

S.B. NO. 2874

JAN 25 2012

A BILL FOR AN ACT

RELATING TO AIRPORT REVENUE.

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

1 SECTION 1. Under both state law and federal regulation, the
2 State's airport system is required to be economically self-
3 supporting. To meet this requirement, the department of
4 transportation relies on revenue from airline operations,
5 facility and space rental from aeronautical and airport-related
6 users, revenues from concessions, and, to a very small extent,
7 facility and space rentals from non-aeronautical or
8 non-airport-related users.

9 In the late 1980s and early 1990s, Hawaii was a prime
10 destination for Japanese travelers and Hawaii's airports
11 benefited from unprecedented concession revenues due primarily
12 to almost \$2,000,000,000 in revenue from the in-bond (duty free)
13 concession over a thirteen-year period. At the very height of
14 the in-bond (duty free) boom in 1993, revenue from this single
15 concession was over \$300,000,000. From June 1, 1994 through May
16 31, 2001, the annual fiscal year revenue from the in-bond (duty
17 free) concession never dropped below \$100,000,000.

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1 All of that changed with the contract that began in June
2 2001. Due to changes in the Japanese market, the minimum annual
3 guaranteed concession fee from the in-bond (duty free)
4 concession contract dropped to \$60,000,000 per year. The events
5 of September 11, 2001, caused a further reduction in concession
6 revenue across the board. Today, while the in-bond (duty free)
7 concession is still the largest single revenue generating
8 concession, the guaranteed revenue from that concession is now
9 \$35,300,000 annually.

10 Over time, revenues from other concessions have increased,
11 but not enough to offset the change in the in-bond (duty free)
12 concession. In fiscal year 2009-2010, overall concession
13 revenue was more than \$127,000,000, but that still is more than
14 \$100,000,000 less than at the peak of the in-bond (duty free)
15 concession.

16 To help offset the decline in concession revenues, revenues
17 from landing fees, aeronautical and airport-related rentals, and
18 non-aeronautical rentals have increased. While aeronautical and
19 airport-related revenues have increased, the recent merger of
20 airlines, e.g., Delta and Northwest, and United and Continental,

1 and the loss of Aloha Airlines and ATA in 2008, reduced the
2 overall amount of real estate rented by the airlines.

3 The smallest of the revenue generators is by far
4 non-aeronautical rentals. This revenue segment could be
5 increased, without changing the nature of airports, by allowing
6 additional flexibility in contracting with such users. For
7 example, the department of transportation acquired portions of
8 Ualena Street in the 1990s for expansion of Honolulu
9 International Airport. The acquisition was made subject to the
10 existing land leases that terminate at the end of 2012.

11 Some of the lessees at the time of the acquisition were
12 relocated, with the space vacated being rented to others. Since
13 the acquisition, several entities inquired about renting space
14 but wanted to have the security of a five-year, or longer,
15 lease. Given the nature of the proposed non-aeronautical use of
16 the property, the department of transportation was prohibited
17 from directly negotiating such an agreement by section 171-59,
18 Hawaii Revised Statutes. Similar circumstances have arisen at
19 other airports as well.

20 Given the challenges in the economy and the continuing
21 efforts by the airlines to reduce costs throughout their

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1 operations, increasing the opportunities for revenue generation
2 at airports from non-aeronautical users is essential to the
3 maintenance of a healthy and self-supporting airport system.

4 SECTION 2. Section 171-59, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) Disposition of public lands for airline, aircraft,
7 airport-related, agricultural processing, cattle feed
8 production, aquaculture, marine, maritime, and maritime-related
9 operations may be negotiated without regard to the limitations
10 set forth in subsection (a) and section 171-16(c); provided
11 that:

12 (1) The disposition encourages competition within the
13 aeronautical, airport-related, agricultural,
14 aquaculture, maritime, and maritime-related
15 operations;

16 (2) The disposition shall not exceed a maximum term of
17 thirty-five years, except in the case of:

18 (A) Maritime and maritime-related operations, which
19 may provide for a maximum term of seventy years;
20 and

1 (B) Aquaculture operations, which may provide for a
2 maximum term of sixty-five years; provided that
3 aquaculture operations in good standing may seek
4 to renew a lease issued under this section and,
5 during the lease term, may engage in supportive
6 activities that are related to or integrated with
7 aquaculture; and

8 (3) The method of disposition of public lands for cattle
9 feed production as set forth in this subsection shall
10 not apply after December 31, 1988.

