HB 1039

HD1, SD1

AIRLINES COMMITTEE OF HAWAII

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

March 31, 2011

Honorable David Ige, Chair
Honorable Michelle Kidani, Vice Chair
Committee Members
Senate Committee on Ways and Means

Re: HB 1039 HD1 SD1, RELATING TO TRANSPORTATION - Concerns
Senate Committee on Ways and Means Hearing – April 1, 2011, 9 AM
Conference Room 211

Aloha Chair Ige, Vice Chair Kidani, and Members of the committee:

The Airlines Committee of Hawaii* (ACH), which is made up of 21 signatory air carriers that underwrite the Hawaii State Airport System, **appreciates the opportunity to testify on HB 1039, HD1, SD1, Relating to Transportation, because of its potential impact on airline costs. We are particularly concerned that any additional costs will have a material impact on funding for Phase I of the Airport Modernization Program ("Program") and may put the entire project at risk.**

We understand that the impetus to provide rent relief stems from the fallout we anticipate will come as result of the devastating disasters in Japan. As signatory carriers, we too will feel the brunt of that impact.

We also are faced with balancing our operations against a highly volatile oil market. In 10 days the price of crude increased from $110/barrel to just over $117/barrel. Oil prices which once represented less than 10 percent of our operational costs now are more than double that and nearly as high as our personnel costs depending on the cost of oil.

As a result, we too have concerns with the drop in travel from Japan or other areas and with the volatility of the cost of oil. As you discuss the merits of this bill, please consider that any offset of lease costs may be passed along to air carriers. So, this bill has the potential to make it increasingly difficult for airlines to operate and ultimately hurt the consumer. Contrary to what has been mentioned in prior testimonies, offsetting rising expenses by raising prices is difficult because it chokes demand – if tickets are too expensive, travelers will make alternate plans.

In 2009, the legislature passed Act 33, to direct the Department of Transportation (DOT) to negotiate with a number of concession operators who were seeking relief financial or otherwise. We understand that several of the operators including two larger ones were able to negotiate some form of rent relief. However, we understand these same operators may be seeking additional relief today even though they have negotiated terms for relief on their existing contracts.

The airlines have stepped up their commitment to the Program by paying significantly higher rates and charges to support the bond issuances and operational costs required to implement this Program. For example, airlines are committed to paying $142 million this year, a $60 million dollar increase over a few years go. Further, the airlines' payments will be increasing to $200 million through fiscal year 2016, In spite of the Great Recession, the ACH has stood by it's commitment to the state to underwrite funding for this critical Program.

Background:

More than any other state, Hawaii is dependent on air transportation. Airways are our interisland highways. Airlift is essential to our state's tourism-dependent economy.

The Hawaii state airport system is unlike anywhere in the world, where 15 airports on six islands operate as one monopoly. Airlines must accept rates and charges on a system-wide basis. As a result, signatory air carriers help support the airports system.

The airports system is a self-sustaining operation under Federal Aviation Administration mandate. Revenues from airlines, concessionaires and others, as well as federal grants, must cover all developmental and operational costs of all airports.

Potential Impact:

As signatory airlines, the ACH entered into a partnership with the DOT to guarantee the financial viability of the airports system for each fiscal year. To that end, carriers pledge to pay whatever amount is required to ensure the payment of all expenses. This residual agreement dictates that any rent abatement to allow airport concessionaires to "breakeven" at the expense of the Airports Division will be passed on to the airlines.

Simply put, every dollar of rent abatement provided to concessionaires will increase airline costs by a dollar. Thus, conferring the DOT with the discretion and authority to provide concessionaires with additional rent relief will adversely impact all airlines.

Most importantly, any diversion from the current arrangement with concessionaires would be a violation of the public-private agreement between the State and the ACH.

The ACH and the State have partnered together to develop Phase I of a $1.3 billion Program to modernize and improve airports throughout the state. The economic stimulus of these construction projects is significant and especially needed to boost jobs and expand the capacity of each of the airports throughout Hawaii. Passage of this bill is likely to materially impact the Program by necessitating deferral or cancellation of a significant number of projects at every airport.

Honorable David Ige, Chair
Committee on Ways and Means
Hawaii State Senate   Hearing: April 1, 2011 at 9:00 a.m.

Re: HB 1039, SD1 – Relating to Transportation

Chair Ige and Honorable Committee Members:

My name is Peter Fithian and I am the Legislative Chair of the **Airports Concessionaires Committee** which represents most of the concessions at Hawaii's public airports

I thank this Committee for recognizing the obvious economic crisis that is happening as a result of the recent tsunami and related events in Japan. I commend this Committee for recognizing the impact of this devastating-international event and for not waiting and for taking swift action by considering this bill.

