
A BILL FOR AN ACT

RELATING TO AIRPORT CONCESSIONS.

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

1 SECTION 1. The legislature finds that the State of Hawaii,
2 as well as the nation, is facing an economic recession that is
3 severe and one that may result in greater hardship and economic
4 suffering than has ever been faced by the State. This is
5 especially true for airport concessionaires who rely on air
6 travelers for their business. Passenger counts, already
7 weakened due to the recent history of rising fuel and ticket
8 prices, have now dropped off even further. This decrease in the
9 number of air travelers, coupled with the heightened security
10 measures following the events of September 11, which restricts
11 access to airport concessionaires only to ticketed passengers,
12 has caused airport concessionaires to realize a decline in
13 business similar to that realized immediately after September
14 11, 2001.

15 As a result of the events of September 11, 2001, the
16 legislature passed legislation granting relief to airport
17 concessionaires due to the financial hardship they were



1 suffering so that they could remain open and continue serving
2 Hawaii's tourists and residents.

3 Further, the continued economic downturn after September
4 11, 2001, along with other global events that affected Hawaii's
5 economy such as the Severe Acute Respiratory Syndrome epidemic
6 that took place in March 2003, required additional action by the
7 legislature to assist airport concessionaires. Act 128, Session
8 Laws of Hawaii 2006, temporarily suspended Hawaii's statutes
9 requiring airport concessions to be put out to sealed bid and
10 gave the state department of transportation (DOT) the sole
11 discretion to discuss and negotiate fixed, short-term lease
12 extensions, under certain conditions.

13 While DOT has sought to be a reasonable landlord by
14 providing various economic relief provisions to airport
15 concessionaires, the interdependence of our global economy has
16 caused economic uncertainty to increase. The fluctuations
17 experienced in the economy due to this uncertainty have caused
18 various concessions to suffer financial losses, losses they
19 continue to suffer. One concession in particular has suffered
20 and continues to suffer a loss of gross receipts of more than
21 thirty per cent with monthly operating losses.



1 Obviously such losses cannot continue. Some relief
2 provisions previously given to concessionaires should be
3 clarified or amended, such as those provisions applicable only
4 during times of economic emergency. DOT should also consider
5 making relief provisions, such as a self-adjusting eighty-five
6 per cent formula that provides relief to all concessions and not
7 some concessions during slow economic times. This provision
8 allows all airport concessionaires' guaranteed rent payments to
9 DOT to rise or fall each year depending on the concession's
10 level of success, to avoid undue hardship and the likelihood of
11 default on airport concession contracts due to reasons beyond
12 their control.

13 Unlike many local businesses which have survived during
14 this current economic recession by way of cutting expenses and
15 offering kamaaina discounts and incentives, airport
16 concessionaires can only provide services for passengers
17 arriving or departing on daily flights. This fact severely
18 restricts the economic base for airport concessionaires.
19 Furthermore, unlike some airport tenants such as airlines that
20 are able to make up for lost revenue through other means such as
21 fuel surcharges and baggage fees, or are able to cut expenses by



1 reducing their number of flights, Hawaii's airport concessions
2 can only appeal to the legislature for relief.

3 Unless relief is provided, concessionaires suffering losses
4 will no longer be economically viable and will face the harsh
5 consequences of defaulting on their concession contract,
6 forfeiting their performance bond, and being barred from doing
7 business with the State of Hawaii for five years in accordance
8 with section 171-13, Hawaii Revised Statutes. These penalties
9 place a tremendous hardship on these businesses. Such results
10 would not only be devastating for the concessionaire but for the
11 State as well since the State likely will only be able to find a
12 replacement concessionaire who will pay the State significantly-
13 reduced rents for years to come. As relief for airport
14 concessionaires cannot be simply applied or amended by DOT,
15 legislative direction and authorization is necessary.

16 Economic hardship for the state, as well as airport
17 concessions, is likely to increase in future months and it will
18 take years for an economic rebound to occur. However, the
19 services of these businesses must continue to be provided to our
20 visitors and for the sake of our tourist industry. Measured
21 economic relief must be provided these businesses.

