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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 would 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17 in default, withdrawn, or being transferred, and the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, or assumption  
16 of the contract, for a period [which] or upon terms that the  
17 state or county officer determines in their discretion will  
18 allow the concessionaire to recoup the amount or portion of the  
19 amount lost by ~~[such reduction,]~~ the significant hardship;  
20 provided that ~~[if]~~ upon granting relief the state or county  
21 officer shall consider and state in writing, the duration and



1 extent of the significant hardship during the term of the  
2 contract, the relief granted, and reason for granting relief.

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

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

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

13 (c) The extension of any term shall not be more than fifty  
14 per cent of the maximum term of sixty-five years as set forth in  
15 section 171-36(2) when counting the remaining term of the  
16 concession plus any extension thereof.

17 (d) The other provisions of chapter 171 shall not apply if  
18 in conflict with the intent and purposes of this section  
19 providing broad discretion to the state and county governments  
20 and their respective agencies and subdivisions to grant relief.

21 (e) For the purposes of this section:



1       "Significant hardship" means:

2       (1) A reduction of:

3           (A) Fifteen per cent or more in the volume of  
4           business of the concessionaire for a period of  
5           sixty days or more; or

6           (B) Five per cent to fourteen per cent in business of  
7           the concessionaire for a period of one hundred  
8           days or more,

9           computed on the average monthly gross income for the  
10          eighteen months just prior to the period or as long as  
11          the concessionaire has been in the business, whichever  
12          period is shorter;

13       (2) A delay of more than thirty days in the anticipated  
14       substantial completion of premises being constructed  
15       by the state or county governments resulting in less  
16       time for the concessionaire to construct, occupy, and  
17       amortize its tenant improvements before the contract  
18       termination date;

19       (3) Unexpected circumstances, including but not limited to  
20       rising international tariffs, construction site  
21       problems, or other circumstances resulting in the



1           infeasibility of the concessionaire to proceed with  
2           its improvements;

3           (4) Where one or more of a concession operator's locations  
4           are in default, withdrawn, or in the process of being  
5           transferred; or

6           (5) Where one or more concession contracts have more  
7           generous relief terms to address financial or other  
8           hardships suffered by a concession when compared to  
9           other concession contacts."

10           SECTION 3. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12           SECTION 4. This Act shall take effect on January 1, 2050.

**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. Effective 1/1/2050. (HD1)

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

