

STAND. COM. REP. NO. 1277

Honolulu, Hawaii

March 27, 2009

RE: S.B. No. 1224
S.D. 1
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir:

Your Committee on Transportation, to which was referred S.B. No. 1224, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO AIRPORT CONCESSIONS,"

begs leave to report as follows:

The purpose of this bill is to provide limited economic relief to airport concessionaires by allowing periodic adjustment of airport concession rents to a reasonable and affordable level for each concession.

Specifically, this measure:

- (1) Requires the Department of Transportation (DOT) to periodically review each individual airport concession, beginning July 1, 2009, to adjust to a reasonable and affordable level the concession rental amounts due for the remainder of the lease contract, taking into consideration the ability of each individual concession to pay current rents, the concession's profit and loss, and the concession's capital improvement investment; and
- (2) Allows this review and these adjustments to continue until July 1, 2014.



DOT supported this bill. The Airport Concessionaires Committee, HMSHost, and ICE Currency Services USA supported this measure with amendments.

Hawaii is currently facing some of the worst economic conditions seen in the history of the state, and these conditions are only expected to worsen over the near term. Although businesses throughout the islands are experiencing financial difficulties, these hardships are compounded for concessions at Hawaii's airports because of security measures put into place after the attacks of September 11, 2001. These security changes restrict access to many of the airport concessions to ticketed passengers only and therefore severely restrict a concession's market share. In addition, the spiraling economy has resulted in a decrease in the number of visitor arrivals, which has resulted in greater economic losses for airport concessions. While the Legislature provided economic relief to many concessionaires after the events of September 11th, some concessions continue to suffer and are therefore seeking relief through this Act.

Your Committee finds that DOT has provided economic relief to some concessionaires that met the statutory requirements for economic relief previously established by the Legislature. However, some businesses do not have similar relief provisions included in their lease agreements. If these businesses continue to suffer financial hardships, it may force them to default on their concession contracts and thus forfeit their performance bond. This would be especially hard for these businesses as forfeiture of their performance bond will result in the concessionaire being barred from doing business with the State for five years. This would not only affect the concessionaire but would have a negative impact on the airport and tourism industry as well. However, simply requiring DOT to periodically review each individual airport concession and provide periodic adjustment of airport concession rents to a reasonable and affordable level for each concession does not guarantee that relief will be provided to these businesses. Therefore, your Committee has amended this bill by deleting its contents and inserting the contents of H.B. No. 1388, H.D. 1, with some additional amendments. As amended, this bill would give the Governor, or Director of DOT (Director) if so directed by the Governor, the discretion and authority to:

- (1) Provide relief to airport concessionaires:



- (A) Whose leases or contracts were entered into on or after November 1, 2006, and who spent capital improving their concession premises; or
 - (B) Who spent capital improving their concession premises as a result of any agreement entered into with DOT under Act 128, Session Laws of Hawaii 2006;
- (2) Reach a relief agreement with the concessionaire to extend the term of the lease or contract, grant or modify existing relief provisions, reduce or waive rent, and otherwise modify and amend any terms of the concession lease or contract; and
 - (3) Grant fair and reasonable relief to a concessionaire whose concession has suffered operating losses for any period starting on or after November 1, 2006.

This bill would also require the Governor or Director, to:

- (1) Provide for annual adjustments in the guaranteed rents of all airport concessionaires that are to be paid to the State;
- (2) Modify and adjust each airport concession lease or contract not having economic emergency relief provisions similar to other concessions leases or contracts issued after September 11, 2001, to contain such provisions;
- (3) Grant optional additional relief to any adjusted or modified contract or lease, or any existing contract or lease that already contains economic emergency relief provisions, during dire economic times; and
- (4) Take into account the concession's economic circumstances and whether the concession received relief by way of annual adjustment in guaranteed rents or other governmental relief to avoid duplicate economic relief benefits to a concessionaire.

Finally, this bill was amended to stipulate that:

- (1) In seeking relief pursuant to this Act, qualified concessionaires may only seek relief for losses of gross



receipts or loss of business which occurred during periods of time beginning November 1, 2006, or later;

- (2) Remedies available to both DOT and the concessionaires should agreement not be reached between the two parties on the granting of economic relief within 120 days of enactment of this measure;
- (3) Relief shall be provided as long as and to the extent that such relief does not violate any applicable federal laws and regulations, does not jeopardize the receipt of any federal aid, or impair the obligation of DOT to holders of any bond issued by DOT; and
- (4) The Act be effective on July 1, 2009, and be repealed on July 1, 2011.

Technical, nonsubstantive amendments were also made for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Transportation that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1224, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1224, S.D. 1, H.D. 1, and be referred to the Committee on Finance.

Respectfully submitted on
behalf of the members of the
Committee on Transportation,




JOSEPH M. SOUKI, Chair



State of Hawaii
House of Representatives
The Twenty-fifth Legislature

Record of Votes of the Committee on Transportation

Bill/Resolution No.: SB 1224, SD1	Committee Referral: TRN, FIN	Date: 03/23/2009		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
TRN Members	Ayes	Ayes (WR)	Nays	Excused
1. SOUKI, Joseph M. (C)	/			
2. AWANA, Karen Leinani (VC)	/			
3. AQUINO, Henry J.C.	/			
4. HANOHANO, Faye P.	/			
5. KEITH-AGARAN, Gilbert S.C.	/			
6. LEE, Marilyn B.	/			
7. NAKASHIMA, Mark M.	/			
8. RHOADS, Karl	/			
9. SAIKI, Scott K.	/			
10. TAKUMI, Roy M.	/			
11. YAMASHITA, Kyle T.	/			
12. PINE, Kymberly Marcos		/		
TOTAL (12)	11	1	0	0
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <small>committee acronym(s)</small>				
Vice Chair's or designee's signature: 				
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