

JAN 26 2011

A BILL FOR AN ACT

RELATING TO PASSENGER FACILITY CHARGES.

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

1 SECTION 1. Section 261-7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§261-7 Operation and use privileges.** (a) In operating
4 an airport or air navigation facility owned or controlled by the
5 department of transportation, or in which it has a right or
6 interest, the department may enter into contracts, leases,
7 licenses, and other arrangements with any person:

8 (1) Granting the privilege of using or improving the
9 airport or air navigation facility or any portion or
10 facility thereof or space therein for commercial
11 purposes;

12 (2) Conferring the privilege of supplying goods,
13 commodities, things, services, or facilities at the
14 airport or air navigation facility;

15 (3) Making available services, facilities, goods,
16 commodities, or other things to be furnished by the
17 department or its agents at the airport or air
18 navigation facility; or

1 (4) Granting the use and occupancy on a temporary basis by
2 license or otherwise any portion of the land under its
3 jurisdiction which for the time being may not be
4 required by the department so that it may put the area
5 to economic use and thereby derive revenue therefrom.

6 All the arrangements shall contain a clause that the land
7 may be repossessed by the department when needed for aeronautics
8 purposes upon giving the tenant temporarily occupying the same
9 not less than thirty days' notice in writing of intention to
10 repossess.

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

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

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

- 11 (1) The payment to be made on in-bond merchandise sold at
12 Honolulu International Airport and on in-bond
13 merchandise displayed or sold elsewhere in the State
14 and delivered to the airport;
- 15 (2) The ability of the applicant to comply with all
16 federal and state rules and regulations concerning the
17 sale and delivery of in-bond merchandise; and
- 18 (3) The reputation, experience, and financial capability
19 of the applicant.

20 The department shall actively supervise the operation of
21 the contractor to insure its effectiveness. The department
22 shall develop and implement such guidelines as it may find

1 necessary and proper to actively supervise the operations of the
2 contractor, and shall include guidelines relating to the
3 department's review of the reasonableness of contractor's price
4 schedules, quality of merchandise, merchandise assortment,
5 operations, and service to customers. Apart from the contract
6 described in this subsection, the department shall confer no
7 right upon nor suffer nor allow any person to offer to sell,
8 sell, or deliver in-bond merchandise at Honolulu International
9 Airport; provided that this section shall not prohibit the
10 delivery of in-bond merchandise as cargo to the Honolulu
11 International Airport.

12 (d) The department, by contract, lease, or other
13 arrangement, upon a consideration fixed by it, may grant to any
14 qualified person the privilege of operating, as agent of the
15 State or otherwise, any airport owned or controlled by the
16 department; provided that no such person shall be granted any
17 authority to operate the airport other than as a public airport
18 or to enter into any contracts, leases, or other arrangements in
19 connection with the operation of the airport which the
20 department might not have undertaken under subsection (a).

21 (e) The department may fix and regulate, from time to
22 time, reasonable landing fees for aircraft, including the

1 imposition of landing surcharges or differential landing fees,
2 and other reasonable charges for the use and enjoyment of the
3 airports and the services and facilities furnished by the
4 department in connection therewith, including the establishment
5 of a statewide system of airports landing fees, a statewide
6 system of airports support charges, and joint use charges for
7 the use of space shared by users, which fees and charges may
8 vary among different classes of users such as foreign carriers,
9 domestic carriers, inter-island carriers, air taxi operators,
10 helicopters, and such other classes as may be determined by the
11 director, for the purpose of meeting the expenditures of the
12 statewide system of airports set forth in section 261-5(a),
13 which includes expenditures for capital improvement projects
14 approved by the legislature.

15 In setting airports rates and charges, including landing
16 fees, the director may enter into contracts, leases, licenses,
17 and other agreements with aeronautical users of the statewide
18 system of airports containing such terms, conditions, and
19 provisions as the director deems advisable.

