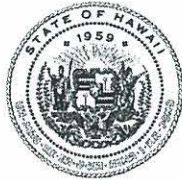


HB2004,HD2

RELATING TO TRANSPORTATION.

Temporarily authorizes the Department of Transportation to extend the term of an airport concession, and to modify and amend the terms of any concession contract, lease, or permit in exchange for revenue-enhancing improvements that are made or paid for by the concession. Effective July 1, 2030. (HB2004 HD2)

NEIL ABERCROMBIE
GOVERNOR



GLENN M. OKIMOTO
INTERIM DIRECTOR

Deputy Directors
JADE T BUTAY
FORD N. FUCHIGAMI
RANDY GRUNE
JADINE URASAKI

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:

March 14, 2012

H.B. 2004, H.D. 2
RELATING TO TRANSPORTATION

SENATE COMMITTEE ON TRANSPORTATION & INTERNATIONAL AFFAIRS

The Department of Transportation supports this bill. Concessions at Hawaii airports are a major revenue generator. Additional concession locations in the airport will enhance the travelers' experience by providing a wider array of merchandise and food choices. Individual concessions are responsible for building out their spaces and providing the fixtures and merchandise to operate the concession. Extending the existing concession term provides the concessions with the opportunity to amortize the cost of the improvements and ensures that development of the new concession spaces will take place as expeditiously as possible.

Thank you for the opportunity to provide testimony.





HB2004 HD2
RELATING TO TRANSPORTATION

Senate Committee on Transportation and International Affairs

March 14, 2012

1:16 p.m.

Room 224

The Office of Hawaiian Affairs (OHA) **OPPOSES** HB2004 HD2, which would grant the Department of Transportation (DOT) authority to reopen and extend concession lease terms in exchange for revenue-enhancing improvements paid for by the concessionaire. It further exempts DOT from all laws that conflict with the bill, including laws regulating the issuance of concession leases at Hawai'i's airports, and is effective until July 1, 2014. Because the state has fiduciary duties to act prudently and reasonably in leasing public trust land, OHA opposes this bill.

Section 5(f) of the Admission Act established the public land trust, in which certain land and the proceeds or income from the disposition of that land are to be held in trust by the State of Hawai'i for five purposes, including the betterment of the conditions of Native Hawaiians. The majority of the state's airports are situated on public trust land.

Accordingly, the state, as a trustee, including the DOT, must uphold its fiduciary responsibilities in leasing our public trust lands. These duties include, among others, acting in the best interest of the beneficiaries, exercising reasonable care, acting as a prudent person would under similar circumstances, and performing due diligence prior to taking action on leases. Laws regulating land leases for concessions provide a framework to ensure that the state carries out its duties while allowing for the use of public lands. While circumventing existing laws may be the quickest means to lease land, the state has a fiduciary duty to conform to the aforementioned standards.

For this reason, OHA urges the committee to HOLD HB2004 HD2. Mahalo for the opportunity to testify on this important measure.



Greeters of Hawaii

Honorable J. Kalani English, Chair
Committee on Transportation and International Affairs
Hawaii State Senate

Hearing: March 14, 2012; Room 224 at 1:16 p.m.

Re: **HB 2004, HD2 - Relating to Transportation**

Chair English and Honorable Committee Members:

My name is Peter Fithian, and I am the President with **Greeters of Hawaii, Ltd.**

My **company supports this bill** and the position of the Airports Concessionaires Committee as to amendments.

This bill seeks to recognize and provide flexibility and discretion to Hawaii's Airports Division (DOT) to meet the difficulties and problems that will be faced by concession operators at our public airports due to fast-tracking of major construction improvements.

While we understand and commend the major goal of fast-tracking up to 80,000 or more square feet of additional concession space at Honolulu International Airport and likely other airports (significant goal) to meet the unmet needs and demands of our travelers, we respectfully ask that you recognize and understand the hardship and problems that will result to airport concession operators.

