

AIRLINES COMMITTEE OF HAWAII



Honolulu International Airport
300 Rodgers Blvd., #62
Honolulu, Hawaii 96819-1832
Phone (808) 838-0011
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April 1, 2009

The Honorable Marcus Oshiro, Chair
The Honorable Marilyn Lee, Vice Chair
House Committee on Finance

Re: **SB1224, SD1, HD1 – RELATING TO AIRPORT CONCESSIONS – Comment**
House Committee on Finance, Hawaii State Capitol Room 308 – 12 PM
(Agenda #3)

Aloha Chair Oshiro, Vice Chair Lee and Members of the Committee:

The Airlines Committee of Hawaii*, which is made up of 21 signatory air carriers that underwrite the Hawaii State Airport System, **has concerns about SB1224, SD1, HD1, Relating to Airport Concessions, because of its potential impact to airline costs.**

The airlines entered into a partnership with the State and have guaranteed that all costs of the State airports system will be paid each fiscal year. The residual nature of this partnership dictates that any rent abatement for airport's system concessionaires is passed on to the airlines. Simply put, every dollar of rent abatement provided to concessionaires raises airline costs by a dollar. A fifteen percent reduction in concessionaire rental payments to the State would result in airline costs increasing by nearly \$10 million annually.

The Airlines Committee of Hawaii and the State have partnered together to develop a \$2.3 billion program to modernize and improve airports throughout the state. The economic stimulus of these construction projects is significant. Like airport concessionaires, the airline industry is also struggling financially. Thus, the Airlines Committee of Hawaii is unable to subsidize other airport tenants while supporting this capital improvement program in Hawaii.

Thank you for the opportunity to provide testimony on SB1224, SD1, HD1.

*ACH members are Air Canada, Air New Zealand, Air Pacific, Alaska Airlines, All Nippon Airways, American Airlines, China Airlines, Continental Airlines, Delta Air Lines, Federal Express, go!, Hawaiian Airlines, Japan Airlines, Korean Air, Northwest Airlines, Philippine Airlines, Qantas Airways, United Airlines, United Parcel Service, US Airways, and Westjet.

Honorable Marcus Oshiro, Chair
Committee on Finance
House of Representatives
State of Hawaii

Hearing: April 1, 2009, 12 noon

Re: SB 1224, HD1 - Relating to Airport Concessions

Honorable Chair Oshiro and Honorable Committee Members:

My name is Peter Fithian and I am the Chair of the Legislative Committee for Airport Concessionaires. The Airport Concessionaires Committee's membership consists of most of the major concessions at Hawaii's public airports.

We support this bill with an amendment. We are pleased that we are having meaningful discussions with the DOT on this bill. We seek fairness.

Over 20 concessions have relief provisions or monthly terms that allow them relief during these difficult economic times that other concessions do not have. This is not fair. Some concessions are suffering undue hardship while others are not. For some concessions their business levels are down 30% to 40% and this cannot continue. It is important to keep this bill alive since the Senate decided not to consider the House version of this bill.

HD1 is preferable to the Senate version since: 1) it gives the DOT the flexibility to grant relief in a non-monetary form including but not limited to extension of term of the contract; 2) it is not as broad in scope and limits the period of relief; 3) it ensures relief negotiations will be completed in a timely manner; and 4) it ensures that a concession will not be unfairly punished. If the DOT refuses to grant relief similar to what the DOT is granting to other concessions, this bill allows the concession to ask for a rebid without penalty to the concessionaire. In this way the DOT can get more monies from another operator if it believes that is possible. This is only fair if the DOT does not want to grant relief similar to what it is granting to the other concessions.

The amendment we seek to this bill is to amend paragraph (1)(B) of Section to so it reads:

“(B) Who, as a result of any agreement with the department pursuant to Act 201, Session Laws of Hawaii 2004, and Act 128, Session Laws of Hawaii 2006, spent capital improving their concession premises.”

As mentioned, it is critical that a bill pass this legislative session to avoid closure by airport concessions. One concession is suffering a loss of business of more than 30% and another concessions is suffering a loss of business of more than 40%. This cannot continue much longer.

