

JAN 22 2008

A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Airports throughout the United States have
2 renovated, reconfigured, and relocated car rental customer
3 facilities as an appropriate means of efficiently and
4 effectively dealing with increased demands for space. Many, if
5 not most, of these airports commonly use the collection of a car
6 rental customer facility charge to finance the renovation,
7 construction, operation, and maintenance of car rental customer
8 facilities, and pay for associated shuttle bus systems to
9 transport passengers to and from these car rental customer
10 facilities without adversely affecting general airport funds.

11 Further, the legislature finds that concessionaires,
12 including car rental companies, have historically contributed
13 about fifty per cent or more of Hawaii's airport revenues by way
14 of concession rental payments. Such revenues have typically
15 been used primarily to pay for improvements for airlines, as
16 well as some improvements for airport concessions. It is not
17 the intent of the legislature to preclude the use of such
18 revenues for facility improvements and other support for car



1 rental concessions at public airports by the passage of this
2 Act. Given the future expenditure plans and present shortage of
3 airport revenues for facility and other improvements, it is the
4 intent of the legislature to expedite the provision of needed
5 car rental facilities that can better serve Hawaii's visitors
6 and residents.

7 The purpose of this Act is to provide the department of
8 transportation with the authority to establish and collect a car
9 rental customer facility charge and use the revenues collected
10 for the renovation and development of car rental customer
11 facilities including, without limitation, acquisition of
12 property or property rights; acquisition of equipment for and
13 operation of a unified shuttle bus system to and from passenger
14 terminals and rental car facilities; and design, construction,
15 renovation, operation, and maintenance of the car rental
16 customer facilities.

17 SECTION 2. Chapter 261, Hawaii Revised Statutes, is
18 amended by adding a new section to be appropriately designated
19 and to read as follows:

20 "§261- _____ Car rental customer facility charge special
21 fund. (a) There is established in the state treasury the car
22 rental customer facility charge special fund to be administered



1 by the director and into which shall be deposited all proceeds
2 from the car rental customer facility charge.

3 (b) Moneys in the car rental customer facility charge
4 special fund shall be used for enhancement, renovation,
5 operation and maintenance of existing rental car customer
6 facilities, and the development of car rental customer
7 facilities at state airports, including acquisition and
8 maintenance of property or property rights, acquisition of
9 equipment for and operation of a unified shuttle bus system to
10 and from passenger terminals and the rental car facilities,
11 consultant fees, and design, construction, operation, and
12 maintenance of, or allocable to, the approved car rental
13 customer facilities. In planning the future needs and
14 expenditures of such moneys, the director shall, at least once a
15 year, consult with lessors, as defined in section 437D-3, who
16 are using or who in the future may use such facilities and
17 services.

18 (c) The car rental customer facility charge special fund
19 shall be exempt from sections 36-30 and 103-8.5."

20 SECTION 3. Section 36-30, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:

22 "(a) Each special fund, except the:



- 1 (1) Transportation use special fund established by section
2 261D-1;
- 3 (2) Special out-of-school time instructional program fund
4 under section 302A-1310;
- 5 (3) School cafeteria special funds of the department of
6 education;
- 7 (4) Special funds of the University of Hawaii;
- 8 (5) State educational facilities improvement special fund;
- 9 (6) Special funds established by section 206E-6;
- 10 (7) Aloha Tower fund created by section 206J-17;
- 11 (8) Funds of the employees' retirement system created by
12 section 88-109;
- 13 (9) Unemployment compensation fund established under
14 section 383-121;
- 15 (10) Hawaii hurricane relief fund established under chapter
16 431P;
- 17 (11) Convention center enterprise special fund established
18 under section 201B-8;
- 19 (12) Hawaii health systems corporation special funds and
20 the subaccounts of its regional system boards;
- 21 (13) Tourism special fund established under section
22 201B-11;



- 1 (14) Universal service fund established under chapter 269;
2 (15) Emergency and budget reserve fund under section
3 328L-3;
4 (16) Public schools special fees and charges fund under
5 section 302A-1130(f);
6 (17) Sport fish special fund under section 187A-9.5;
7 (18) Neurotrauma special fund under section 321H-4;
8 (19) Center for nursing special fund under section 304A-
9 2163;
10 (20) Passenger facility charge special fund established by
11 section 261-5.5;
12 (21) Court interpreting services revolving fund under
13 section 607-1.5;
14 (22) Trauma system special fund under section 321-22.5;
15 (23) Hawaii cancer research special fund;
16 (24) Community health centers special fund; [and]
17 (25) Emergency medical services special fund; and
18 (26) Car rental customer facility charge special fund
19 established under section 261- _____,
20 shall be responsible for its pro rata share of the
21 administrative expenses incurred by the department responsible
22 for the operations supported by the special fund concerned."