In addition to barricades, different passenger routes and temporary relocation of space, concession operators will be asked to improve and/or quickly open new space as and when it becomes available. This will be costly and may not be feasible pending length on the contract. As an example, a concession typically has only a 5 year contract. If it has only a remaining term of 2 years left on its contract, how can it be expected to fixture, a/c, light, provide equipment and otherwise improve new and additional space? This is obviously not possible and likely something concessions will have to refuse leaving new space vacant.

We urge you to pass this bill that gives the DOT the authority to solve such problems by providing the DOT with the flexibility and discretion to amend concession contracts including extending the term of a concession contract if the operator pays for improvements relating to such new space. An extension in all fairness will allow a concession more time to amortize (pay for) such improvement costs.

Thank you for allowing us to testify. Please support this bill



AIRPORT CONCESSIONAIRES COMMITTEE

Honorable J. Kalani English, Chair
Committee on Transportation and International Affairs
Hawaii State Senate

Hearing: March 14, 2012; Room 224 at 1:15 p.m.

RE: **HB 2004**, HD2 --- Relating to Transportation

Chair English and Honorable Senate Committee Members:

My name is Peter Fithian and I am the Legislative Chair for the **Airports Concessionaires' Committee**. The Committee represents that major concessions at Hawaii's public airports. Airport concessions historically have contributed over 50% of the operating revenues to support public airports in Hawaii.

The **Committee supports the bill** with an amendment changing the effective date to July 1, 2012. In addition, the Senate companion bill (SB 2337) is scheduled to be heard this morning by the House Transportation Committee. If the House Committee agrees to pass SB 2337 then we respectfully ask that further consideration on this bill be deferred since SB 2337 is proceeding forward.

This bill does not mandate or require the DOT to do anything. It requires no additional expenditures by the DOT. It simply gives the DOT the sole discretion and flexibility to be fair to concessions who pay for unplanned for improvements requested by the DOT.

While the Committee commends the historic and bold vision of the DOT-Airports Division to fast-track and add 80,000 or more square feet of concession space at Hawaii's public airports, particularly at HIA, the Committee is fearful as to the costly impact such fast-tracking will have on airport concessions.

Such fast-tracking will result in barricades, noise, dust, changes in passenger routes past the front of concessions and likely temporary relocation of concessions. In addition, concessions will be asked to make various improvements as part of or related to such construction including putting in fixtures, lighting, a/c, flooring, equipment and other improvements to newly added space.

Such requested improvements will be very costly to concessions who had not planned or anticipated paying for such expenses. Concessions will likely be forced to refuse to cooperate with such improvements since they will not be able to amortize (pay off) the costs of such improvements. Most airport concessions only have an agreement of 5 years or less. What is a concession to do if it only has 2 years remaining on its contract and thus can't afford to make such tenant and other improvements?



Honorable J. Kalani English, Chair
Committee on Transportation and International Affairs
Hawaii State Senate
Hearing: March 14, 2012; Room 224 at 1:16 p.m.

Re: **HB 2004, HD2 - Relating to Transportation**

Chair English and Honorable Committee Members:

Aloha Senator English. Once again I need to ask for your support of this bill that will assist airport concessions to improve facilities, while ensuring additional term.

My company supports this bill and the position of the Airports Concessionaires Committee as to amendments.

This bill seeks to recognize and provide flexibility and discretion to Hawaii's Airports Division (DOT) to meet the hardship and problems that will be faced by concession operators at our public airports due to fast-tracking of major construction improvements.

While we understand and commend the major goal of fast-tracking up to 80,000 or more square feet of additional concession space at Honolulu International Airport and likely other airports (significant goal) to meet the unmet needs and demands of our travelers, we respectfully ask that you recognize and understand the hardship and problems that will result to airport concession operators.

In addition to barricades, different passenger routes and temporary relocation of space, concession operators will be asked to improve and/or quickly open new space as and when it becomes available. This will be costly and may not be feasible pending length on the contract. As an example, a concession typically has only a 5 year contract. If it has only a remaining term of 2 years left on its contract, how can it be expected to fixture, a/c, light, provide equipment and otherwise improve new and additional space? This is obviously not possible and likely something concessions will have to refuse leaving new space vacant.

