

---

---

# A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

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

1 Part I

2 SECTION 1. Act 33, Special Session Laws of Hawaii 2009,  
3 sought to provide the department of transportation with the  
4 discretion and flexibility to provide relief to various airport  
5 concessionaires due to sudden, extraordinary, and severe  
6 economic events. The legislature recognized that the department  
7 of transportation's relief efforts were not fair to all  
8 concessionaires, in that some concessionaires had a self-  
9 adjusting eighty-five per cent guaranteed rent adjusting formula  
10 that provided relief for adverse economic events. Other  
11 concessionaires had a guaranteed rent formula that does not  
12 allow for fluctuations in economic circumstances.

13 The legislature finds that the issues prompting the  
14 enactment of Act 33 have not been completely resolved as to all  
15 airport concessions, so inequities continue among various  
16 concessions. In addition, as a result of the recent devastating  
17 tsunami and related events taking place in Japan, a number of  
18 airport concessionaires are or will experience a sudden,



1 extraordinary, and severe economic hardship as they do not have  
2 the same self-adjusting relief provisions of other airport  
3 concessionaires. It is estimated that these less fortunate  
4 concessions could experience a loss of revenues of about  
5 twenty-five per cent for twelve months or longer or until the  
6 number of visitors from Japan returns to the level that existed  
7 prior to the recent tsunami. Those gross revenue losses would  
8 be devastating to an airport concessionaire lacking the self-  
9 adjusting rent formula of other concessionaires.

10 The purpose of this part is to provide rent relief to  
11 airport concessionaires that have a guaranteed rent formula with  
12 the State.

13 SECTION 2. Act 33, Special Session Laws of Hawaii 2009, is  
14 amended as follows:

15 1. By adding a new section to read:

16 "SECTION 2A. The governor, or the director of  
17 transportation if so directed by the governor, shall have the  
18 discretion and authority to provide additional relief to airport  
19 concessionaires that do not have a self-adjusting lease formula  
20 as of March 31, 2011."

21 2. By amending section 6 to read:



1 "SECTION 6. This Act shall take effect on July 1, 2009,  
2 and shall be repealed on [~~July 1, 2011.~~] July 1, 2013."

3 Part II

4 SECTION 3. Section 251-2, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6 "(a) There is levied and shall be assessed and collected  
7 each month a rental motor vehicle surcharge tax of [~~\$2~~] \$7.50 a  
8 day, except that [~~for the period of September 1, 1999, to August~~  
9 ~~31, 2011,~~] after June 30, 2013, the tax shall be \$3 a day, or  
10 any portion of a day that a rental motor vehicle is rented or  
11 leased. The rental motor vehicle surcharge tax shall be levied  
12 upon the lessor; provided that the tax shall not be levied on  
13 the lessor if:

14 (1) The lessor is renting the vehicle to replace a vehicle  
15 of the lessee that is being repaired; and

16 (2) A record of the repair order for the vehicle is  
17 retained either by the lessor for two years for  
18 verification purposes or by a motor vehicle repair  
19 dealer for two years as provided in section 437B-16."

20 SECTION 4. Section 251-5, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           "~~+~~§251-5~~+~~ **Remittances.** All remittances of surcharge  
2 taxes imposed under this chapter shall be made by cash, bank  
3 draft, cashier's check, money order, or certificate of deposit  
4 to the office of the taxation district to which the return was  
5 transmitted. The department shall deposit the moneys into the  
6 state treasury to the credit of the state highway fund~~-~~;  
7 provided that of the rental motor vehicle surcharge taxes  
8 assessed and collected pursuant to section 251-2(a), the  
9 equivalent of \$4.50 of the tax assessed and collected per day  
10 shall be deposited into the state treasury to the credit of the  
11 general fund."

12           SECTION 5. Section 261-7, Hawaii Revised Statutes, is  
13 amended to read as follows:

14           "**§261-7 Operation and use privileges.** (a) In operating  
15 an airport or air navigation facility owned or controlled by the  
16 department of transportation, or in which it has a right or  
17 interest, the department may enter into contracts, leases,  
18 licenses, and other arrangements with any person:

- 19           (1) Granting the privilege of using or improving the
- 20                     airport or air navigation facility or any portion or
- 21                     facility thereof or space therein for commercial
- 22                     purposes;



- 1 (2) Conferring the privilege of supplying goods,  
2 commodities, things, services, or facilities at the  
3 airport or air navigation facility;
- 4 (3) Making available services, facilities, goods,  
5 commodities, or other things to be furnished by the  
6 department or its agents at the airport or air  
7 navigation facility; or
- 8 (4) Granting the use and occupancy on a temporary basis by  
9 license or otherwise any portion of the land under its  
10 jurisdiction which for the time being may not be  
11 required by the department so that it may put the area  
12 to economic use and thereby derive revenue therefrom.

