

A BILL FOR AN ACT VETO OVERRIDE

RELATING TO AIRPORT CONCESSIONS.

ACT No. 33
Approved: [Signature]
Dated: July 15, 2009

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

1 SECTION 1. The legislature finds that the State of Hawaii,
2 along with the rest of the nation, is facing an economic
3 recession that is sudden, extraordinary, and severe and one that
4 may result in greater hardship and economic suffering than has
5 ever been faced by the State. This is especially true for
6 airport concessionaires who rely on air travelers for their
7 business. Passenger counts, already weakened due to the recent
8 history of rising fuel and ticket prices, have now dropped off
9 even further. This decrease in the number of air travelers,
10 coupled with the heightened security measures following the
11 events of September 11, 2001, has restricted ticketed
12 passengers' access to airport concessionaires, and caused
13 airport concessionaires to realize a decline in business similar
14 to that realized immediately after September 11, 2001.

15 As a result of the events of September 11, 2001, the
16 legislature passed legislation granting relief to airport
17 concessionaires due to the financial hardship they were



1 suffering so that they could remain open and continue serving
2 Hawaii's tourists and residents.

3 Further, the continued economic downturn after
4 September 11, 2001, along with other global events that affected
5 Hawaii's economy such as the Severe Acute Respiratory Syndrome
6 epidemic that took place in March 2003, required additional
7 action by the legislature to assist airport concessionaires.
8 Act 128, Session Laws of Hawaii 2006 (Act 128), temporarily
9 suspended Hawaii's statutes requiring airport concessions to be
10 put out to sealed bid and gave the state department of
11 transportation (DOT) the sole discretion to discuss and
12 negotiate fixed, short-term lease extensions, under certain
13 conditions. The legislature finds that conflicting opinions
14 exist as to the intent of Act 128 but hereby finds and clarifies
15 that it was not the intent or purpose of the legislature,
16 through the passage of Act 128, to remove any rent-relief
17 provisions then existing in any concession leases or contracts
18 that included improvements in accordance with Act 128.

19 While DOT has sought to be a reasonable landlord by
20 providing various economic relief provisions to airport
21 concessionaires, the interdependence of our global economy has
22 increased economic uncertainty. The fluctuations experienced in



1 the economy due to this uncertainty have caused various
2 concessions to suffer financial losses, losses they continue to
3 suffer. One concession in particular has suffered and continues
4 to suffer a loss of gross receipts of more than thirty per cent
5 with monthly operating losses.

6 Obviously such losses cannot continue. Some relief
7 provisions previously given to concessionaires must be clarified
8 or amended, such as those provisions applicable only during
9 times of economic emergency. These provisions allow all airport
10 concessionaires' guaranteed rent payments to DOT to rise or fall
11 each year depending on the concession's level of success, to
12 avoid undue hardship and the likelihood of default on airport
13 concession contracts due to reasons beyond their control. In
14 fairness, the DOT should consider providing the same type of
15 relief to all concessions and not just some concessions, such as
16 the self-adjusting eighty-five per cent formula now provided to
17 cover twenty airport concessions.

18 Unlike many local businesses which have survived during
19 this current economic recession by cutting expenses and offering
20 kamaaina discounts and incentives, airport concessionaires can
21 only provide services for passengers arriving or departing on
22 daily flights. This fact severely restricts the economic base



1 for airport concessionaires. Furthermore, unlike some airport
2 tenants that are able to make up for lost revenue through other
3 means or are able to cut expenses, Hawaii's airport concessions
4 can only appeal to the legislature for relief.

5 Unless relief is provided, concessionaires suffering losses
6 may no longer be economically viable and will face the harsh
7 consequences of defaulting on their concession contract,
8 forfeiting their performance bond, and being barred from doing
9 business with the State of Hawaii for five years in accordance
10 with section 171-13, Hawaii Revised Statutes. These penalties
11 place a tremendous hardship on these businesses due to economic
12 conditions beyond their control. Such results would not only be
13 devastating for the concessionaire but for the State as well due
14 to disruption in services and employee layoffs at airport
15 concessions, and since the State likely will only be able to
16 find a replacement concessionaire who will pay the State
17 significantly-reduced rents for years to come. As relief for
18 airport concessionaires cannot be simply granted or leases and
19 contracts amended by DOT, legislative direction and
20 authorization is necessary.