20 If the director has not entered into contracts, leases,
21 licenses, and other agreements with any or fewer than all of the

1 aeronautical users of the statewide system of airports prior to
2 the expiration of an existing contract, lease, license, or
3 agreement, the director shall set and impose rates, rentals,
4 fees, and charges pursuant to this subsection without regard to
5 the requirements of chapter 91; provided that a public
6 informational hearing shall be held on the rates, rentals, fees,
7 and charges. The director shall develop rates, rentals, fees,
8 and charges in accordance with a residual methodology so that
9 the statewide system of airports shall be, and always remain,
10 self-sustaining. The rates, rentals, fees, and charges shall be
11 set at such levels as to produce revenues which, together with
12 aviation fuel taxes, shall be at least sufficient to meet the
13 expenditures of the statewide system of airports set forth in
14 section 261-5(a), including expenditures for capital improvement
15 projects approved by the legislature, and to comply with
16 covenants and agreements with holders of airport revenue bonds.
17 The director may develop and formulate methodology in setting
18 the various rates, rentals, fees, and charges imposed and may
19 determine usage of space, estimate landed weights, and apply
20 such portion of nonaeronautical revenue deemed appropriate in
21 determining the rates, rentals, fees, and charges applicable to
22 aeronautical users of the statewide system of airports. The

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1 rates, rentals, fees, and charges determined by the director in
2 the manner set forth in this subsection shall be those charges
3 payable by the aeronautical users for the periods immediately
4 following the date of expiration of the existing contract,
5 lease, license, or agreement. If fees are established pursuant
6 to this section, the department shall prepare a detailed report
7 on the circumstances and rates and charges that have been
8 established, and shall submit the report to the legislature no
9 later than twenty days prior to the convening of the next
10 regular session. If a schedule of rates, rentals, fees, and
11 charges developed by the director in accordance with this
12 section is projected by the department to produce revenues
13 which, together with aviation fuel taxes, will be in excess of
14 the amount required to meet the expenditures of the statewide
15 system of airports set forth in section 261-5(a), including
16 expenditures for capital improvement projects approved by the
17 legislature, and to comply with covenants and agreements with
18 holders of airport revenue bonds, the department shall submit
19 the schedule of rates, rentals, fees, and charges to the
20 legislature prior to the convening of the next regular session
21 of the legislature. Within forty-five days after the convening
22 of the regular session, the legislature may disapprove any

1 schedule of rates, rentals, fees, and charges required to be
2 submitted to it by this section by concurrent resolution. If no
3 action is taken by the legislature within the forty-five-day
4 period the schedule of rates, rentals, fees, and charges shall
5 be deemed approved. If the legislature disapproves the schedule
6 within the forty-five-day period, the director shall develop a
7 new schedule of rates, rentals, fees, and charges in accordance
8 with this section within seventy-five days of the disapproval.
9 Pending the development of a new schedule of rates, rentals,
10 fees, and charges, the schedule submitted to the legislature
11 shall remain in force and effect. Notwithstanding any other
12 provision of law to the contrary, the department may waive
13 landing fees and other aircraft charges established under this
14 section at any airport owned or controlled by the State
15 whenever:

- 16 (1) The governor declares a state of emergency; and
17 (2) The department determines that the waiver of landing
18 fees and other charges for the aircraft is consistent
19 with assisting in the delivery of humanitarian relief
20 to disaster-stricken areas of the State.
21 (f) To enforce the payment of any charges for repairs or
22 improvements to, or storage or care of any personal property

1 made or furnished by the department or its agent in connection
2 with the operation of an airport or air navigation facility
3 owned or operated by the department, the department shall have
4 liens on the property, which shall be enforceable by it as
5 provided by sections 507-18 to 507-22.

6 (g) The department from time to time may establish
7 developmental rates for buildings and land areas used
8 exclusively for general aviation activities at rates not less
9 than fifty per cent of the fair market rentals of the buildings
10 and land areas and may restrict the extent of buildings and land
11 areas to be used.

12 (h) Notwithstanding any laws to the contrary, the
13 department may establish, levy, assess, and collect rental motor
14 vehicle customer facility charges without regard to chapter 91,
15 which shall be paid to the department periodically as determined
16 by the department and shall be used to pay for, or finance on a
17 long-term basis or other-term basis where appropriate, the
18 design, planning, construction, and other uses of the rental
19 motor vehicle customer facility charges as set forth by the
20 rental motor vehicle customer facility charge special fund in
21 section 261-5.6.

1 The rental motor vehicle customer facility charges shall be
2 levied, assessed, and collected from all rental motor vehicle
3 customers who benefit from the use of any type of rental motor
4 vehicle facility or service provided by the department at a
5 state airport.

