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# A BILL FOR AN ACT

RELATING TO CONCESSIONS.

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

1           SECTION 1. The legislature finds that state and county  
2 governments sometimes lack the flexibility in concession  
3 contracts to quickly address unexpected problems and emergencies  
4 that may arise, resulting in a loss of services to the public  
5 and loss of revenues to state and county governments.

6           The legislature notes that state and county governments  
7 should benefit from added flexibility in concession contracts to  
8 address the following issues:

9           (1) Delays in construction of premises by state and county  
10 governments;

11           (2) Unexpected circumstances, including increased  
12 construction costs due to tariffs, construction site  
13 problems, or other circumstances making it no longer  
14 feasible for a concessionaire to complete planned  
15 concession improvements during the contract term;

16           (3) Situations where a concession operator's location is  
17 in default, withdrawn, or being transferred, and the



1 state and county governments as landlords need to be  
2 able to avoid disruption of services and loss of  
3 revenues by immediately negotiating with another  
4 person or entity to assume the contract, including  
5 anyone who may have unamortized costs relating to  
6 concessions improvements; or

7 (4) Where other concession contracts have more generous  
8 relief terms to address financial or other hardships  
9 that a concession contract does not have.

10 The purpose of this Act is to provide more flexibility and  
11 discretion to state and county governments to address unexpected  
12 substantial hardship situations that are not provided in their  
13 concessions contracts.

14 SECTION 2. Section 102-10, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "**§102-10 Modification of concession contract terms. (a)**  
17 ~~[If] Notwithstanding any other law to the contrary, if~~ during  
18 the term of the contract ~~[+],~~ including contracts which have been  
19 executed and are presently in force ~~[ ] there has been a reduction~~  
20 ~~of fifteen per cent or more in the volume of business of the~~  
21 ~~concessionaire for a period of sixty days or more, computed on~~



1 ~~the average monthly gross income for the eighteen months just~~  
2 ~~prior to the period or as long as the concessionaire has been in~~  
3 ~~the business, whichever period is shorter,],~~ a significant  
4 hardship is anticipated or has occurred, and [such reduction]  
5 the significant hardship, as determined by the officer letting  
6 the contract, is related to improvements or operations on  
7 premises governed by the contract or caused by construction work  
8 conducted during the period of time on, or within or contiguous  
9 to, the public property upon which the concession is located, by  
10 either the state or county governments, or both, the officer,  
11 with the approval of the governor in the case of a state officer  
12 and the chief executive of the respective county in the case of  
13 a county officer, may grant relief by entering into a new  
14 contract or modify any of the terms of the existing contract,  
15 including the agreed upon rent, extension of term, subject to  
16 the restrictions in section 171-36, if applicable, or assumption  
17 of the contract, for a period [which] or upon terms that the  
18 state or county officer determines in their discretion will  
19 allow the concessionaire to recoup the amount or portion of the  
20 amount lost by [such reduction,] the significant hardship;  
21 provided that [if] upon granting relief the state or county



1 officer shall consider and state in writing, the duration and  
2 extent of the significant hardship during the term of the  
3 contract, the relief granted, and reason for granting relief.

4 (b) Subsection (a) shall not apply:

5 (1) If the existing contract includes provisions allowing  
6 modification for [the above contingencies, this  
7 section shall not be applicable thereto; provided  
8 further that this provision shall not apply to] a  
9 substantial hardship; and

10 (2) To any particular concession if the application  
11 [thereto] may impair any contractual obligations with  
12 bondholders of the State or counties or with any other  
13 parties.

14 (c) For the purposes of this section:

15 "Significant hardship" means:

16 (1) A reduction of:

17 (A) Fifteen per cent or more in the volume of  
18 business of the concessionaire for a period of  
19 sixty days or more; or



- 1           (B) Five per cent to fourteen per cent in business of
- 2                   the concessionaire for a period of one hundred
- 3                   days or more,
- 4           computed on the average monthly gross income for the
- 5           eighteen months just prior to the period or as long as
- 6           the concessionaire has been in the business, whichever
- 7           period is shorter;
- 8           (2) A delay of more than thirty days in the anticipated
- 9                   substantial completion of premises being constructed
- 10           by the state or county governments resulting in less
- 11           time for the concessionaire to construct, occupy, and
- 12           amortize its tenant improvements before the contract
- 13           termination date;
- 14           (3) Unexpected circumstances, including but not limited to
- 15                   rising international tariffs, construction site
- 16                   problems, or other circumstances resulting in the
- 17                   infeasibility of the concessionaire to proceed with
- 18                   its improvements;
- 19           (4) Where one or more of a concession operator's locations
- 20                   are in default, withdrawn, or in the process of being
- 21                   transferred; or



1        (5) Where one or more concession contracts have more  
 2        generous relief terms to address financial or other  
 3        hardships suffered by a concession when compared to  
 4        other concession contracts."

5        SECTION 3. Statutory material to be repealed is bracketed  
 6 and stricken. New statutory material is underscored.

7        SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

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JAN 23 2020



# H.B. NO. 2604

**Report Title:**

Concessions; Substantial Hardship; Public Property; Contracts

**Description:**

Provides state and county governments more flexibility and discretion to address substantial hardship situations that impact concession contracts.

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

