

JAN 27 2021

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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 this Act is  
2 necessary due to the significant hardship that Hawaii is  
3 experiencing, especially during the ongoing coronavirus disease  
4 2019 (COVID-19) pandemic. The legislature further finds that  
5 the department of transportation does not have the same powers  
6 to grant relief to Hawaii airport concessions that most other  
7 airports across the United States have whenever significant  
8 hardships occur. Hawaii's airport concessions are currently  
9 suffering more significant hardships than many other airport  
10 concessions across the United States that are heavily dependent  
11 on tourism. Hawaii's chief economist has stated that 2019  
12 tourism levels may not return for six years following the  
13 beginning of the COVID-19 pandemic in Hawaii, which occurred  
14 around March 15, 2020.

15       The legislature recognizes that airport concessions play a  
16 major role in supporting Hawaii's public airports.  
17 Historically, airport concessions have, on average, provided



1 fifty per cent, and occasionally up to seventy per cent, of the  
2 necessary operating revenues for Hawaii's public airports.  
3 Hawaii's airports are supported by special funds rather than by  
4 taxpayer dollars. Federal Aviation Administration officials  
5 have recognized this importance and encouraged airport  
6 operators, like the department of transportation, to be creative  
7 and think outside the box to provide varied relief measures,  
8 other than just temporary rent relief, to airport concessions.  
9 The legislature likewise so encourages the department of  
10 transportation. The purpose of these relief measures in part is  
11 to encourage concessionaires to remain in their current  
12 locations in spite of any financial hardships and be ready and  
13 able to serve those passengers that are beginning to return to  
14 the airports.

15 This Act provides the department with the discretion and  
16 powers to address significant hardships as they occur or  
17 continue, including those hardships caused by COVID-19, and to  
18 not delay until the department of transportation has the  
19 discretion and power to take corrective action. The legislature  
20 expects that, when exercising this discretionary power, the  
21 department of transportation will timely respond to significant



1 hardships in a fashion that is generally fair to all and does  
2 not favor one airport tenant or group of tenants, regardless of  
3 size, over others unless warranted.

4 Accordingly, the purpose of this Act is not to require any  
5 type of relief or action, but rather to provide the department  
6 of transportation broad flexibility and broad discretion to  
7 timely address significant hardships and to grant relief to  
8 airport concessions.

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

11 "**S102-10 Modification of contract terms.** [If] (a)  
12 Notwithstanding any other law to the contrary, if during the  
13 term of the contract [4], including [contracts which have] any  
14 type of contract that has been executed [and are] or is  
15 presently in force[4] there], or both:

16 (1) There has been a reduction of fifteen per cent or more  
17 in the volume of business of the concessionaire for a  
18 period of sixty days or more, computed on the average  
19 monthly gross income for the eighteen months [~~just~~  
20 ~~prior to~~] immediately preceding the period or [~~as long~~  
21 ~~as~~] the length of time that the concessionaire has



1           been in the business, whichever ~~[period]~~ is shorter,  
2           and ~~[such]~~ the reduction, as determined by the officer  
3           letting the contract, is caused by construction work  
4           conducted during the period of time on, or within or  
5           contiguous to, the public property upon which the  
6           concession is located by either the state or county  
7           governments, or both, the officer, with the approval  
8           of the governor in the case of a state officer and the  
9           chief executive of the respective county in the case  
10          of a county officer, may modify any of the terms of  
11          the contract, including the agreed upon rent, for a  
12          period which will allow the concessionaire to recoup  
13          the amount lost by ~~[such]~~ the reduction; ~~[provided~~  
14          ~~that if]~~ and

15          (2) A significant hardship is anticipated or has occurred  
16          to one or more airport concessions, as determined by  
17          the officer letting the contract, the officer, with  
18          the approval of the governor, shall have the  
19          discretion to grant recoupment for the amount lost as  
20          may be applicable for the period that the  
21          concessionaire has been in business; provided that the



1           recoupment may periodically include one or more of the  
2           following:

3           (A) Entering into a new contract; and

4           (B) Modifying the terms of any type of existing  
5           contract, including without limitation holdover  
6           agreements or revocable permits; the adjustment  
7           of rent; the granting of an extension of the  
8           contract's term with or without any further  
9           required investments or obligations; permitting  
10          the assumption or transfer, or both, of a  
11          contract; permitting the withdrawal of the  
12          contract without a concessionaire being in  
13          default or barred from doing business with the  
14          State, or both; and any other form of relief to a  
15          concession suffering significant hardship.

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

17          (1) If the contract includes provisions allowing  
18          modification for all of the [above] contingencies[  
19          ~~this section shall not be applicable thereto; provided~~  
20          ~~further that this provision shall not apply to]~~ and  
21          types of relief described in this section; and



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

5        (c) For airport concessions, the term of the contract  
6        shall not be more than twenty years, which shall include both  
7        the remaining term of the contract and any extension thereof.

8        (d) To the extent that the provisions of chapter 171  
9        conflict with the purpose and intent of this section, chapter  
10       171 shall not apply to airport concessions.

11       (e) For purposes of this section, "significant hardship"  
12       includes one or more of the following that may occur or  
13       continue, or both, from time to time:

14       (1) A reduction of:

15       (A) Fifteen per cent or more in the volume of  
16       business of the concessionaire for a period of  
17       sixty days or more, computed on the average  
18       monthly gross income for the eighteen months  
19       immediately preceding the period or the length of  
20       time that the concessionaire has been in  
21       business, whichever is shorter; and



1           (B) Ten per cent or more in the volume of business of  
2           the concessionaire for a period of one hundred  
3           eighty days or more, computed on the average  
4           monthly gross income for the period one hundred  
5           eighty days immediately preceding the period or  
6           the length of time that the concessionaire has  
7           been in business, whichever is shorter;

8           (2) A delay of more than ninety days in the anticipated  
9           substantial completion of premises being constructed  
10           by the State resulting in less time for the  
11           concessionaire to construct, occupy, and amortize the  
12           concessionaire's tenant improvements over the  
13           remaining term of the concessionaire's contract with  
14           the State;

15           (3) Unexpected circumstances, including but not limited to  
16           rising international tariffs, construction site or  
17           design problems, or other circumstances resulting in  
18           the infeasibility or other significant hardship for  
19           the concessionaire to proceed with the improvements  
20           described in the concessionaire's contract with the  
21           State;



1       (4) Situations in which one or more concession contracts  
2       have more favorable relief terms to address financial  
3       or operating hardships when compared to the relief  
4       terms of other concession contracts;

5       (5) Situations in which one or more of a concessionaire's  
6       locations are in default, withdrawn, or in the process  
7       of being transferred and a sublessee, a joint venture  
8       partner, or licensee generating less than twenty-five  
9       per cent or less of the total gross receipts of the  
10       concessionaire will not be allowed to continue  
11       operations and amortize the cost of the sublessee,  
12       joint venture partner, or licensee's concession  
13       improvements over the remaining term of the sublessee,  
14       joint venture partner, or licensee's contract with the  
15       concessionaire; or

16       (6) Situations in which an extension of time on the  
17       contract would assist the concessionaire in the  
18       recoupment of the concessionaire's loss or the loss of  
19       time for the concessionaire to amortize the cost of  
20       the concession improvements, or both, due to the loss





1           of volume of business as described in paragraphs  
2           (1) (A) and (1) (B) ."

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

**5** SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY:



# S.B. NO. 1308

**Report Title:**

DOT; Airport Concessions; Substantial Hardship; Contracts

**Description:**

Provides the department of transportation with more flexibility and discretion to address substantial hardship situations that impact airport 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.*