1 SECTION 4. Section 103-8.5, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) There is created a works of art special fund, into
4 which shall be transferred one per cent of all state fund
5 appropriations for capital improvements designated for the
6 construction cost element; provided that this transfer shall
7 apply only to capital improvement appropriations that are
8 designated for the construction or renovation of state
9 buildings. The one per cent transfer requirement shall not
10 apply to appropriations from the passenger facility charge
11 special fund established by section 261-5.5[-] and the car
12 rental customer facility charge special fund established by
13 section 261-_____."

14 SECTION 5. Section 261-5, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) Except for:
17 (1) That portion of the payments received by the
18 department under a contract entered into as authorized
19 by section 261-7 and deposited in the transportation
20 use special fund pursuant to section 261D-1[~~7~~and
21 ~~except for all~~];



1 (2) All proceeds from the passenger facility charge and
2 deposited in the passenger facility charge special
3 fund [~~7~~]; and

4 (3) All proceeds from the car rental customer facility
5 charge and deposited in the car rental customer
6 facility charge special fund,

7 all moneys received by the department from rents, fees, and
8 other charges collected pursuant to this chapter, as well as all
9 aviation fuel taxes paid pursuant to section 243-4(a)(2), shall
10 be paid into the airport revenue fund created by section 248-8.

11 All moneys paid into the airport revenue fund shall be
12 appropriated, applied, or expended by the department for any
13 purpose within the jurisdiction, powers, duties, and functions
14 of the department related to the statewide system of airports,
15 including, without limitation, the costs of operation,
16 maintenance, and repair of the statewide system of airports and
17 reserves therefor, and acquisitions (including real property and
18 interests therein), constructions, additions, expansions,
19 improvements, renewals, replacements, reconstruction,
20 engineering, investigation, and planning for the statewide
21 system of airports, all or any of which in the judgment of the
22 department are necessary to the performance of its duties or



1 functions. The department shall generate sufficient revenues
2 from its airport properties to meet all of the expenditures of
3 the statewide system of airports and to comply with section 39-
4 61; provided that as long as sufficient revenues are generated
5 to meet such expenditures, the director of transportation may,
6 in the director's discretion, grant a rebate of the aviation
7 fuel taxes paid into the airport revenue fund during a fiscal
8 year pursuant to sections 243-4(a)(2) and 248-8 to any person
9 who has paid airport use charges or landing fees during such
10 fiscal year. Such rebate may be granted during the next
11 succeeding fiscal year but shall not exceed one-half cent per
12 gallon per person, and shall be computed on the total number of
13 gallons for which the tax was paid by such person, for such
14 fiscal year."

15 SECTION 6. Section 261-7, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§261-7 Operation and use privileges.** (a) In operating
18 an airport or air navigation facility owned or controlled by the
19 department of transportation, or in which it has a right or
20 interest, the department may enter into contracts, leases,
21 licenses, and other arrangements with any person:



- 1 (1) Granting the privilege of using or improving the
2 airport or air navigation facility or any portion or
3 facility thereof or space therein for commercial
4 purposes;
- 5 (2) Conferring the privilege of supplying goods,
6 commodities, things, services, or facilities at the
7 airport or air navigation facility;
- 8 (3) Making available services, facilities, goods,
9 commodities, or other things to be furnished by the
10 department or its agents at the airport or air
11 navigation facility; or
- 12 (4) Granting the use and occupancy on a temporary basis by
13 license or otherwise any portion of the land under its
14 jurisdiction which for the time being may not be
15 required by the department so that it may put the area
16 to economic use and thereby derive revenue therefrom.

17 All the arrangements shall contain a clause that the land
18 may be repossessed by the department when needed for aeronautics
19 purposes upon giving the tenant temporarily occupying the same
20 not less than thirty days' notice in writing of intention to
21 repossess.



1 (b) Except as otherwise provided in this section, in each
2 case mentioned in subsection (a)(1), (2), (3), and (4), the
3 department may establish the terms and conditions of the
4 contract, lease, license, or other arrangement, and may fix the
5 charges, rentals, or fees for the privileges, services, or
6 things granted, conferred, or made available, for the purpose of
7 meeting the expenditures of the statewide system of airports set
8 forth in section 261-5(a), which includes expenditures for
9 capital improvement projects approved by the legislature. Such
10 charges shall be reasonable and uniform for the same class of
11 privilege, service, or thing.