13 All the arrangements shall contain a clause that the land  
14 may be repossessed by the department when needed for aeronautics  
15 purposes upon giving the tenant temporarily occupying the same  
16 not less than thirty days' notice in writing of intention to  
17 repossess.

18 (b) Except as otherwise provided in this section, in each  
19 case mentioned in subsection (a) (1), (2), (3), and (4), the  
20 department may establish the terms and conditions of the  
21 contract, lease, license, or other arrangement, and may fix the  
22 charges, rentals, or fees for the privileges, services, or



1 things granted, conferred, or made available, for the purpose of  
2 meeting the expenditures of the statewide system of airports set  
3 forth in section 261-5(a), which includes expenditures for  
4 capital improvement projects approved by the legislature. Such  
5 charges shall be reasonable and uniform for the same class of  
6 privilege, service, or thing.

7 (c) The department shall enter into a contract with no  
8 more than one person ("contractor") for the sale and delivery of  
9 in-bond merchandise at Honolulu International Airport, in the  
10 manner provided by law. The contract shall confer the right to  
11 operate and maintain commercial facilities within the airport  
12 for the sale of in-bond merchandise and the right to deliver to  
13 the airport in-bond merchandise for sale to departing foreign-  
14 bound passengers.

15 The department shall grant the contract pursuant to the  
16 laws of this State and may take into consideration:

17 (1) The payment to be made on in-bond merchandise sold at  
18 Honolulu International Airport and on in-bond  
19 merchandise displayed or sold elsewhere in the State  
20 and delivered to the airport;



1 (2) The ability of the applicant to comply with all  
2 federal and state rules and regulations concerning the  
3 sale and delivery of in-bond merchandise; and

4 (3) The reputation, experience, and financial capability  
5 of the applicant.

6 The department shall actively supervise the operation of  
7 the contractor to ensure its effectiveness. The department  
8 shall develop and implement such guidelines as it may find  
9 necessary and proper to actively supervise the operations of the  
10 contractor, and shall include guidelines relating to the  
11 department's review of the reasonableness of contractor's price  
12 schedules, quality of merchandise, merchandise assortment,  
13 operations, and service to customers.

14 Apart from the contract described in this subsection, the  
15 department shall confer no right upon nor suffer nor allow any  
16 person to offer to sell, sell, or deliver in-bond merchandise at  
17 Honolulu International Airport; provided that this section shall  
18 not prohibit the delivery of in-bond merchandise as cargo to the  
19 Honolulu International Airport.

20 (d) The department, by contract, lease, or other  
21 arrangement, upon a consideration fixed by it, may grant to any  
22 qualified person the privilege of operating, as agent of the



1 State or otherwise, any airport owned or controlled by the  
2 department; provided that no such person shall be granted any  
3 authority to operate the airport other than as a public airport  
4 or to enter into any contracts, leases, or other arrangements in  
5 connection with the operation of the airport which the  
6 department might not have undertaken under subsection (a).

7 (e) The department may fix and regulate, from time to  
8 time, reasonable landing fees for aircraft, including the  
9 imposition of landing surcharges or differential landing fees,  
10 and other reasonable charges for the use and enjoyment of the  
11 airports and the services and facilities furnished by the  
12 department in connection therewith, including the establishment  
13 of a statewide system of airports landing fees, a statewide  
14 system of airports support charges, and joint use charges for  
15 the use of space shared by users, which fees and charges may  
16 vary among different classes of users such as foreign carriers,  
17 domestic carriers, inter-island carriers, air taxi operators,  
18 helicopters, and such other classes as may be determined by the  
19 director, for the purpose of meeting the expenditures of the  
20 statewide system of airports set forth in section 261-5(a),  
21 which includes expenditures for capital improvement projects  
22 approved by the legislature.





1 In setting airports rates and charges, including landing  
2 fees, the director may enter into contracts, leases, licenses,  
3 and other agreements with aeronautical users of the statewide  
4 system of airports containing such terms, conditions, and  
5 provisions as the director deems advisable.