Airport Concessionaires support this bill with amendment. Since it took the past administration more than 1 year to negotiate relief we request that the date on line 22 on page 2 be change from July 1, 2012 to July 1, 2013. In all fairness an given the circumstances we respectfully ask your support to extend for two (2) years Act 33 of 2009 Special Legislative Session. Act 33 is now scheduled to expire on July 1, 2011.

In keeping with the provisions of Act 33, **such an extension does not mandate or require the Department of Transportation to provide relief to airport concessions. It simply gives the Department the discretion and a wide range of powers and flexibility that it does not have to consider providing relief both financial and otherwise.** Since the Airport Division is special funded with historically 50% to 75% of the revenues being provided by airport concessions, any relief provided to the handful of airport concessions that likely qualify for relief will not have any impact on the State's general fund.

As you know in 2009 the Legislature recognizing the severe-economic crisis following the downfall of Lehman Brothers agreed that a serious problem of unfairness existed with airport concession contracts in that all concessions did not have the same type of economic relief provisions including the 85% self-adjusting-guaranteed rent formula.

While over 20 concessions had such a 85% formula some concessions did not and were suffering dire economic hardship and likely bankruptcy or closure. In fact, prior to the Legislature passing Act 33 in 2009 ***one airport concession suffered severe economic hardship and was forced to close after 25 years in business. No concession should have to close due to such unfairness while others survive.***

Such a closure and loss of an airport concession business was tragic to the concession and its long-time employees and clearly should not have happened. Unfortunately the concession was one of a handful of concessions that did not have the 85% formula the Department had provided to over 20 other concessions.

It was due to the Legislature's swift action and over-ride of the Governor's veto in 2009 that served to correct this obvious unfairness that existed and avoided the closure of more airport concessions. <u>The Legislature needs to take swift action again.</u>

Following the passage of Act 33 and during the negotiations with the past Administration, the past Administration did not offer to correct the entire problem by providing the 85% formula to all concessions not having such a formula. If the past Administration had made such an offer as part of the its relief package obviously all of the concessions would have gladly accepted the 85% formula which would grant them the same relief provisions enjoyed by 20 or more other concessions.

As a result of the past Administration not providing the 85% formula to the concessions not having such a formula like over 20 other concessions, the problem persists for a handful of concessions.

It is predicted by HTA and/or others that in the coming months there will be a 30% of more drop off of tourists from Japan which total about $1.2 million travelers a year to Hawaii. Japanese tourists are recognized to be big spenders compared to other tourists including at Hawaii's public airports. No one knows how long this drop off will persist and it could be for more than a year. ***Act 33 needs to be extended now to provide the new Administration with the flexibility to help to ensure that <u>no concession has to again close due to such unfairness.</u>***

Such a drop off of will unfairly impact the handful of concessions that do not have the 85% formula while the 20 or more other concessions will benefit from such a formula. This again as recognized by the 2009 Legislature is simply not fair.

The Legislature objected to such unfairness in 2009 by passage of Act 33 and the over-ride of the Governor's veto. The past Administration has not corrected the unfairness problem and thus Act 33 needs to be extended so the Department continues to have the flexibility and power to provide relief to the handful of concessions who do not have the 85% formula like over 20 other concessions.

I have attached by way of background a summary of the past arguments that the Legislature considered in the passage of Act 33. These arguments are still valid. Please continue to recognize these arguments and the uniqueness and difficulties of airport concessions trying to run a business behind security checkpoints while having to pay guaranteed rents to the Department.

Thank you for allowing me to testify. I urge you to please pass Proposed SD1.

PAST ARGUMENTS FOR ACT 33, 2009 SPECIAL LEGISLATIVE SESSION

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 sough 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.

Past Relief to Airlines. Although the concessions have historically provided 50% to 75% of airport operating revenues and thus kept airline contributions to the airport system very low compared to other airports for over 30 years, a past Administration provided relief to the airlines by granting them $76 million waiver in landing fees over a 2 year period. During this 2 year period the airlines benefited from the $76 million and also reduced the seat capacity to Hawaii. Thus, the airlines apparently did not use the $76 million to help Hawaii. Concessions in spite of their significant contributions of 50% to 75% have yet to receive similar benefits like the airlines. Still further, unlike the airlines the relief to concessions will benefit Hawaii by keeping businesses open and staffed by Hawaii employees. In view of this, the airlines should not be objecting to relief to concessionaires as they have done so in the past.