12 (c) The department shall enter into a contract with no
13 more than one person ("contractor") for the sale and delivery of
14 in-bond merchandise at Honolulu International Airport, in the
15 manner provided by law. The contract shall confer the right to
16 operate and maintain commercial facilities within the airport
17 for the sale of in-bond merchandise and the right to deliver to
18 the airport in-bond merchandise for sale to departing foreign-
19 bound passengers.

20 The department shall grant the contract pursuant to the
21 laws of this State and may take into consideration:



1 (1) The payment to be made on in-bond merchandise sold at
2 Honolulu International Airport and on in-bond
3 merchandise displayed or sold elsewhere in the [State]
4 state and delivered to the airport;

5 (2) The ability of the applicant to comply with all
6 federal and state rules and regulations concerning the
7 sale and delivery of in-bond merchandise; and

8 (3) The reputation, experience, and financial capability
9 of the applicant.

10 The department shall actively supervise the operation of
11 the contractor to [~~insure~~] ensure its effectiveness. The
12 department shall develop and implement such guidelines as it may
13 find necessary and proper to actively supervise the operations
14 of the contractor, and shall include guidelines relating to the
15 department's review of the reasonableness of contractor's price
16 schedules, quality of merchandise, merchandise assortment,
17 operations, and service to customers.

18 Apart from the contract described in this subsection, the
19 department shall confer no right upon nor suffer nor allow any
20 person to offer to sell, sell, or deliver in-bond merchandise at
21 Honolulu International Airport; provided that this section shall



1 not prohibit the delivery of in-bond merchandise as cargo to the
2 Honolulu International Airport.

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

12 (e) The department may fix and regulate, from time to
13 time, reasonable landing fees for aircraft, including the
14 imposition of landing surcharges or differential landing fees,
15 and other reasonable charges for the use and enjoyment of the
16 airports and the services and facilities furnished by the
17 department in connection therewith, including the establishment
18 of a statewide system of airports landing fees, a statewide
19 system of airports support charges, and joint use charges for
20 the use of space shared by users, which fees and charges may
21 vary among different classes of users such as foreign carriers,
22 domestic carriers, inter-island carriers, air taxi operators,



1 helicopters, and such other classes as may be determined by the
2 director, for the purpose of meeting the expenditures of the
3 statewide system of airports set forth in section 261-5(a),
4 which includes expenditures for capital improvement projects
5 approved by the legislature.

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

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

20 The director shall develop rates, rentals, fees, and
21 charges in accordance with a residual methodology so that the
22 statewide system of airports shall be, and always remain, self-



1 sustaining. The rates, rentals, fees, and charges shall be set
2 at such levels as to produce revenues which, together with
3 aviation fuel taxes, shall be at least sufficient to meet the
4 expenditures of the statewide system of airports set forth in
5 section 261-5(a), including expenditures for capital improvement
6 projects approved by the legislature, and to comply with
7 covenants and agreements with holders of airport revenue bonds.

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

14 The rates, rentals, fees, and charges determined by the
15 director in the manner set forth in this subsection shall be
16 those charges payable by the aeronautical users for the periods
17 immediately following the date of expiration of the existing
18 contract, lease, license, or agreement. If fees are established
19 pursuant to this section, the department shall prepare a
20 detailed report on the circumstances and rates and charges that
21 have been established, and shall submit the report to the



1 legislature no later than twenty days prior to the convening of
2 the next regular session.

3 If a schedule of rates, rentals, fees, and charges
4 developed by the director in accordance with this section is
5 projected by the department to produce revenues which, together
6 with aviation fuel taxes, will be in excess of the amount
7 required to meet the expenditures of the statewide system of
8 airports set forth in section 261-5(a), including expenditures
9 for capital improvement projects approved by the legislature,
10 and to comply with covenants and agreements with holders of
11 airport revenue bonds, the department shall submit the schedule
12 of rates, rentals, fees, and charges to the legislature prior to
13 the convening of the next regular session of the legislature.
14 Within forty-five days after the convening of the regular
15 session, the legislature may disapprove any schedule of rates,
16 rentals, fees, and charges required to be submitted to it by
17 this section by concurrent resolution. If no action is taken by
18 the legislature within the forty-five-day period the schedule of
19 rates, rentals, fees, and charges shall be deemed approved. If
20 the legislature disapproves the schedule within the forty-five-
21 day period, the director shall develop a new schedule of rates,
22 rentals, fees, and charges in accordance with this section



1 within seventy-five days of the disapproval. Pending the
2 development of a new schedule of rates, rentals, fees, and
3 charges, the schedule submitted to the legislature shall remain
4 in force and effect.

