

ACT 46

S.B. NO. 2337

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 modernization and improvements at Hawaii's airport concessions have not kept pace with passenger needs and demands. A recent study by the State indicates that various areas at our public airports are lacking in concession space by as much as forty per cent. In addition to areas covered by this study, the legislature requests that the department of transportation should also make a similar assessment of other areas at our public airports.

In addition to not meeting such needs and demands, the study indicates that Hawaii's public airports are not maximizing the revenues they could be receiving from airport concession operations if additional concession spaces were provided and locations were also improved. These improvements reportedly would not only pay for themselves but would also generate additional revenues for Hawaii's public airports.

As a result, the legislature finds that the department of transportation needs to fast-track construction and encourage improvements which will not only benefit Hawaii's public airports but also provide critical jobs and help stimulate Hawaii's economy. The legislature will consider and support the department of transportation's requests to meet these goals.

While the legislature recognizes the importance of fast-tracking such improvements, it also recognizes that fast-paced construction and related matters will result in hardship to existing airport concessions with inconveniences such as temporary barricades, re-routing of passengers, and temporary relocation of concession operations, among other issues.

In addition, the legislature recognizes the financial hardships existing concessions will face when asked by the department of transportation to make and pay for improvements to these newly-added concession spaces or improved areas for items such as fixturing, lighting, flooring, partitioning, and equipment, among other expenditures.

Further, the legislature also recognizes that concessions may not be able to afford to make these improvements for various reasons. In a typical scenario, the concession would not be able to recoup the money it paid for improvements because the existing or remaining term of a concession lease or permit is too short.

Thus, the legislature finds that it is important that the department of transportation and concessions seek to work together in achieving the improvements contemplated by this Act in an expeditious but fair and equitable manner, including amendments extending the term of a concession lease or permit at the department of transportation's discretion. Since such amendments or changes cannot be simply granted by the department of transportation, legislative direction and authorization is necessary as provided for in this Act.

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The purpose of this Act is to provide the department of transportation with the authority and discretion to reach an agreement with an airport concession to extend the term of the concession and to modify and amend terms of any concession contract, lease, or permit in exchange for revenue-enhancing improvements that are made or paid for by the concession.

SECTION 2. Notwithstanding any laws or provisions to the contrary, including but not limited to chapters 102 and 261, Hawaii Revised Statutes, the department of transportation, in its sole discretion and authority, upon mutual agreement with a concession and in exchange for revenue-enhancing improvements that are made or paid by the concession deemed acceptable by the department of transportation, may extend, modify, alter, or amend the terms of concession contracts, leases, and permits.

SECTION 3. The authority provided to the department of transportation by this Act shall remain valid as long as and to the extent that such authority does not violate any applicable federal laws and regulations and does not jeopardize the receipt of federal aid or impair the obligation of the department of transportation to the holders of any bond issued by the department of transportation.

SECTION 4. To the extent necessary to take action, effectuate, and fulfill the purpose and intentions of this Act including the authority provided, section 171-13 and chapters 102 and 261, Hawaii Revised Statutes, as well as any other statutory provisions or rules that may be in conflict with this Act, shall be deemed waived and not applicable.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act, which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.

SECTION 6. This Act shall take effect on July 1, 2012, and shall be repealed on July 1, 2014.

(Approved April 23, 2012.)