

ACT 47

S.B. NO. 2874

A Bill for an Act Relating to Airport Revenue.

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

SECTION 1. Under both state law and federal regulation, the State's airport system is required to be economically self-supporting. To meet this requirement, the department of transportation relies on revenue from airline operations, facility and space rental from aeronautical and airport-related users, revenues from concessions, and, to a very small extent, facility and space rentals from non-aeronautical or non airport related users.

In the late 1980s and early 1990s, Hawaii was a prime destination for Japanese travelers and Hawaii's airports benefited from unprecedented concession revenues due primarily to almost \$2,000,000,000 in revenue from the in-bond (duty free) concession over a thirteen-year period. At the very height

of the in-bond boom in 1993, revenue from this single concession was over \$300,000,000. From June 1, 1994, through May 31, 2001, the annual fiscal year revenue from the in-bond concession never dropped below \$100,000,000.

All of that changed with the contract that began in June 2001. Due to changes in the Japanese market, the minimum annual guaranteed concession fee from the in-bond concession contract dropped to \$60,000,000 per year. The events of September 11, 2001, caused a further reduction in concession revenue across the board. Today, while the in-bond concession is still the largest single revenue generating concession, the guaranteed revenue from that concession is now \$35,300,000 annually.

Over time, revenues from other concessions have increased, but not enough to offset the change in the in-bond concession. In fiscal year 2009-2010, overall concession revenue was more than \$127,000,000, but that still is more than \$100,000,000 less than at the peak of the in-bond concession.

To help offset the decline in concession revenues, revenues from landing fees, aeronautical and airport-related rentals, and non-aeronautical rentals have increased. While aeronautical and airport-related revenues have increased, the recent merger of airlines, e.g., Delta and Northwest, and United and Continental, and the loss of Aloha Airlines and ATA in 2008, reduced the overall amount of real estate rented by the airlines.

The smallest of the revenue generators is by far non aeronautical rentals. This revenue segment could be increased, without changing the nature of airports, by allowing additional flexibility in contracting with such users. For example, the department of transportation acquired portions of Ualena street in the 1990s for expansion of Honolulu International Airport. The acquisition was made subject to the existing land leases that terminate at the end of 2012.

Some of the lessees at the time of the acquisition were relocated, with the vacated space being rented to others. Since the acquisition, several entities inquired about renting space but wanted to have the security of a five-year, or longer, lease. Given the nature of the proposed non-aeronautical use of the property, the department of transportation was prohibited from directly negotiating such an agreement by section 171-59, Hawaii Revised Statutes. Similar circumstances have arisen at other airports as well.

Given the challenges in the economy and the continuing efforts by the airlines to reduce costs throughout their operations, increasing the opportunities for revenue generation at airports from non-aeronautical users is essential to the maintenance of a healthy and self-supporting airport system.

SECTION 2. Section 171-59, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Disposition of public lands for airline, aircraft, airport-related, agricultural processing, cattle feed production, aquaculture, marine, maritime, and maritime-related operations may be negotiated without regard to the limitations set forth in subsection (a) and section 171-16(c); provided that:

- (1) The disposition encourages competition within the aeronautical, airport-related, agricultural, aquaculture, maritime, and maritime-related operations;
- (2) The disposition shall not exceed a maximum term of thirty-five years, except in the case of:
 - (A) Maritime and maritime-related operations, which may provide for a maximum term of seventy years; and
 - (B) Aquaculture operations, which may provide for a maximum term of sixty-five years; provided that aquaculture operations in good standing may seek to renew a lease issued under this

section and, during the lease term, may engage in supportive activities that are related to or integrated with aquaculture; and

- (3) The method of disposition of public lands for cattle feed production as set forth in this subsection shall not apply after December 31, 1988.

For the purposes of this subsection:

“Agricultural processing” means the processing of agricultural products, including dairying, grown, raised, or produced in Hawaii.

“Airport-related” means a purpose or activity that requires air transportation to achieve that purpose or activity~~[-];~~ or an activity that generates revenue for the airport system as provided in section 261-7.

“Aquaculture” means the propagation, cultivation, or farming of aquatic plants and animals in controlled or selected environments for research, commercial, or stocking purposes, including aquaponics or any growing of plants or animals with aquaculture effluents.

“Maritime-related” means a purpose or activity that requires and is directly related to the loading, off-loading, storage, or distribution of goods and services of the maritime industry.”

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

“(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]~~ of any portion of the land under its jurisdiction [which for the time being] that may not be required by the department for aeronautics purposes so that it may instead 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.]~~

The term “airport purpose” or “airport purposes” contained in any governor’s executive order transferring jurisdiction and control of real property to the department of transportation shall be considered to include entering into contracts, leases, licenses, and other arrangements pursuant to this section.”

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

SECTION 5. This Act shall take effect on June 29, 2012; provided that the amendments made to section 261-7(a), Hawaii Revised Statutes, by section 3

of this Act, shall not be repealed when section 261-7, Hawaii Revised Statutes, is reenacted on June 30, 2012, pursuant to Act 104, Session Laws of Hawaii 2011.

(Approved April 23, 2012.)