21 Economic hardship for the State, as well as airport
22 concessions, is likely to increase in future months and it could



1 take years for an economic rebound to occur. However, these
2 businesses in all fairness and for public purposes should
3 continue to provide services to our visitors, for the sake of
4 our tourist industry and to our residents. Like other
5 concessions receiving rent relief or rent adjustments pursuant
6 to their leases or contracts with the DOT, similar or other
7 relief should be provided to concession leases or contracts not
8 having such provisions.

9 The major purpose of this Act is to:

10 (1) Give the governor and DOT the discretion and authority
11 to provide relief to airport concessionaires:

12 (A) Whose leases or contracts with DOT were entered
13 into on or after November 1, 2006, and who spent
14 capital improving the concession premises; or

15 (B) Who, as a result of any agreement with DOT
16 pursuant to Act 128, Session Laws of Hawaii 2006,
17 or Act 201, Session Laws of Hawaii 2004, spent
18 capital improving the concession premises;

19 provided that negotiations for relief for a concession
20 covered by this Act shall commence within ninety days,
21 or any extension agreed to between the governor or
22 governor's designee and a concessionaire following the



1 mailing by the concessionaire of a written request for
2 relief to the governor; and

3 (2) Provide that in seeking relief pursuant to this Act,
4 qualified concessionaires may only seek relief for
5 losses of gross receipts or loss of business which
6 occurred during periods of time starting November 1,
7 2006, or later.

8 SECTION 2. Notwithstanding any laws or provisions to the
9 contrary, including chapters 102 and 261, Hawaii Revised
10 Statutes, the governor, or director of transportation, if so
11 directed by the governor, with respect to airport concessions:

12 (1) Shall have the discretion and authority to provide
13 relief to airport concessionaires:

14 (A) Whose leases or contracts were granted pursuant
15 to chapter 102, Hawaii Revised Statutes, and were
16 entered into on or after November 1, 2006, and
17 who spent capital improving the concession
18 premises; or

19 (B) Who, as a result of any agreement with the
20 department pursuant to Act 201, Session Laws of
21 Hawaii 2004, or Act 128, Session Laws of Hawaii



1 2006, spent capital improving the concession
2 premises;
3 provided that negotiations for relief for a concession
4 covered by this Act shall commence within ninety days,
5 or any agreed extension between the governor or
6 governor's designee and a concessionaire, following
7 the mailing by the concessionaire of a written request
8 for relief to the governor;

9 (2) Shall have the discretion and authority, without
10 limitation, to reach a relief agreement with the
11 concessionaire to extend the term of the lease or
12 contract, grant or modify existing relief provisions,
13 adjust rent, and otherwise add to, modify, and amend
14 any of the terms of the concession lease or contract;

15 (3) Shall have the discretion and authority to grant
16 similar and fair relief to a concessionaire whose
17 concession has suffered operating losses, reduced
18 business, or other losses, for any period starting on
19 or after November 1, 2006;

20 (4) Shall take into account any prior rent relief granted
21 to a concessionaire pursuant to this Act or by any



1 governmental agency to avoid the duplication of relief
2 benefits; and

3 (5) Shall have the discretion and authority to provide
4 relief only for the period of time on or after
5 November 1, 2006, that a concession lease or contract
6 was or remains in effect.

7 SECTION 3. The relief provided for by this Act shall be
8 provided as long as and to the extent that such relief does not
9 violate any applicable federal laws and regulations and does not
10 jeopardize the receipt of any federal aid or impair the
11 obligation of Hawaii's department of transportation to the
12 holders of any bond issued by Hawaii's department of
13 transportation.

14 SECTION 4. To the extent necessary to take action,
15 effectuate, and fulfill the purpose and intentions of this Act
16 including the relief to be provided, the effects of section
17 171-13, and chapters 102 and 261, Hawaii Revised Statutes, as
18 well as any other statutory provisions or any rules that may be
19 in conflict with this Act, shall be deemed waived and not
20 applicable.

21 SECTION 5. If any provision of this Act, or the
22 application thereof to any person or circumstance is held



1 invalid, the invalidity shall not affect other provisions or
2 applications of the Act, which can be given effect without the
3 invalid provision or application, and to this end the provisions
4 of this Act are severable.

5 SECTION 6. This Act shall take effect on July 1, 2009, and
6 shall be repealed on July 1, 2011.

