A BILL FOR AN ACT

RELATING TO CONCESSIONS.

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

SECTION 1. The legislature finds that state and county
governments sometimes lack the flexibility in concession
contracts to quickly address unexpected problems and emergencies
that may arise, resulting in a loss of services to the public
and loss of revenues to state and county governments.

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

(1) Delays in construction of premises by state and county
governments;

(2) Unexpected circumstances, including increased
construction costs due to tariffs, construction site
problems, or other circumstances making it no longer
feasible for a concessionaire to complete planned
concession improvements during the contract term;

(3) Situations where a concession operator's location is
in default, withdrawn, or being transferred, and the
state and county governments as landlords need to be able to avoid disruption of services and loss of revenues by immediately negotiating with another person or entity to assume the contract, including anyone who may have unamortized costs relating to concessions improvements; or

(4) Where other concession contracts have more generous relief terms to address financial or other hardships that a concession contract does not have.

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

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

"§102-10 Modification of concession contract terms. (a) Notwithstanding any other law to the contrary, if during the term of the contract [4], including contracts which have been executed and are presently in force[4], there has been a reduction of fifteen per cent or more in the volume of business of the concessionaire for a period of sixty days or more, computed on
the average monthly gross income for the eighteen months just prior to the period or as long as the concessionaire has been in the business, whichever period is shorter, a significant hardship is anticipated or has occurred, and [such reduction] the significant hardship, as determined by the officer letting the contract, is related to improvements or operations on premises governed by the contract or caused by construction work conducted during the period of time on, or within or contiguous to, the public property upon which the concession is located, by either the state or county governments, or both, the officer, with the approval of the governor in the case of a state officer and the chief executive of the respective county in the case of a county officer, may grant relief by entering into a new contract or modify any of the terms of the existing contract, including the agreed upon rent, extension of term, or assumption of the contract, for a period [which] or upon terms that the state or county officer determines in their discretion will allow the concessionaire to recoup the amount or portion of the amount lost by [such reduction] the significant hardship; provided that [if] upon granting relief the state or county officer shall consider and state in writing, the duration and
extent of the significant hardship during the term of the
contract, the relief granted, and reason for granting relief.

(b) Subsection (a) shall not apply:

(1) If the existing contract includes provisions allowing
modification for [the above contingencies, this
section shall not be applicable thereto; provided
further that this provision shall not apply to] a
substantial hardship; and

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

(c) The extension of any term shall not be more than fifty
per cent of the maximum term of sixty-five years as set forth in
section 171-36(2) when counting the remaining term of the
concession plus any extension thereof.

(d) The other provisions of chapter 171 shall not apply if
in conflict with the intent and purposes of this section
providing broad discretion to the state and county governments
and their respective agencies and subdivisions to grant relief.

(e) For the purposes of this section:
"Significant hardship" means:

(1) A reduction of:
   (A) Fifteen per cent or more in the volume of
       business of the concessionaire for a period of
       sixty days or more; or
   (B) Five per cent to fourteen per cent in business of
       the concessionaire for a period of one hundred
       days or more,
       computed on the average monthly gross income for the
       eighteen months just prior to the period or as long as
       the concessionaire has been in the business, whichever
       period is shorter;

(2) A delay of more than thirty days in the anticipated
    substantial completion of premises being constructed
    by the state or county governments resulting in less
    time for the concessionaire to construct, occupy, and
    amortize its tenant improvements before the contract
    termination date;

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

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

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

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

SECTION 4. This Act shall take effect on January 1, 2050.
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. Effective 1/1/2050. (HD1)

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