

---

---

# 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 fund.

21 (a) There is established in the state treasury the car rental  
 22 customer facility charge special fund to be administered by the



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



1 SECTION 8. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

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



**Report Title:**

Transportation; Airports

**Description:**

Establishes a car rental customer facility charge special fund to be used for enhancement, renovation, operation and maintenance of existing rental car customer facilities, and the development of car rental customer facilities at state airports; authorizes the Department of Transportation to establish, by rule, car rental customer facility charges for deposit in the fund. (SD1)