Honorable David Y. Ige, Chair
Committee on Ways and Means
Hawaii State Senate
State Capitol Building
Honolulu, HI 96813 Hearing: April 1, 2011 at 9:00 am, Room 211

Re: HB 1039, SD1 – Relating to Transportation

Chair Ige and WAM Committee Members,

I am Sharon Weiner, Vice President at DFS. DFS supports this bill, with the suggested amendment that the date on line 22, page 2 is changed to July 1, 2013. This is a responsible change, since it took the prior administration more than a year to complete negotiations regarding relief after the Economic Crisis of 2008/9. We agree with the point of view of the Airports Concessionaires Committee.

The March 11, 2011 Japanese earthquake and tsunami is predicted by the Hawaii Tourism Authority to cause a roughly 30% decline in outbound travel from Japan to Hawaii. JAL has already cut one weekly flight from Narita. The nuclear reactor situation is, at this point, uncertain and could be a cause for further declines in outbound Japanese travel. We are planning for severe losses in our duty free concession which is totally dependent on international travelers and does not have an annual 85% reducer as do most other concessions.

Please note that this Bill does not stipulate an amount of relief – it only extends the process used during the Economic Crisis to this Japan Crisis.

DFS supports treating all concessions fairly, especially in times of economic crisis. A concession should not be forced to go out of business or suffer severe economic burdens simply because it does not have the economic relief provisions the Department provided to other concessions.

DFS Hawaii
A Division of DFS Group L.P.
P.O. Box 29500
Honolulu, Hawaii 96820
Telephone (808) 837-3000

GARETT LEW
PRESIDENT
GRLCorp@hawaii.rr.com

GRL CORPORATION

P.O. Box 29009
Honolulu, Hawaii 96820

Honorable David Y. Ige, Chair
Committee on Ways and Means
Hawaii State Senate
State Capitol Building
Honolulu, HI 96813 Hearing: April 1, 2011 at 9:00 am, Room 211

Re: HB 1039, SD1 – Relating to Transportation

Chair Ige and Honorable Committee Members:

My name is Garett Lew and I am the President of the GRL Corporation.

I support this bill with suggested amendment that the date on line 22 on page 2 by changed from July 1, 2012 to July 1, 2013. Reason for this is that it took the past Administration over 1 year to negotiate relief with some concessions and it will likewise take the new Administration 2 years as well. In addition we support any comments or requests that may be made by the Airports Concessionaires Committee.

The Legislature in 2009 recognized that a serious problem with airport concession contracts existed in that they did not all have the same type of economic relief provisions including the 85% self-adjusting-guaranteed rent formula.

In response to this unfairness, the Legislature in 2009 passed Act 33 to give the Governor and the Department of Transportation the "discretion and flexibility " to grant various forms of relief to concessionaires to correct the problem.

While qualified concessionaires negotiated separately with the Department, the past Administration did not provide the 85% self-adjusting-guaranteed rent relief formula or similar relief to all concessions. The Department did not offer it to all concessions. As a result and given the recent Japan crisis, various concessions will again suffer severe economic hardship due to the continuing unfairness of some concessions having relief provisions that other concessions do not have.

The purpose of this bill with amendment above is simply to extend Act 33 an additional 24 months beyond July 1, 2011 (original bill was 24 months) to give the new Administration the power, flexibility and discretion it needs to work with the concessions affected by the Japan crisis and who do not have this 85% self-adjusting guaranteed rent relief formula (or similar provision) like other concessions.

I support the goal of fair treatment of all concessions in times of economic crisis and hardship. A concession should not be forced to go out of business or suffer severe economic burdens simply because it does not have the economic relief provisions the Department provided to other concessions. All concessions should be treated fairly.

Island Shoppers, Inc.

Honolulu International Airport
300 Rodgers Boulevard #3
Honolulu, Hawaii 96819

Tel: 808.834.1136
Fax: 808.834.1137

Honorable David Y. Ige, Chair
Committee on Ways and Means
Hawaii State Senate
State Capitol Building
Honolulu, HI 96813

Hearing: April 1, 2011 at 9:00 am, Room 211

Re: HB 1039, SD1 – Relating to Transportation

Chair Ige and Honorable Committee Members:

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

I support this bill with suggested amendment that the date on line 22 on page 2 by changed from July 1, 2012 to July 1, 2013. Reason for this is that it took the past Administration over 1 year to negotiate relief with some concessions and it will likewise take the new Administration 2 years as well. In addition we support any comments or requests that may be made by the Airports Concessionaires Committee.

