

ACT 128

H.B. NO. 2637

A Bill for an Act Relating to Transportation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that many airport concessions are in need of improvements. A number of airport concessions have complained that, given stringent accounting rules, they cannot make necessary improvements to their concessions because there is no remaining term on the lease, or due to the very short remaining term that does not allow amortization of further improvements. Over twenty airport concessions now experience this problem.

As a result, improvements that the airports and various concessionaires would like to see take place are simply not being made. All agree that Hawaii's airports would be better in overall appearance and enhanced revenues may potentially accrue to the department of transportation if improvements could be made.

While there were a number of concessions prior to September 11, 2001, that had only a few years or no remaining term on their leases, the events of September 11, 2001, the severe acute respiratory syndrome epidemic of March 2003, and the general downturn and uncertainty in the economy that followed did not make it feasible to put concessions out to bid.

The legislature further finds that, while the economy has now improved, it will take two to three years to put these twenty or more concessions out to bid. Rather than have some of these concessions forego necessary improvements for two to three more years, it would be beneficial for both concessionaires and the airports if some of the concession leases could be extended on a short-term basis to allow for some improvements.

To allow the airports to temporarily grant fixed short-term lease extensions, Hawaii's statutes requiring airport concessions to be put out to sealed bid would have to be temporarily suspended. During this period, the department of transportation, in its sole discretion, would be allowed to discuss and negotiate fixed short-term lease extensions as a condition for concession improvements.

Since this Act is intended as a one-time and temporary change in the law to allow for only some improvements while the back log of concessions waiting to be bid is reduced, it is the intent of the legislature that:

- (1) The term of the extension shall be limited to not more than forty per cent of the original concession term;
- (2) The cost of improvements must justify the extension; and
- (3) There must be no reduction in lease rent during the extension period.

Further, concession lessees who received rent relief from the department of transportation after April 30, 2002, by way of negotiation or pursuant to Act 201, Session Laws of Hawaii 2004, shall not be eligible for any fixed short-term lease extension provided by this Act.

To expedite these discussions and these improvements, the legislature further finds that it is necessary to grant the department of transportation, for a period of twelve months, the sole discretion and authority to negotiate all terms and conditions for any short-term lease extension within these parameters. The department of transportation shall have the opportunity and flexibility to negotiate improvements in return for fixed short-term lease extensions. In addition to possible added revenues to the department of transportation, the improvements will immediately jump-start and enhance the ambience, appearance, and overall experience at Hawaii's public airports for visitors and local residents alike, and avoid improvement delays for another few years.

The purpose of this Act is to provide the department of transportation with:

- (1) The flexibility to allow airport concessions to make improvements; and
- (2) The authority to:
 - (A) Grant short-term extensions to concession leases or concession permits within specified parameters in exchange for improvements; and
 - (B) Modify and alter older leases and permits by changing the relief terms to similar terms found in newer concession leases that allow a concession to receive economic emergency relief in case of disruptive economic events.

SECTION 2. Notwithstanding any law to the contrary and for concession leases or permits that did not receive rent relief after April 30, 2002, by way of negotiation or pursuant to Act 201, Session Laws of Hawaii 2004, the department of transportation, in its sole discretion and authority, upon mutual agreement with a concession seeking to make improvements, may modify, alter, or amend the terms of concession leases and permits in exchange for improvements, including but not limited to locations, requirements, and obligations; provided that:

- (1) Any extension of a lease or permit shall be for a period not longer than forty per cent of the original term of the concession lease;
- (2) The rents during the extension period shall not be lower than rents paid by the concession under its existing lease or permit; and
- (3) Rent relief terms for leases or permits signed prior to April 30, 2002, may be modified and altered to include terms in newer concession leases that provide economic emergency relief for concessions in case of disruptive economic events.

Within twelve months prior to the termination of any lease or permit receiving an extension pursuant to this Act, the department of transportation shall solicit bids for a new lease; provided the solicitation of bids may be delayed for good cause, including the occurrence of a disruptive event similar to the events of September 11, 2001, as determined by the director of transportation in the director's sole discretion.

SECTION 3. This Act shall take effect upon its approval and shall be repealed on July 1, 2007.

(Approved May 24, 2006.)