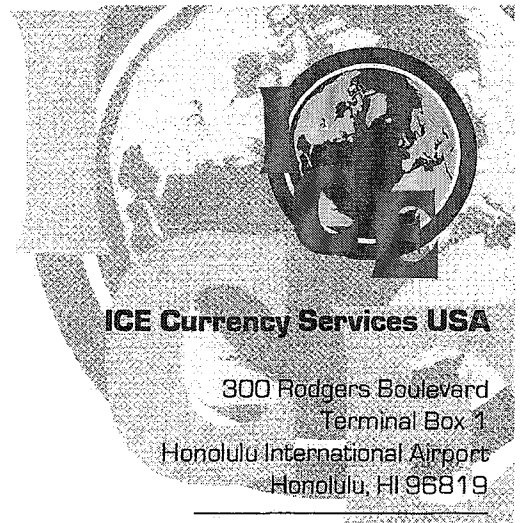


**SB 1224**



**ICE Currency Services USA**

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Via e-mail: [WAMTestimony@Capitol.hawaii.gov](mailto:WAMTestimony@Capitol.hawaii.gov)

Honorable Donna Mercado Kim, Chair  
Committee on Ways and Means  
Hawaii State Senate

Hearing: February 26, 2009

Re: SB 1224, SD1 Relating to Airport Concessions

Honorable Chair Kim and Honorable Committee Members:

My name is Aleta Lindsay and I am Vice President, Business Development at International Currency Exchange (ICE).

We support the Airports Concessionaires Committee on this bill.

As a matter of fundamental fairness all concessions should have the same relief provisions enjoyed by other concessions, especially during these dire economic times. Some concessions are presently experiencing a loss of business of as much as 40% and are not getting relief like other concessions because they don't have the same type of relief provisions. This is not fair.

We anticipate further changes to this bill as discussions with the Department continue.

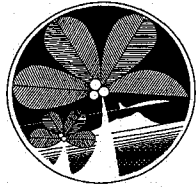
We thank you for your support of this bill to allow such discussions to continue.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Aleta M. Lindsay".

Aleta M. Lindsay  
Vice President

## AIRLINES COMMITTEE OF HAWAII



Honolulu International Airport  
300 Rodgers Blvd., #62  
Honolulu, Hawaii 96819-1832  
Phone (808) 838-0011  
Fax (808) 838-0231

February 26, 2009

The Honorable Donna Mercado Kim, Chair  
The Honorable Shan S. Tsutsui, Vice Chair

Re: **SB1224 SD1 – RELATING TO AIRPORT CONCESSIONS – Comments**  
**Senate Committee on Ways & Means, Conference Room 211, 9AM**

Aloha Chair Kim, Vice Chair Tsutsui and Members of the Committee:

**The Airlines Committee of Hawaii\*, which is made up of 20 signatory air carriers that underwrite the Hawaii State Airport System, does not support SB1224 SD1 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. For example, a 15 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.

However, the Airlines Committee of Hawaii would not oppose a reduction in concession rental payments to the State if that impact was not passed on to the airlines serving Hawaii.

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

*\*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 Donna Mercado Kim, Chair  
Committee on Ways and Means  
Hawaii State Senate

Hearing: February 26, 2009

Re: SB 1224, SD1 Relating to Airport Concessions

Honorable Chair Kim and Honorable Committee Members:

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

We support this very important bill as we continue our discussions with the Department of Transportation as to clarifying amendments.

At the urging of Senator J. Kalani English we had one meeting with the Department to try and develop such language. While significant progress was made in our opinion there was not sufficient time to agree on specific language. As a result SD1 was drafted as a proposed solution by the Committee chaired by Senator English. We shall continue to work with the Department as to agreeable language.

In our view a final bill needs to be more specific as to the options and powers granted to the Department should perhaps include but not limited to: 1) the granting of the 85% relief formula like other concessions; 2) granting of lease extensions; 3) clarifying of economic relief provisions and 4) as to concessions operations not making a profit and suffering losses as we speak unless other concessions who have relief formulas, if no agreement is reached within 3 months of passage of the bill then allow the concession to pay only percentage rent (or a reasonable percentage rent) while the concession is put out to rebid within 6 months without any penalty or loss to the concessionaire including forfeiture of performance bond. Further, we agree with the Department that scope of the bill is broad and changes to the scope of the bill can be made to better identify the type of concessions suffering hardship who have asked for relief. Finally, Section 1 of the bill was deleted and we believe this is an important section that sets forth the legislative findings and intent that are important for this type of bill. We believe Section 1 of the bill should be reinstated along with our proposed clarifying amendments to the Committee chaired by Senator English.

We thank you for passing this bill to allow further discussions to continue.

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.

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 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%.

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.

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. The initially proposed bill contained provisions that allowed 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 the initially proposed bill 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. As discussions continue on this bill, we shall seek to discuss with the Department the reinstatement of some of the deleted provisions in our proposed bill, the ideas mentioned above as well as other measures that seek a fair compromise without suffering and losses to the concessions.

Please pass this bill. Thank you.