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

9 (1) The governor declares a state of emergency; and

10 (2) The department determines that the waiver of landing
11 fees and other charges for the aircraft is consistent
12 with assisting in the delivery of humanitarian relief
13 to disaster-stricken areas of the [~~State-~~] state.

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

21 (g) The department from time to time may establish
22 developmental rates for buildings and land areas used



1 exclusively for general aviation activities at rates not less
2 than fifty per cent of the fair market rentals of the buildings
3 and land areas and may restrict the extent of buildings and land
4 areas to be [~~utilized.~~] used.

5 (h) The department may establish car rental customer
6 facility charges by rule."

7 SECTION 7. Section 437D-8.4, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) Notwithstanding any law to the contrary, a lessor may
10 visibly pass on to a lessee:

11 (1) The general excise tax attributable to the
12 transaction;

13 (2) The vehicle license and registration fee and weight
14 taxes, prorated at 1/365th of the annual vehicle
15 license and registration fee and weight taxes actually
16 paid on the particular vehicle being rented for each
17 full or partial [~~twenty-four hour~~] twenty-four-hour
18 rental day that the vehicle is rented; provided the
19 total of all vehicle license and registration fees
20 charged to all lessees shall not exceed the annual
21 vehicle license and registration fee actually paid for
22 the particular vehicle rented;



- 1 (3) The rental motor vehicle surcharge tax as provided in
- 2 section 251-2 attributable to the transaction;
- 3 (4) The county surcharge on state tax under section
- 4 46-16.8; provided that the lessor itemizes the tax for
- 5 the lessee; and
- 6 (5) The rents or fees paid to the department of
- 7 transportation under concession contracts [7]
- 8 negotiated pursuant to chapter 102, [~~ex~~] service
- 9 permits [7] granted pursuant to title 19, Hawaii
- 10 administrative rules, or car rental customer facility
- 11 charges established pursuant to 261-7; provided that:
- 12 (A) The rents or fees are limited to amounts that can
- 13 be attributed to the proceeds of the particular
- 14 transaction;
- 15 (B) The rents or fees shall not exceed the lessor's
- 16 net payments to the department of transportation
- 17 made under concession contract or service permit;
- 18 (C) The lessor submits to the department of
- 19 transportation and the department of commerce and
- 20 consumer affairs a statement, verified by a
- 21 certified public accountant as correct, that
- 22 reports the amounts of the rents or fees paid to



1 the department of transportation pursuant to the
2 applicable concession contract or service permit:
3 (i) For all airport locations; and
4 (ii) For each airport location;
5 (D) The lessor submits to the department of
6 transportation and the department of commerce and
7 consumer affairs a statement, verified by a
8 certified public accountant as correct, that
9 reports the amounts charged to lessees:
10 (i) For all airport locations;
11 (ii) For each airport location; and
12 (iii) For each lessee;
13 (E) The lessor includes in these reports the
14 methodology used to determine the amount of fees
15 charged to each lessee; and
16 (F) The lessor submits the above information to the
17 department of transportation and the department
18 of commerce and consumer affairs within three
19 months of the end of the preceding annual
20 accounting period or contract year as determined
21 by the applicable concession agreement or service
22 permit.



1 The respective departments, in their sole
2 discretion, may extend the time to submit the
3 statement required in this subsection. If the
4 director determines that an examination of the
5 lessor's information is inappropriate under this
6 subsection and the lessor fails to correct the
7 matter within ninety days, the director may
8 conduct an examination and charge a lessor an
9 examination fee based upon the cost per hour per
10 examiner for evaluating, investigating, and
11 verifying compliance with this subsection, as
12 well as additional amounts for travel, per diem,
13 mileage, and other reasonable expenses incurred
14 in connection with the examination, which shall
15 relate solely to the requirements of this
16 subsection, and which shall be billed by the
17 departments as soon as feasible after the close
18 of the examination. The cost per hour shall be
19 \$40 or as may be established by rules adopted by
20 the director. The lessor shall pay the amounts
21 billed within thirty days following the billing.



1 All moneys collected by the director shall be
2 credited to the compliance resolution fund."

3 SECTION 8. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 9. This Act shall take effect on July 1, 2008.

6

INTRODUCED BY:

John E. G. [Signature]
Mike Gabbard
Randy H. Baker
Erzanne Chun Oalland



Report Title:

Transportation; Airports

Description:

Authorizes the Department of Transportation to establish and collect car rental customer facility charges. Creates a car rental customer facility charge special fund.

