

JAN 17 2020

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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 delay of services to the public  
5 and loss of revenues.

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

- 9           (1) Delays in construction of premises;
- 10           (2) Unforeseen circumstances, including increased  
11 construction costs due to tariffs, construction site  
12 problems, or other circumstances making it no longer  
13 feasible for a concessionaire to complete planned  
14 concession improvements during the contract term;
- 15           (3) Situations where a concession operator's location is  
16 in default, withdrawn, or being transferred, and the  
17 state and county governments as landlords need to be



1           able to avoid disruption of services and loss of  
2           revenues by negotiating with another entity to assume  
3           the contract; or

4           (4) Where other concession contracts have more generous  
5           relief terms to address financial or other hardships.

6           The purpose of this Act is to provide more flexibility and  
7           discretion to state and county governments to address unexpected  
8           substantial hardship situations that are not memorialized in  
9           their concessions contracts.

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

12          "**§102-10 Modification of concession contract terms.** (a)  
13          If during the term of the contract ~~[+]~~, including contracts which  
14          have been executed and are presently in force ~~[+]~~ ~~there has been a~~  
15          ~~reduction of fifteen per cent or more in the volume of business~~  
16          ~~of the concessionaire for a period of sixty days or more,~~  
17          ~~computed on the average monthly gross income for the eighteen~~  
18          ~~months just prior to the period or as long as the concessionaire~~  
19          ~~has been in the business, whichever period is shorter,], a~~  
20          significant hardship is anticipated or has occurred, and [such  
21          ~~reduction]~~ the significant hardship, as determined by the



1 officer letting the contract, is related to improvements or  
2 operations on premises governed by the contract or caused by  
3 construction work conducted during the period of time on, or  
4 within or contiguous to, the public property upon which the  
5 concession is located, by either the state or county  
6 governments, or both, the officer, with the approval of the  
7 governor in the case of a state officer and the chief executive  
8 of the respective county in the case of a county officer, may  
9 enter into a new contract or modify any of the terms of the  
10 existing contract, including the agreed upon rent, extension of  
11 term, or assumption of the contract, for a period [which] or  
12 upon terms that the state or county officer determines will  
13 allow the concessionaire to recoup the amount or portion lost by  
14 ~~[such reduction,]~~ the significant hardship; provided that ~~[if]~~  
15 the state or county officer shall consider, in writing, the  
16 duration and extent of the significant hardship during the term  
17 of the contract.

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

19 (1) If the existing contract includes provisions allowing  
20 modification for ~~[the above contingencies, this~~  
21 ~~section shall not be applicable thereto, provided~~



1 ~~further that this provision shall not apply to] a~~  
2 substantial hardship; and

3 (2) To any particular concession if the application  
4 ~~[thereto]~~ may impair any contractual obligations with  
5 bondholders of the State or counties or with any other  
6 parties.

7 (c) For the purposes of this section:

8 "Significant hardship" means:

9 (1) A reduction of:

10 (A) Fifteen per cent or more in the volume of  
11 business of the concessionaire for a period of  
12 sixty days or more; or

13 (B) Five per cent to fourteen per cent in business of  
14 the concessionaire for a period of one hundred  
15 days or more,

16 computed on the average monthly gross income for the  
17 eighteen months just prior to the period or as long as  
18 the concessionaire has been in the business, whichever  
19 period is shorter;

20 (2) A delay of more than thirty days in the anticipated  
21 substantial completion of premises being constructed



1           by the state or county governments resulting in less  
2           time for the concessionaire to construct, occupy, and  
3           amortize its tenant improvements before the contract  
4           termination date;

5           (3) Unexpected circumstances, including but not limited to  
6           rising international tariffs, construction site  
7           problems, or other circumstances resulting in the  
8           infeasibility of the concessionaire to proceed with  
9           its improvements;

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

13          (5) Where one or more concession contracts have more  
14          generous relief terms to address financial or other  
15          hardships suffered by a concession when compared to  
16          other concession contracts."

17          SECTION 3. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.



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

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INTRODUCED BY: *Francis J. ...*

*[Signature]*

*Rosely H. ...*  
*Clarence W. ...*



# S.B. NO. 2416

**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.*