6 If the director has not entered into contracts, leases,  
7 licenses, and other agreements with any or fewer than all of the  
8 aeronautical users of the statewide system of airports prior to  
9 the expiration of an existing contract, lease, license, or  
10 agreement, the director shall set and impose rates, rentals,  
11 fees, and charges pursuant to this subsection without regard to  
12 the requirements of chapter 91; provided that a public  
13 informational hearing shall be held on the rates, rentals, fees,  
14 and charges.

15 The director shall develop rates, rentals, fees, and  
16 charges in accordance with a residual methodology so that the  
17 statewide system of airports shall be, and always remain, self-  
18 sustaining. The rates, rentals, fees, and charges shall be set  
19 at such levels as to produce revenues which, together with  
20 aviation fuel taxes, shall be at least sufficient to meet the  
21 expenditures of the statewide system of airports set forth in  
22 section 261-5(a), including expenditures for capital improvement



1 projects approved by the legislature, and to comply with  
2 covenants and agreements with holders of airport revenue bonds.

3 The director may develop and formulate methodology in  
4 setting the various rates, rentals, fees, and charges imposed  
5 and may determine usage of space, estimate landed weights, and  
6 apply such portion of nonaeronautical revenue deemed appropriate  
7 in determining the rates, rentals, fees, and charges applicable  
8 to aeronautical users of the statewide system of airports.

9 The rates, rentals, fees, and charges determined by the  
10 director in the manner set forth in this subsection shall be  
11 those charges payable by the aeronautical users for the periods  
12 immediately following the date of expiration of the existing  
13 contract, lease, license, or agreement. If fees are established  
14 pursuant to this section, the department shall prepare a  
15 detailed report on the circumstances and rates and charges that  
16 have been established, and shall submit the report to the  
17 legislature no later than twenty days prior to the convening of  
18 the next regular session.

19 If a schedule of rates, rentals, fees, and charges  
20 developed by the director in accordance with this section is  
21 projected by the department to produce revenues which, together  
22 with aviation fuel taxes, will be in excess of the amount



1 required to meet the expenditures of the statewide system of  
2 airports set forth in section 261-5(a), including expenditures  
3 for capital improvement projects approved by the legislature,  
4 and to comply with covenants and agreements with holders of  
5 airport revenue bonds, the department shall submit the schedule  
6 of rates, rentals, fees, and charges to the legislature prior to  
7 the convening of the next regular session of the legislature.  
8 Within forty-five days after the convening of the regular  
9 session, the legislature may disapprove any schedule of rates,  
10 rentals, fees, and charges required to be submitted to it by  
11 this section by concurrent resolution. If no action is taken by  
12 the legislature within the forty-five-day period the schedule of  
13 rates, rentals, fees, and charges shall be deemed approved. If  
14 the legislature disapproves the schedule within the forty-five-  
15 day period, the director shall develop a new schedule of rates,  
16 rentals, fees, and charges in accordance with this section  
17 within seventy-five days of the disapproval. Pending the  
18 development of a new schedule of rates, rentals, fees, and  
19 charges, the schedule submitted to the legislature shall remain  
20 in force and effect.

21 Notwithstanding any other provision of law to the contrary,  
22 the department may waive landing fees and other aircraft charges



1 established under this section at any airport owned or  
2 controlled by the State whenever:

3 (1) The governor declares a state of emergency; and

4 (2) The department determines that the waiver of landing  
5 fees and other charges for the aircraft is consistent  
6 with assisting in the delivery of humanitarian relief  
7 to disaster-stricken areas of the State.

8 (f) To enforce the payment of any charges for repairs or  
9 improvements to, or storage or care of any personal property  
10 made or furnished by the department or its agent in connection  
11 with the operation of an airport or air navigation facility  
12 owned or operated by the department, the department shall have  
13 liens on the property, which shall be enforceable by it as  
14 provided by sections 507-18 to 507-22.

15 (g) The department from time to time may establish  
16 developmental rates for buildings and land areas used  
17 exclusively for general aviation activities at rates not less  
18 than fifty per cent of the fair market rentals of the buildings  
19 and land areas and may restrict the extent of buildings and land  
20 areas to be used.

