



GOV. MSG. NO. **1207**

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 9, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

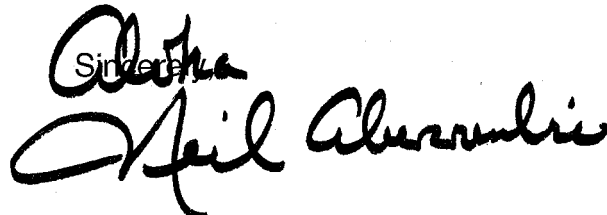
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 9, 2011, the following bill was signed into law:

HB1039 HD1 SD2 CD1

RELATING TO TRANSPORTATION
Act 104 (11)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

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

PART I

SECTION 1. Act 33, Special Session Laws of Hawaii 2009, sought to provide the department of transportation with the discretion and flexibility to provide relief to various airport concessionaires due to sudden, extraordinary, and severe economic events. The legislature recognized that the department of transportation's relief efforts were not fair to all concessionaires, in that some concessionaires had a self-adjusting eighty-five per cent guaranteed rent adjusting formula that provided relief for adverse economic events. Other concessionaires had a guaranteed rent formula that does not allow for fluctuations in economic circumstances.

The legislature finds that the issues prompting the enactment of Act 33 have not been completely resolved as to all airport concessions, so inequities continue among various concessions. In addition, as a result of the recent devastating tsunami and related events taking place in Japan, a number of airport concessionaires are or will experience a sudden,



1 extraordinary, and severe economic hardship as they do not have
2 the same self-adjusting relief provisions of other airport
3 concessionaires. It is estimated that these less fortunate
4 concessions could experience a loss of revenues of about
5 twenty-five per cent for twelve months or longer or until the
6 number of visitors from Japan returns to the level that existed
7 prior to the recent tsunami. Those gross revenue losses would
8 be devastating to an airport concessionaire lacking the self-
9 adjusting rent formula of other concessionaires.

10 The purpose of this part is to provide rent relief to
11 airport concessionaires that have a guaranteed rent formula with
12 the State.

13 SECTION 2. Act 33, Special Session Laws of Hawaii 2009, is
14 amended as follows:

15 1. By adding a new section to read:

16 "SECTION 2A. The governor, or the director of
17 transportation if so directed by the governor, shall have the
18 discretion and authority to provide additional relief to airport
19 concessionaires that do not have a self-adjusting lease formula
20 as of March 31, 2011."

21 2. By amending section 6 to read:



1 "SECTION 6. This Act shall take effect on July 1, 2009,
2 and shall be repealed on [~~July 1, 2011.~~] July 1, 2013."

3 PART II

4 SECTION 3. Section 251-2, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) There is levied and shall be assessed and collected
7 each month a rental motor vehicle surcharge tax of [~~\$2~~] \$7.50 a
8 day, except that [~~for the period of September 1, 1999, to August~~
9 ~~31, 2011,~~] after June 30, 2012, the tax shall be \$3 a day, or
10 any portion of a day that a rental motor vehicle is rented or
11 leased. The rental motor vehicle surcharge tax shall be levied
12 upon the lessor; provided that the tax shall not be levied on
13 the lessor if:

- 14 (1) The lessor is renting the vehicle to replace a vehicle
15 of the lessee that is being repaired; and
- 16 (2) A record of the repair order for the vehicle is
17 retained either by the lessor for two years for
18 verification purposes or by a motor vehicle repair
19 dealer for two years as provided in section 437B-16."

20 SECTION 4. Section 251-5, Hawaii Revised Statutes, is
21 amended to read as follows:



1 " ~~[+]~~ §251-5 ~~[+]~~ Remittances. All remittances of surcharge
2 taxes imposed under this chapter shall be made by cash, bank
3 draft, cashier's check, money order, or certificate of deposit
4 to the office of the taxation district to which the return was
5 transmitted. The department shall deposit the moneys into the
6 state treasury to the credit of the state highway fund~~[-]~~;
7 provided that of the rental motor vehicle surcharge taxes
8 assessed and collected pursuant to section 251-2(a), the
9 equivalent of \$4.50 of the tax assessed and collected per day
10 shall be deposited into the state treasury to the credit of the
11 general fund."