Background. This legislature kindly came to our aid at least on two (2) occasions following the events of September 11, 2001. We again seek you assistance.

Airport Concessions are Unique Businesses. As you recognized in the past, airport concessions are unique businesses especially following the events of September 11, 2001 since you now need and a ticket and security clearance before you can eat or shop at airport concessions. Also, unlike other Hawaii businesses, airport concessions cannot offer Kamaiana discounts or 75% off sales like major shopping centers. Further airport concessions must remain open from the first flight to the last flight to service our traveling public regardless of the dwindling number of passengers. And yet during these times, Hawaii's DOT expects its guaranteed rents to be paid. Even further, airport concessions are not like airlines which can cut expenses by reducing their number of flights or increase their revenues by fuel surcharges and charging for extra luggage. Airport concessions are unique and difficult businesses to successfully operate.

DOT Grants Relief To Some But Not All Concessions: This Unfairness Must Be Corrected Given These Harsh Economic Times. While Hawaii's DOT following the events of September 11, 2001 has sought to provide relief in concession contracts and leases, such relief provisions unfortunately are not in all concession contracts and leases. Thus, while some concessions are presently enjoying relief other concessions are not. This is not fair during these harsh economic times.

85% Formula. One of these relief provisions allows the guaranteed rents a concession must pay the airport to rise and fall depending on the concession's level of success during the previous 12 months. This is what we call the "85% formula" that is done on an annual basis. Thus, if during a prior 12-month period your business did better then your guaranteed rents to be paid to the airport for the next 12-month period would likely increase. The formula also provides for the opposite in that if your business suffered in the prior 12-month period then your guaranteed rents for the next 12-month period would be reduced up to a maximum of 15%. It is also unfair that the DOT is interpreting Act 128 (2006 SLH) to mean that if a concession spent monies and made improvements to its concession it lost its right to such relief that was already a part of its concession contract. This is not a fair interpretation by the DOT. This should be immediately corrected by the DOT.

Economic Emergency Relief Formula. Recognizing that this 85% formula may not grant sufficient relief in that it was limited to a maximum of 15% and also a one time annual adjustment, the airports also started to include in their leases an "economic-emergency-relief formula". This formula allowed for an adjustment to be made immediately (and not annually) and the granting of relief of more than 15% when necessary and thus not just limited to 15% pursuant to the 85% formula. Given the above-mentioned DOT's interpretation of Act 128, there is also serious concern that the DOT will likewise interpret that these provisions already existing in a concessionaire's contract are no longer applicable because it made improvements to its concession pursuant to Act 128. Again, DOT should immediately correct this unfair interpretation. DOT needs to be fair in interpreting and administering various relief provisions to concessions especially during dire economic times. Fundamental fairness should and must apply.

Unfairness: Relief To Some But Not Others During Extremely Harsh Times Not Fair. As stated, while some concessions are enjoying the benefits of both relief provisions, some concessions have only one of these provisions and some concessions may not have any of these provisions. Given the harsh economic times this bill seeks to correct this unfairness by providing

that all concessions (and not just some) should be allowed to seek relief under both types of relief provisions and an optional economic relief provision that measures a concession's hardship from the start of concession based on its published gross receipts as long as the hardship is due to reasons beyond the control of the concessionaire.

Prevents Duplicate Relief. This bill contains provisions that allows the Director of Transportation to prevent duplicate benefits to a concessionaire under both formulas or other similar governmental relief.

Precludes Relief Prior to November 1, 2006. Although some concessions may have suffered financial losses prior to November 1, 2006 since they failed to have both formulas, this Act seeks to limit and recognize relief for losses incurring on and after November 1, 2006, a 12-month period of time prior to the reported commencement of the recession as of November 1, 2007. Thus, although a concession may have been in business and suffered losses many years prior to November 1, 2006 it cannot seek relief prior to November 1, 2006.