21 ~~[(h) Notwithstanding any laws to the contrary, the~~  
22 ~~department may establish, levy, assess, and collect rental motor~~



1 ~~vehicle customer facility charges without regard to chapter 91,~~  
2 ~~which shall be paid to the department periodically as determined~~  
3 ~~by the department and shall be used to pay for, or finance on a~~  
4 ~~long-term basis or other-term basis where appropriate, the~~  
5 ~~design, planning, construction, and other uses of the rental~~  
6 ~~motor vehicle customer facility charges as set forth by the~~  
7 ~~rental motor vehicle customer facility charge special fund in~~  
8 ~~section 261-5.6.~~

9       ~~The rental motor vehicle customer facility charges shall be~~  
10 ~~levied, assessed, and collected from all rental motor vehicle~~  
11 ~~customers who benefit from the use of any type of rental motor~~  
12 ~~vehicle facility or service provided by the department at a~~  
13 ~~state airport.~~

14       ~~Beginning September 1, 2010, the department shall levy,~~  
15 ~~assess, and collect a rental motor vehicle customer facility~~  
16 ~~charge of \$4.50 per day, or any portion of a day that a rental~~  
17 ~~motor vehicle is rented or leased, by a rental motor vehicle~~  
18 ~~concession where customers pick up and return rental vehicles to~~  
19 ~~a facility at a state airport as determined by the director.~~

20       ~~All rental motor vehicle customer facility charges shall be~~  
21 ~~collected by lessors as defined in section 437D-3 and who~~  
22 ~~operate a rental motor vehicle concession awarded by the~~



1 ~~department at a state airport; provided that customers of~~  
2 ~~lessors, as defined in section 437D-3, who do not operate a~~  
3 ~~rental motor vehicle concession at a state airport but whose~~  
4 ~~customers benefit from the use of a rental motor vehicle~~  
5 ~~facility or service at a state airport paid for by rental motor~~  
6 ~~vehicle customer facility charges, shall collect from rental~~  
7 ~~motor vehicle customers, rental motor vehicle customer facility~~  
8 ~~charges in an amount determined by the department in its sole~~  
9 ~~discretion that represents a fair share of the cost and ongoing~~  
10 ~~expenses relating to customer use of the facility or service~~  
11 ~~notwithstanding any law to the contrary and without regard to~~  
12 ~~the requirements of chapter 91. All rental motor vehicle~~  
13 ~~customer facility charges collected by the lessor shall be paid~~  
14 ~~to the department.~~

15 ~~Notwithstanding any law to the contrary, the department may~~  
16 ~~negotiate and contract the management, maintenance, and~~  
17 ~~operations of the facility and related services with one or more~~  
18 ~~airport concessions or their designee that share in the use of a~~  
19 ~~rental motor vehicle customer facility at a state airport.]"~~

20 SECTION 6. The director of finance is authorized to issue  
21 general obligation bonds in the sum of \$ or so much  
22 thereof as may be necessary and the same sum or so much thereof



1 as may be necessary is appropriated for fiscal year 2011-2012  
2 for the purpose of constructing car rental facilities at various  
3 airports throughout the State.

4 The sum appropriated by this part shall be expended by the  
5 department of transportation.

6 SECTION 7. The appropriation made for the capital  
7 improvement projects authorized by this part shall not lapse at  
8 the end of the fiscal biennium for which the appropriation is  
9 made; provided that all moneys from the appropriation  
10 unencumbered as of June 30, 2014, shall lapse as of that date.

11 SECTION 8. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 9. This Act shall take effect on June 30, 2011;  
14 provided that part II of this Act shall take effect on July 1,  
15 2011; provided further that on June 30, 2013, sections 4 and 5  
16 of this Act shall be repealed and sections 251-5 and 261-7,  
17 Hawaii Revised Statutes, shall be reenacted in the form in which  
18 they read on the day before the effective date of this Act.



**Report Title:**

Transportation; Guaranteed Rent Adjusting Formula

**Description:**

Provides rent relief to airport concessionaires that do not have a self-adjusting rent formula. Extends sunset date of Act 33, First Special Session Laws of Hawaii 2009, until 07/01/2013. Increases the rental motor vehicle surcharge tax under section 251-2(a), HRS, to \$7.50 per day until 06/30/2013 and deposits \$4.50 per day of the tax into the general fund until that date. Suspends the rental motor vehicle customer facility charges under section 261-7(h), HRS, until 06/30/2013. Authorizes the issuance of general obligation bonds in an unspecified amount for the purpose of constructing car rental facilities at various state airports. (SD2)

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

