarian relief to disaster-stricken areas of the State.

(f) To enforce the payment of any charges for repairs or improvements to, or storage or care of any personal property made or furnished by the department or its agent in connection with the operation of an airport or air navigation facility owned or operated by the department, the department shall have liens on the property, which shall be enforceable by it as provided by sections 507-18 to 507-22.

(g) The department from time to time may establish developmental rates for buildings and land areas used exclusively for general aviation activities at rates not less than fifty per cent of the fair market rentals of the buildings and land areas and may restrict the extent of buildings and land areas to be used.

~~[(h) Notwithstanding any laws to the contrary, the department may establish, levy, assess, and collect rental motor vehicle customer facility charges without regard to chapter 91, which shall be paid to the department periodically as determined by the department 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 por-~~

tion 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 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 rental motor vehicle concession at a state airport but whose customers benefit from the use of a rental motor vehicle facility or service at a state airport paid for by rental motor vehicle customer facility charges, shall collect from 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 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 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 6. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on June 30, 2011; provided that part II of this Act shall take effect on July 1, 2011; provided further that on June 30, 2012, sections 4 and 5 of this Act shall be repealed and sections 251-5 and 261-7, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.

(Approved June 9, 2011.)