6 Beginning September 1, 2010, the department shall levy,
7 assess, and collect a rental motor vehicle customer facility
8 charge of \$4.50 per day, or any portion of a day that a rental
9 motor vehicle is rented or leased, by a rental motor vehicle
10 concession where customers pick up and return rental vehicles to
11 a facility at a state airport as determined by the director.

12 All rental motor vehicle customer facility charges shall be
13 collected by lessors as defined in section 437D-3 and who
14 operate a rental motor vehicle concession awarded by the
15 department at a state airport; provided that customers of
16 lessors, as defined in section 437D-3, who do not operate a
17 rental motor vehicle concession at a state airport but whose
18 customers benefit from the use of a rental motor vehicle
19 facility or service at a state airport paid for by rental motor
20 vehicle customer facility charges, shall collect from rental
21 motor vehicle customers, rental motor vehicle customer facility
22 charges in an amount determined by the department in its sole

1 discretion that represents a fair share of the cost and ongoing
2 expenses relating to customer use of the facility or service
3 notwithstanding any law to the contrary and without regard to
4 the requirements of chapter 91. All rental motor vehicle
5 customer facility charges collected by the lessor shall be paid
6 to the department.

7 Notwithstanding any law to the contrary, the department may
8 negotiate and contract the management, maintenance, and
9 operations of the facility and related services with one or more
10 airport concessions or their designee that share in the use of a
11 rental motor vehicle customer facility at a state airport.

12 (i) Notwithstanding any laws to the contrary and without
13 regard to the requirement of chapter 91, the department may
14 assess passenger facility charges as authorized under 49 United
15 States Code section 40117 and as provided under 14 Code of
16 Federal Regulations part 158 for each overseas or international
17 passenger who uses a state airport. The department shall
18 establish the charges in accordance with applicable federal laws
19 and regulations. No passenger facility charge shall be assessed
20 on flight segments between two or more airports within the
21 State."

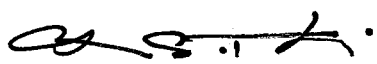
22 SECTION 2. New statutory material is underscored.

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1 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: 

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BY REQUEST

Report Title:

Transportation; Passenger Facility Charges; Revenues; Special Fund

Description:

Authorizes the Department of Transportation to collect increases in passenger facility charges without amending the administrative rule.

JUSTIFICATION SHEET

DEPARTMENT: Transportation

TITLE: PASSENGER FACILITY CHARGE

PURPOSE: Clarifies the law by amending the language to enable full compliance with the federal intent of the Passenger Facilities Charge ("PFC") usage.

MEANS: Amend section 261-7, Hawaii Revised Statutes.

JUSTIFICATION: The U.S. Congress has authorized airports to impose a PFC on enplaning passengers. Such PFCs are to be used by the airports to fund FAA-approved airport improvement projects. Once the FAA has approved a PFC, the legislation requires airlines and travel agents to collect PFCs from their passengers. The PFC rate is established by the Federal Aviation Administration. Currently, the FAA approved PFC for Hawaii is \$4.50 per enplaned passenger.

In 2003, the Legislature established the Passenger facility charge special fund (the "Fund"), as codified in section 261-5.5, Hawaii Revised Statutes. However, the administration of the PFC is governed by title 19, chapter 36 of the Hawaii Administrative Rules. Thus, if the FAA changes the maximum allowed PFC rate, then the Department must amend HAR § 19-36-4 in accordance with the Hawaii Administrative Procedures Act, to likewise adjust the PFC rate. As a housekeeping measure, the Department proposes the immediate bill to statutorily ensure the ability to automatically collect the maximum allowed PFC rate, as may be amended by the FAA from time to time.

Impact on the public: Minimal. The impact to the public will be seen in the timeliness of the Department's ability to adjust its PFC rate to reflect any corresponding changes made by the FAA from time to time.

The PFC does not apply to interisland travel.
Impact on the department and other agencies:
None.

GENERAL FUND: None.

OTHER FUNDS: The Passenger Facility Charge will be deposited to the Passenger Facility Charge special fund.

PBS PROGRAM
DESIGNATION: TRN 195.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.