12 SECTION 5. Section 261-7, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§261-7 Operation and use privileges. (a) In operating
15 an airport or air navigation facility owned or controlled by the
16 department of transportation, or in which it has a right or
17 interest, the department may enter into contracts, leases,
18 licenses, and other arrangements with any person:

19 (1) Granting the privilege of using or improving the
20 airport or air navigation facility or any portion or
21 facility thereof or space therein for commercial
22 purposes;



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

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

18 (b) Except as otherwise provided in this section, in each
19 case mentioned in subsection (a) (1), (2), (3), and (4), the
20 department may establish the terms and conditions of the
21 contract, lease, license, or other arrangement, and may fix the
22 charges, rentals, or fees for the privileges, services, or



1 things granted, conferred, or made available, for the purpose of
2 meeting the expenditures of the statewide system of airports set
3 forth in section 261-5(a), which includes expenditures for
4 capital improvement projects approved by the legislature. Such
5 charges shall be reasonable and uniform for the same class of
6 privilege, service, or thing.

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

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

17 (1) The payment to be made on in-bond merchandise sold at
18 Honolulu International Airport and on in-bond
19 merchandise displayed or sold elsewhere in the State
20 and delivered to the airport;



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

4 (3) The reputation, experience, and financial capability
5 of the applicant.

6 The department shall actively supervise the operation of
7 the contractor to ensure its effectiveness. The department
8 shall develop and implement such guidelines as it may find
9 necessary and proper to actively supervise the operations of the
10 contractor, and shall include guidelines relating to the
11 department's review of the reasonableness of contractor's price
12 schedules, quality of merchandise, merchandise assortment,
13 operations, and service to customers.

14 Apart from the contract described in this subsection, the
15 department shall confer no right upon nor suffer nor allow any
16 person to offer to sell, sell, or deliver in-bond merchandise at
17 Honolulu International Airport; provided that this section shall
18 not prohibit the delivery of in-bond merchandise as cargo to the
19 Honolulu International Airport.

20 (d) The department, by contract, lease, or other
21 arrangement, upon a consideration fixed by it, may grant to any
22 qualified person the privilege of operating, as agent of the



1 State or otherwise, any airport owned or controlled by the
2 department; provided that no such person shall be granted any
3 authority to operate the airport other than as a public airport
4 or to enter into any contracts, leases, or other arrangements in
5 connection with the operation of the airport which the
6 department might not have undertaken under subsection (a).

7 (e) The department may fix and regulate, from time to
8 time, reasonable landing fees for aircraft, including the
9 imposition of landing surcharges or differential landing fees,
10 and other reasonable charges for the use and enjoyment of the
11 airports and the services and facilities furnished by the
12 department in connection therewith, including the establishment
13 of a statewide system of airports landing fees, a statewide
14 system of airports support charges, and joint use charges for
15 the use of space shared by users, which fees and charges may
16 vary among different classes of users such as foreign carriers,
17 domestic carriers, inter-island carriers, air taxi operators,
18 helicopters, and such other classes as may be determined by the
19 director, for the purpose of meeting the expenditures of the
20 statewide system of airports set forth in section 261-5(a),
21 which includes expenditures for capital improvement projects
22 approved by the legislature.



1 In setting airports rates and charges, including landing
2 fees, the director may enter into contracts, leases, licenses,
3 and other agreements with aeronautical users of the statewide
4 system of airports containing such terms, conditions, and
5 provisions as the director deems advisable.

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

15 The director shall develop rates, rentals, fees, and
16 charges in accordance with a residual methodology so that the
17 statewide system of airports shall be, and always remain, self-
18 sustaining. The rates, rentals, fees, and charges shall be set
19 at such levels as to produce revenues which, together with
20 aviation fuel taxes, shall be at least sufficient to meet the
21 expenditures of the statewide system of airports set forth in
22 section 261-5(a), including expenditures for capital improvement



1 projects approved by the legislature, and to comply with
2 covenants and agreements with holders of airport revenue bonds.

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

9 The rates, rentals, fees, and charges determined by the
10 director in the manner set forth in this subsection shall be
11 those charges payable by the aeronautical users for the periods
12 immediately following the date of expiration of the existing
13 contract, lease, license, or agreement. If fees are established
14 pursuant to this section, the department shall prepare a
15 detailed report on the circumstances and rates and charges that
16 have been established, and shall submit the report to the
17 legislature no later than twenty days prior to the convening of
18 the next regular session.