The Legislature in 2009 recognized that a serious problem with airport concession contracts existed in that they did not all have the same type of economic relief provisions including the 85% self-adjusting-guaranteed rent formula.

In response to this unfairness, the Legislature in 2009 passed Act 33 to give the Governor and the Department of Transportation the "discretion and flexibility " to grant various forms of relief to concessionaires to correct the problem.

While qualified concessionaires negotiated separately with the Department, the past Administration did not provide the 85% self-adjusting-guaranteed rent relief formula or similar relief to all concessions. The Department did not offer it to all concessions. As a result and given the recent Japan crisis, various concessions will again suffer severe economic hardship due to the continuing unfairness of some concessions having relief provisions that other concessions do not have.

I support the goal of fair treatment of all concessions in times of economic crisis and hardship. A concession should not be forced to go out of business or suffer severe economic burdens simply because it does not have the economic relief provisions the Department provided to other concessions. All concessions should be treated fairly.

Sincerely,

John Matias
Island Shoppers, Inc.

HMS HOST

Making the Traveler's Day Better™

Honolulu International Airport

Honorable David Y. Ige, Chair
Committee on Ways and Means
Hawaii State Senate
State Capitol Building
Honolulu, HI 96813

Hearing: April 1, 2011 at 9:00 am, Room 211

Re: HB 1039, SD1 – Relating to Transportation

Chair Ige and Honorable Committee Members:

My name is Michael Uyeno and I am the Area Controller for the Hawaiian Islands with HMSHost.

I support this bill with suggested amendment that the date on line 22 on page 2 be changed from July 1, 2012 to July 1, 2013. Reason for this is that it took the past Administration over 1 year to negotiate relief with some concessions and it could likewise take the new Administration 2 years as well. In addition we support any comments or requests that may be made by the Airports Concessionaires Committee.

The Legislature in 2009 recognized that a serious problem with airport concession contracts existed in that they did not all have the same type of economic relief provisions including the 85% self-adjusting-guaranteed rent formula.

In response to this unfairness, the Legislature in 2009 passed Act 33 to give the Governor and the Department of Transportation the "discretion and flexibility " to grant various forms of relief to concessionaires to correct the problem.

While qualified concessionaires negotiated separately with the Department, the past Administration did not provide the 85% self-adjusting-guaranteed rent relief formula or similar relief to all concessions. The Department did not offer it to all concessions. As a result and given the recent Japan crisis, various concessions will again suffer severe economic hardship due to the continuing unfairness of some concessions having relief provisions that other concessions do not have.

The purpose of this bill with amendment above is simply to extend Act 33 an additional 24 months beyond July 1, 2011 (original bill was 24 months) to give the new Administration the power, flexibility and discretion it needs to work with the concessions affected by the Japan crisis and who do not have this 85% self-adjusting guaranteed rent relief formula (or similar provision) like other concessions.

I support the goal of fair treatment of all concessions in times of economic crisis and hardship. A concession should not be forced to go out of business or suffer severe economic burdens simply because it does not have the economic relief provisions the Department provided to other concessions. All concessions should be treated fairly.

Thank you for allowing us to testify.

HMSHost Corporation
Hawaiian Islands

By Michael Uyeno

Michael Uyeno
Area Controller

P. O. Box 30428 | Honolulu, HI 96820 | Phone: 808.836.2566 | Fax: 808.834.0968

An Autogrill Company

H.B. 1039, H.D. 1, S.D. 1
Relating to Transportation
Hearing: Friday, April 1, 2011 at 9:00 a.m.
Room 211

Chair Ige and Members of the Committee on Ways and Means:

I am Paul Kopel, General Manager/Vice President—Hawai'i, testifying on behalf of EAN Holdings, LLC, operating Enterprise Rent-A-Car, Alamo Rent-A-Car, and National Car Rental in Hawai'i (collectively referred to as "Enterprise").

Enterprise **supports** H.B. 1039, H.D. 1, S.D.1, which provides further rent relief to airport concessions that do not have a self-adjusting rent formula, and extends the sunset of Act 22, First Special Session Laws of Hawai'i 2009.

Enterprise wishes to express its appreciation for this effort to assist those industries affected by the impacts of the recent Japan tragedy. We are studying our situation to determine how the expected fall off in visitor arrivals will affect Enterprise. It may well be that Enterprise will need the relief provided by the proposed S.D. 1, and we wish to express our support for its passage. Whether or not it affects Enterprise, it is very likely that there will be concessionaires who will need relief.

Thank you for the opportunity to submit comments on this matter.