11 For the purposes of this subsection:

12 "Agricultural processing" means the processing of
13 agricultural products, including dairying, grown, raised, or
14 produced in Hawaii.

15 "Airport-related" means a purpose or activity that requires
16 air transportation to achieve that purpose or activity[-]; or an
17 activity that generates revenue for the airport system as
18 provided in section 261-7.

19 "Aquaculture" means the propagation, cultivation, or farming
20 of aquatic plants and animals in controlled or selected
21 environments for research, commercial, or stocking purposes,

1 including aquaponics or any growing of plants or animals with
2 aquaculture effluents.

3 "Maritime-related" means a purpose or activity that requires
4 and is directly related to the loading, off-loading, storage, or
5 distribution of goods and services of the maritime industry."

6 SECTION 3. Section 261-7, Hawaii Revised Statutes is
7 amended by amending subsection (a) to read as follows:

8 "(a) In operating an airport or air navigation facility
9 owned or controlled by the department of transportation, or in
10 which it has a right or interest, the department may enter into
11 contracts, leases, licenses, and other arrangements with any
12 person:

13 (1) Granting the privilege of using or improving the
14 airport or air navigation facility or any portion or
15 facility thereof or space therein for commercial
16 purposes;

17 (2) Conferring the privilege of supplying goods,
18 commodities, things, services, or facilities at the
19 airport or air navigation facility;

20 (3) Making available services, facilities, goods,
21 commodities, or other things to be furnished by the

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1 department or its agents at the airport or air
2 navigation facility; or
3 (4) Granting the use and occupancy [~~on a temporary basis~~
4 ~~by license or otherwise~~] of any portion of the land
5 under its jurisdiction which for the time being may
6 not be required by the department for aeronautics
7 purposes so that it may put the area to economic use
8 and thereby derive revenue therefrom.

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

14 The definition of the term "airport purpose" or "airport
15 purposes" contained in any governor's executive order transferring
16 jurisdiction and control of real property to the department
17 shall include entering into contracts, leases, licenses, and
18 other arrangements pursuant to this section."

19 SECTION 4. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

1 SECTION 5. This Act shall take effect on upon its
2 approval; provided that the amendments made to Section 261-7,
3 Hawaii Revised Statutes, by this Act, shall not be repealed when
4 Section 261-7, Hawaii Revised Statutes is reenacted on June 30,
5 2012, pursuant to Act 104, Session Laws of Hawaii 2011.

6 INTRODUCED BY: O.S.T.

7 BY REQUEST

8

Report Title:

Relating to Airport Revenue

Description:

Amends Sections 261-7 and 171-59 Hawaii Revised Statutes to provide more flexibility in renting land and facilities at airports for revenue generation purposes.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Transportation

TITLE: A BILL FOR AN ACT RELATING TO AIRPORT REVENUE.

PURPOSE: To provide the Department of Transportation with more options to generate revenue from non-aeronautical users of airport property.

MEANS: Amend sections 171-59(b) and 261-7(a), Hawaii Revised Statutes.

JUSTIFICATION: Airports are required to be economically self-supporting under state and federal law. The proposed change will provide the department with additional options for generating revenue from non-aeronautical sources. The change will assist in diversifying revenue streams, as well as enhancing revenues, and enable the department to better insulate itself from shocks in the aviation industry.

Impact on the public: None

Impact on the department and other agencies: None.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION:

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: July 1, 2012.