Summary. Given the dire economic hardship being experienced by a number of airport concessions, we believe this bill is both necessary and fair. At the same time, the bill seeks to avoid the duplication of relief and limits the start of any relief period to only on and after November 1, 2006. Thank you for allowing us to testify.

March 30, 2009



ICE Currency Services USA

Honorable Marcus Oshiro, Chair
Committee on Finance
House of Representatives
State of Hawaii

300 Rodgers Boulevard
Terminal Box 1

Honolulu International Airport
Honolulu, HI 96819

Hearing: April 1, 2009

Re: SB 1224, HD1 – Relating to Airport Concessions **TEL: (808) 839-0807**

Fax: (808) 839-0818

Chair Oshiro and Honorable Committee Members:

My name is Aleta Lindsay and I am Vice President, Business Development with International Currency Exchange, dba ICE.

I support this bill and testimony by the Airports Concessionaires Committee. It is not fair that during these very harsh and historic economic times some concessions are enjoying relief while other concessions are not since their contracts do not have the same relief provisions. It is fundamentally not fair given the circumstances. There are over 20 airport concessions that have relief provisions or monthly terms that provide relief that other concessions presently do not have. Thus, they have had past, present and future means of survival while other concessions do not.

We continue to discuss matters with the DOT and we have tried to address their various concerns. HD1 in our opinion addresses some of their concerns. Progress is being made. Please keep this very important bill alive since the Senate wants to consider only this bill.

This is preferable to the Senate bill in a number of respects including:

- 1) It gives the DOT the flexibility to grant relief in a non-monetary form including but not limited to an extension of the term of the contract;
- 2) It is not as broad in scope and limits the period of relief;
- 3) It ensures relief negotiations will be completed in a timely manner;
- 4) It ensures that the concession will not be unfairly punished. If the DOT refuses to grant adequate relief to the concession similar to what the DOT is granting to other concessions, this bill does not allow the concession to ask for a rebid (perhaps someone is willing to pay more to DOT) without penalty.

In view of the foregoing, please pass this bill. Thank you for allowing me to testify.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Aleta Lindsay', with a large, stylized flourish at the end.



Island Shoppers, Inc.

Honolulu International Airport
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Honolulu, Hawaii 96819
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Honorable Marcus Oshiro, Chair
Committee on Finance
House of Representatives
State of Hawaii

Hearing: April 1, 2009

Re: SB 1224, HD1 – Relating to Airport Concessions

Chair Oshiro and Honorable Committee Members:

My name is John Matias and I am the owner of Island Shoppers, Inc.

I support this bill and testimony by the Airports Concessionaires Committee. It is not fair that during these very harsh and historic economic times some concessions are enjoying relief while other concessions are not since their contracts do not have the same relief provisions. It is fundamentally not fair given the circumstances. There are over 20 airport concessions that have relief provisions or monthly terms that provide relief that other concessions presently do not have. Thus, they have had past, present and future means of survival while other concessions do not.

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Please pass this bill. Thank you for allowing me to testify.

HMS

HOST

Making the Traveler's Day Better™

Honolulu International Airport

Honorable Marcus Oshiro, Chair
Committee on Finance
House of Representatives
State of Hawaii

Hearing: April 1, 2009

Re: SB 1224, HD1 – Relating to Airport Concessions

Chair Oshiro and Honorable Committee Members:

My name is Alan Yamamoto and I am the District General Manager for the Hawaiian Islands with HMSHost.

I support this bill and testimony by the Airports Concessionaires Committee. It is not fair that during these very harsh and historic economic times, some concessions are enjoying relief while other concessions are not since their contracts do not have the same relief provisions. It is fundamentally not fair given the circumstances. There are over 20 airport concessions that have relief provisions or monthly terms that provide relief that other concessions presently do not have. Thus, they have had past, present and future means of survival while other concessions do not.

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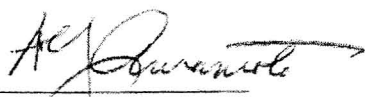
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In view of the foregoing, please pass this bill. Thank you for allowing me to testify.

HMSHost Corporation
Hawaiian Islands

By


Alan Yamamoto
District General Manager

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