22 The purpose of this Act is to:



1 (1) Provide relief to airport concessionaires by providing
2 for annual adjustments in their guaranteed rents to be
3 paid to the State not just for some concessions but in
4 fairness to all airport concessions;

5 (2) Clarify the economic emergency relief provisions for
6 airport concessions that are designed to aid
7 concessions during dire economic times;

8 (3) Further clarify that in granting economic emergency
9 relief, the director of transportation shall take into
10 account the concession's economic circumstances and
11 whether the concession received relief by way of
12 annual adjustment in guaranteed rents or other
13 governmental relief for purposes of avoiding duplicate
14 economic relief benefits to a concessionaire; and

15 (4) Provide that in seeking relief pursuant to this Act,
16 qualified concessionaires may only seek relief for
17 losses of gross receipts or loss of business which
18 occurred during periods of time starting November 1,
19 2006, or later.

20 SECTION 2. Notwithstanding any laws or provisions to the
21 contrary, the governor, or director of transportation, if so



1 directed by the governor, shall adjust and modify existing
2 airport concession leases and contracts as follows:

- 3 (1) The airport concession lease and contract for each
4 airport concessionaire who does not object shall be
5 adjusted and modified to provide in part that its
6 annual guaranteed rents payable to the State shall be
7 adjusted as follows: For the second and each
8 successive-twelve-month period from the start of the
9 concession lease to the end of its term, including any
10 holdover or extension period as set forth in the
11 concession lease, the annual guaranteed rents to be
12 paid to the State shall be eighty-five per cent of the
13 rents (the greater of guaranteed rents or percentage
14 rents as applicable), paid by the concessionaire for
15 the just-ending twelve-month period. Thus, such
16 annual guaranteed rents may be adjusted upward or
17 downward for each succeeding twelve-month period
18 depending on the concession's gross receipts and rents
19 paid during the prior twelve-month period;
- 20 (2) Each airport concession lease not having an economic
21 emergency provision similar to other concession leases



1 issued following the events of September 11, 2001,
2 shall be modified and adjusted to contain such
3 provisions. Further, in part for each such concession
4 lease, as well as for economic emergency relief
5 provisions in any existing concession lease, shall
6 provide, or be adjusted and modified to provide in
7 part, that the director of transportation shall grant
8 relief allowing the concessionaire to recoup the
9 amount lost by such reduction in gross receipts to the
10 concession whenever:

11 (A) The average gross receipts for a concession for a
12 sixty-day period is fifteen per cent or more less
13 than the average gross receipts for the
14 concession for the twelve months prior to the
15 month the bid was submitted for the concession or
16 month of contract award, which event occurred
17 first, or other comparable information if
18 information as to twelve months of prior gross
19 receipts is not available; and

20 (B) Such reduction of fifteen per cent or more loss
21 in gross receipts is due to circumstances beyond
22 the control of the concessionaire;



1 (3) Each concession lease shall contain provisions in part
2 stating that prior to granting any relief pursuant to
3 the economic relief provisions of a concession lease,
4 the director of transportation, before deciding the
5 past amount or continuing monthly amounts of relief,
6 shall first take into account any prior relief granted
7 to a concessionaire by any governmental agency to
8 avoid the duplication of relief benefits;

9 (4) The adjustments and modifications to each concession
10 lease shall take place as soon as possible and any
11 existing concession lease provisions in conflict with
12 the purposes and intent of this Act shall be revised
13 so that they are no longer in conflict with the intent
14 and provisions of this Act; and

15 (5) A concessionaire who qualifies for relief may only
16 seek relief for the period of time on or after
17 November 1, 2006.

18 SECTION 3. The relief provided for by this Act shall take
19 place as long as and to the extent such relief does not violate
20 any applicable federal laws and regulations and do not
21 jeopardize the receipt of any federal aid or impair the
22 obligation of Hawaii's department of transportation to the



1 holders of any bond issued by Hawaii's department of
2 transportation.

3 SECTION 4. If any provision of this Act, or the
4 application thereof to any person or circumstance is held
5 invalid, the invalidity does not affect other provisions or
6 applications of the Act, which can be given effect without the
7 invalid provision or application, and to this end the provisions
8 of this Act are severable.

9 SECTION 5. To the extent necessary to take action,
10 effectuate, and fulfill the purpose and intentions of this Act
11 including the relief to be provided, the effects of section 171-
12 13, Hawaii Revised Statutes, as well any other statutory
13 provisions that may be in conflict with this Act, shall be
14 deemed waived and not applicable.

15 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY: *[Signature]*
Karen Awana

JAN 27 2009



Report Title:

Airports; Airport Concessions; Leases

Description:

Allows for certain adjustments and modifications to airport concession leases.

