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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 like airports on the  
2 continental United States, the department of transportation  
3 needs flexibility and discretion to grant relief to airport  
4 concessions in times of hardship, such as the coronavirus  
5 disease 2019 (COVID-19) pandemic. The current lack of  
6 flexibility resulted in the department of transportation not  
7 being able to grant the same relief to all airport concessions  
8 who suffered through the COVID-19 pandemic. This resulted in  
9 unfair treatment as some concessions received an extension on  
10 their contracts, while others did not receive any form of  
11 relief.

12           The legislature further finds that unlike Hawaii, some  
13 airports on the continental United States are granted the  
14 flexibility needed to offset any hardship faced by concessions,  
15 such as offering an extension of a contract or authorizing a  
16 modification to an existing contract to allow extra time to  
17 recoup its losses due to an unexpected crisis. Other airports



1 have recognized that in times of crises, if a concession closes  
2 it will take a long period of time to find a replacement to  
3 service passengers. For Hawaii, it typically takes eighteen to  
4 twenty-four months, or longer, to find and replace a concession.  
5 In addition, temporary operators with temporary facilities often  
6 generate more complaints and problems.

7 The legislature also finds that the State's antiquated laws  
8 and contract provisions must be modified to address any unfair  
9 treatment of concessions and to allow the department of  
10 transportation the ability to better support airport  
11 concessions.

12 The legislature recognizes airport concession revenues are  
13 very important. Historically, airport concessions have averaged  
14 about fifty per cent of airport operation revenues, and has, at  
15 least on one occasion, reached as high as seventy per cent.

16 The legislature further recognizes that concessions are  
17 unique and very challenging businesses as they have term limits,  
18 are dependent on travelers, and cannot appeal to the general  
19 public like other local businesses. Airport concessions have  
20 suffered devastating losses, and the levels of pre-COVID-19



1 passengers are not expected to return until the beginning of  
2 2026, according to the State's chief economist.

3 The legislature additionally finds that the unpredictable  
4 and devastating hardships of COVID-19 and its variants are a  
5 wakeup call and require the development of new business models  
6 between airports and concessions. Congress provided direct  
7 relief to airlines, and while the department of transportation  
8 expeditiously utilized the federal funds to support airport  
9 concessions, the legislature is concerned that the department  
10 has not yet moved forward in the development of new concession-  
11 business models, a position that was strongly advocated in June  
12 2021 for all continental United States airports by national  
13 organizations such as American Association for Airport  
14 Executives, Airports Council International - North America, and  
15 the Airport Restaurant and Retail Association.

16 The intent of this Act is to give the department of  
17 transportation flexibility and discretion to grant relief like  
18 other continental United States airports in times of crisis.  
19 While it does not mandate that the department of transportation  
20 provide any relief, it gives the department the option to  
21 consider all types of relief opportunities.



1           Accordingly, the purpose of this Act is to provide the  
2 department of transportation flexibility and discretion to  
3 provide fair and important relief to concessions who are  
4 struggling in times of unpredictable crisis to remain in place  
5 and provide services to passengers.

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

8           "**§102-10 Modification of contract terms.** [~~It~~] (a)  
9 Notwithstanding any other law to the contrary, if during the  
10 term of the contract [(-)], including [~~contracts which have~~] any  
11 type of contract that has been executed [~~and are~~] or is  
12 presently in force[(-) there]:

13           (1) There has been a reduction of fifteen per cent or more  
14 in the volume of business of the concessionaire for a  
15 period of sixty days or more, computed on the average  
16 monthly gross income for the eighteen months [~~just~~  
17 ~~prior to~~] immediately preceding the period or [~~as long~~  
18 ~~as~~] the length of time that the concessionaire has  
19 been in the business, whichever period is shorter, and  
20 [~~such~~] the reduction, as determined by the officer  
21 letting the contract, is caused by construction work



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

12 (2) A significant hardship has occurred to one or more  
13 airport concession, as determined by the officer  
14 letting the contract, the officer, with the approval  
15 of the governor, shall have the discretion to grant  
16 recoupment for the amount lost as may be applicable  
17 for the period that the concessionaire has been in  
18 business; provided that the recoupment may  
19 periodically include one or more of the following:

20 (A) Entering into a new contract;



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

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                [~~thereto~~] 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 any contract  
6        shall not be more than fifteen years, which shall include the  
7        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 burden for the  
19           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 paragraphs (1) (A)  
2           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 on July 1, 2050.

6



**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. Effective 7/1/2050. (HD1)

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