19 If a schedule of rates, rentals, fees, and charges
20 developed by the director in accordance with this section is
21 projected by the department to produce revenues which, together
22 with aviation fuel taxes, will be in excess of the amount



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

21 Notwithstanding any other provision of law to the contrary,
22 the department may waive landing fees and other aircraft charges



1 established under this section at any airport owned or
2 controlled by the State whenever:

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

4 (2) The department determines that the waiver of landing
5 fees and other charges for the aircraft is consistent
6 with assisting in the delivery of humanitarian relief
7 to disaster-stricken areas of the State.

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

15 (g) The department from time to time may establish
16 developmental rates for buildings and land areas used
17 exclusively for general aviation activities at rates not less
18 than fifty per cent of the fair market rentals of the buildings
19 and land areas and may restrict the extent of buildings and land
20 areas to be used.

21 ~~[(h) Notwithstanding any laws to the contrary, the~~
22 ~~department may establish, levy, assess, and collect rental motor~~



1 ~~vehicle customer facility charges without regard to chapter 91,~~
2 ~~which shall be paid to the department periodically as determined~~
3 ~~by the department and shall be used to pay for, or finance on a~~
4 ~~long term basis or other term basis where appropriate, the~~
5 ~~design, planning, construction, and other uses of the rental~~
6 ~~motor vehicle customer facility charges as set forth by the~~
7 ~~rental motor vehicle customer facility charge special fund in~~
8 ~~section 261-5.6.~~

9 ~~The rental motor vehicle customer facility charges shall be~~
10 ~~levied, assessed, and collected from all rental motor vehicle~~
11 ~~customers who benefit from the use of any type of rental motor~~
12 ~~vehicle facility or service provided by the department at a~~
13 ~~state airport.~~

14 ~~Beginning September 1, 2010, the department shall levy,~~
15 ~~assess, and collect a rental motor vehicle customer facility~~
16 ~~charge of \$4.50 per day, or any portion of a day that a rental~~
17 ~~motor vehicle is rented or leased, by a rental motor vehicle~~
18 ~~concession where customers pick up and return rental vehicles to~~
19 ~~a facility at a state airport as determined by the director.~~

20 ~~All rental motor vehicle customer facility charges shall be~~
21 ~~collected by lessors as defined in section 437D-3 and who~~
22 ~~operate a rental motor vehicle concession awarded by the~~



1 ~~department at a state airport, provided that customers of~~
2 ~~lessors, as defined in section 437D-3, who do not operate a~~
3 ~~rental motor vehicle concession at a state airport but whose~~
4 ~~customers benefit from the use of a rental motor vehicle~~
5 ~~facility or service at a state airport paid for by rental motor~~
6 ~~vehicle customer facility charges, shall collect from rental~~
7 ~~motor vehicle customers, rental motor vehicle customer facility~~
8 ~~charges in an amount determined by the department in its sole~~
9 ~~discretion that represents a fair share of the cost and ongoing~~
10 ~~expenses relating to customer use of the facility or service~~
11 ~~notwithstanding any law to the contrary and without regard to~~
12 ~~the requirements of chapter 91. All rental motor vehicle~~
13 ~~customer facility charges collected by the lessor shall be paid~~
14 ~~to the department.~~

15 ~~Notwithstanding any law to the contrary, the department may~~
16 ~~negotiate and contract the management, maintenance, and~~
17 ~~operations of the facility and related services with one or more~~
18 ~~airport concessions or their designee that share in the use of a~~
19 ~~rental motor vehicle customer facility at a state airport.] "~~

20 SECTION 6. If any provision of this Act, or the
21 application thereof to any person or circumstance is held
22 invalid, the invalidity does not affect other provisions or



1 applications of the Act, which can be given effect without the
2 invalid provision or application, and to this end the provisions
3 of this Act are severable.

4 SECTION 7. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect on June 30, 2011;
7 provided that part II of this Act shall take effect on July 1,
8 2011; provided further that on June 30, 2012, sections 4 and 5
9 of this Act shall be repealed and sections 251-5 and 261-7,
10 Hawaii Revised Statutes, shall be reenacted in the form in which
11 they read on the day before the effective date of this Act.

APPROVED this 9 day of JUN, 2011

Neil Abernethy
GOVERNOR OF THE STATE OF HAWAII