We urge you to pass this bill that gives the DOT the authority to solve such problems by providing the DOT with the flexibility and discretion to amend concession contracts including extending the term of a concession contract if the operator pays for improvements relating to such new space. An extension in all fairness will allow a concession more time to amortize (pay for) such improvement costs.

Thank you for allowing us to testify. Please support this bill.

Sincerely,

Aleta M Lindsay
Vice President, ICE Currency Services

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

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TO: Senator J. Kalani English
Chair, Committee on Transportation and International Affairs
Hawaii State Capitol, Room 205
Via Email TLAtestimony@capitol.hawaii.gov and Hand Delivery

FROM: Gary M. Slovin

DATE: March 13, 2012

RE: **H.B. 2004, H.D. 2 – Relating to Transportation**
Hearing Date: Wednesday, March 14, 2012 at 1:16 pm
Conference Room 224

Dear Chair English and Members of the Committee on Transportation and International Affairs:

I am Gary Slovin, testifying on behalf of EAN Holdings, LLC, operating Enterprise Rent-A-Car, Alamo Rent-A-Car and National Car Rental in Hawaii (collectively referred to as “Enterprise”).

Enterprise supports H.B. 2004, H.D. 2 in that it provides to the Department of Transportation needed flexibility in extending, modifying, or amending the terms of concession contracts.

Enterprise believes that it would be helpful to 1) clarify that the procedure in this bill would apply to rental car concession agreements for the consolidated rental car facility planned at the Honolulu International Airport, and 2) extend the department’s discretion to negotiate concession agreements for both existing and qualified new concessionaires at the consolidated rental car facility.

The consolidated rental car facility will be a modern structure similar to those that have been built at a number of major mainland airports and will house all of the rental car companies that will serve Honolulu International Airport. The Department of Transportation also has construction projects for the neighbor island airports, including Maui, where upgrading of the runway system at the Maui Airport will require the relocation of the existing rental car facilities.

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The consolidated facility at the Honolulu International Airport will be a complex facility. The normal bid procedures outlined in State law will not be adequate to meet the needs of the State in our judgment. In particular, it would be extremely difficult for a bid to take all of the moving variables into account, including the funding and financing of the facility (which presently remains in question), the allocation of space within the facility, the transition of both on-airport and off-airport rental car locations to the facility, and the timetables for financing and planning the actual construction of the facilities. Negotiated contracts would allow for language that could accommodate these changing circumstances, and would be in line with the overall concept of the bill to fast-track construction and improvements at the airport, and also provide critical jobs to stimulate the economy.

The negotiated contract approach has been successfully used in other airports on the mainland, including the airports at San Jose and Burbank, California. This approach would allow the Department of Transportation to tailor the contracts with the rental car companies in accord with the specific needs and the uses of such large facilities and best serve the community needs. The tourist and business travel industry has become increasingly complex in recent years, and this is likely to continue in the future. The Department and the rental car companies need to have flexibility to meet the needs of the airport, travelers and the rental car companies.

In order to make the consolidated rental car facility feasible and to have these projects begin as quickly as possible to create the employment that is a critical part of these projects, the Department must be able to move more quickly than would be the case with the standard bid process. If the Department of Transportation had the flexibility to negotiate agreements, it could more readily and fairly allocate space in the interim and permanent facilities than through a bid process. In addition, new companies that want to come on to the airport can be managed more efficiently to any responsible company that wishes to do business at the consolidated facility. Further, while a bid process could be subject to delay and various challenges, agreements among all of the parties would be much less susceptible to such variables.

We recognize the value of the traditional bid process, but feel that the requirements at the airport are sufficiently critical and uncertain as to justify departing from the process.

Having that flexibility is likely to help in the overall implementation of the critical projects that the Department of Transportation must soon undertake at the various State

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airports. Accordingly, we would recommend that the following language be added to the bill to give the Department of Transportation discretion over the process:

SECTION 2. Notwithstanding any laws or provisions to the contrary, including but not limited to chapters 102 and 261, Hawaii Revised Statutes, the department of transportation, in its sole discretion and authority, upon mutual agreement with a concession and in exchange for revenue-enhancing improvements that are made or paid by a concession deemed and acceptable by the department of transportation, may extend, modify, alter, or amend the terms of concession contracts, leases, and permits. The authority granted by this Act shall be applicable to extending, modifying, altering, or amending the terms of new or existing concession contracts, leases, and permits for rental motor vehicle companies at the projected consolidated rental car facility, and any other permanent or interim facilities planned by the department.

SECTION 6. This Act shall take effect on July 1, 2012, and shall be repealed on July 1, 2014, provided that applicability of this Act to new or existing concession contracts, leases, and permits for rental motor vehicle companies at the projected consolidated rental car facility and any other permanent or interim facilities planned by the department shall be repealed on July 1, 2017.

Thank you for the opportunity to present these ideas with regard to H.B. 2004, H.D. 2.

AIRLINES COMMITTEE OF HAWAII



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

LATE

March 14, 2012

Honorable J. Kalani English, Chair
Honorable Will Espero, Vice Chair
Senate Committee on Transportation and International Affairs
Hawaii State Capitol, Honolulu, HI 96813

Re: **HB 2004 HD 2 – Relating to Transportation – Comments**
Hawaii State Capitol, Room 224 – 1:16 p.m.

Aloha Chair English, Vice Chair Espero, and Members of the Committee:

The Airlines Committee of Hawaii* (ACH), which is made up of 20 signatory air carriers that underwrite the State Airport System appreciates the opportunity to alert the committee to unintended consequences that may arise with this bill.

As you discuss the merits of this bill, please consider that any offset of lease costs may be passed along to the ACH member airlines that, as signatory carriers, would have to make up revenue shortfalls experienced by the state airport system. We appreciate the impetus to provide rent relief stems from the fallout of the economy, and natural and manmade disasters. But, the ACH member airlines also experienced the brunt of that impact.

Air carriers have adapted their business models to meet customer demand and rising costs. Constantly, we are faced with balancing our operations against a highly volatile oil market. Oil prices that once represented less than 10 percent of our operational costs now are now about 20 percent – nearly as high as personnel costs.

Because any offset of lease costs may be passed along to signatory air carriers, this bill has the potential to make it increasingly difficult for airlines to operate and ultimately hurt the consumer. Offsetting rising expenses by raising prices is difficult because it chokes demand – if tickets are too expensive, travelers will make alternate plans.

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 and stabilize the airports system and help to under-write capital revitalization costs.

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 State Department of Transportation – Airports Division (DOT-A) 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 DOT-A will be passed on to the airlines.

Simply put, every dollar of rent abatement provided to concessionaires will increase airline costs by a dollar.

The ACH member airlines and the State partnered 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 may materially impact the DOT-A’s capital improvement program by necessitating deferral or cancellation of a significant number of projects at every airport.

Recommendation:

Like airport concessionaires, the airline industry is also struggling financially. In fact, neither the concessionaries nor the airlines are unique in their struggles. We are among a number of corporations and businesses that face financial hardships due to a number of pressures. This is a reality that we all must navigate through to stay afloat.

Thus, there is no additional cushion for the ACH member airlines to subsidize other airport tenants while maintaining its support to an operations and capital improvement program in Hawaii. Therefore, we respectfully ask your consideration of the potential impacts this bill may have upon the airport system.

As always, we are grateful for the opportunity to **provide input** on this matter.

Sincerely,

Blaine Miyasato
ACH Co-chair
Hawaiian Airlines

Matthew Shelby
ACH Co-chair
United Airlines

**ACH member airlines 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! Mokulele, Hawaiian Airlines, Japan Airlines, Korean Air, Philippine Airlines, Qantas Airways, United Airlines, United Parcel Service, US Airways, and Westjet.*