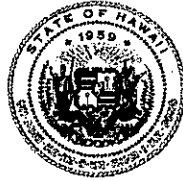


NEIL ABERCROMBIE  
GOVERNOR



GLENN M. OKIMOTO  
INTERIM DIRECTOR

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

IN REPLY REFER TO:

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

March 14, 2012

**S.B. 2337, S.D. 1**  
**RELATING TO TRANSPORTATION**

**HOUSE COMMITTEE ON TRANSPORTATION**

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.



GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

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**TO:** Representative Joseph M. Souki  
Chair, Committee on Transportation  
Hawaii State Capitol, Room 426  
*Via Email TRNtestimony@Capitol.hawaii.gov and Hand Delivery*

**FROM:** Gary M. Slovin

**DATE:** March 13, 2012

**RE:** S.B. 2337, SD1 – Relating to Transportation  
Hearing Date: Wednesday, March 14, 2012 at 9:00 a.m.  
Conference Room 309

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Dear Chair Souki and Members of the Committee on Transportation:

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** S.B. 2337, S.D.1 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.

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

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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 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 the concession deemed 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.

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Page 3

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 2017.

Thank you for the opportunity to present these ideas with regard to S.B. 2337, SD1.



**SB 2337, SD1**  
**RELATING TO TRANSPORTATION**  
House Committee on Transportation

March 14, 2012

9:00 a.m.

Room 309

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB 2337 SD1, 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. SB 2337 SD1 would further exempt DOT from all laws in conflict with the bill, including those laws regulating the issuance of concession leases at Hawai'i's airports, until July 1, 2014. Because the state has fiduciary duties to exercise reasonable care and act prudently in leasing public trust land, OHA opposes this bill.

The Admission Act section 5(f) created the public land trust, pursuant to which certain land and the proceeds or income from the disposition of that land are to be held by the State of Hawai'i for five public 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 trustee, including the DOT, must uphold its fiduciary responsibilities when leasing our public trust lands. These duties include, among other things, acting in the best interest of the beneficiaries, taking reasonable care, acting as a prudent person would in similar circumstances, and performing due diligence prior to taking action. Laws regulating the leasing of land for concessions provide a framework to ensure that the state carries out its duties while allowing for thoughtful use of public lands. While circumventing these laws may be the quickest means to lease land, it is not the prudent inquiry demanded by the state's fiduciary position.

For this reason, OHA urges the committee to HOLD SB 2337 SD1. Mahalo for the opportunity to testify on this important measure.



## *AIRPORT CONCESSIONAIRES COMMITTEE*

Honorable Joseph Souki, Chair  
Committee on Transportation  
House of Representatives

Hearing: March 14, 2012; Room 309 at 9:00 a.m.

RE: SB 2337, SD1 --- Relating to Transportation

Chair Souki and Honorable House 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.

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?

Thus, bill seeks to help solve the problem by give the DOT the sole discretion and flexibility to amend concession agreements to provide relief to concessions in exchange for improvements paid for

by concessions. Among other things, the bill gives the DOT the discretion to extend the term of a concession lease so the concession in all fairness would have additional years to amortize (pay off) the costs of unplanned improvements requested by the DOT or necessitated by such projects.

Please understand the Committee is not opposed to such improvements and fast-tracking. The Committee recognizes and understands the DOT is responding to a recent study that calls for and justifies the need for such improvements and the fact that the additional revenues to DOT Airports from such added space will pay for such DOT projects.

In closing, while the Committee understands the need for such improvements and the fact that the current and future needs of travelers are not being met due to the lack of concession activities and offerings, we respectfully ask that you support this bill so the DOT will have discretion and flexibility to work with concessions who are adversely impacted by paying unanticipated costs.

Thank you for allowing us to testify. Please support this bill. Airport concessions seek to work cooperatively with the DOT in its historic and bold plans to quickly add substantial concession space so they open as completed and help meet the demands of Hawaii's travelers.

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Honorable Joseph Souki, Chair  
Committee on Transportation  
House of Representatives  
a.m.

Hearing: March 14, 2012; Room 309 at 9:00AM

P.O. Box 29638

Re: SB 2337, SD1- Relating to Transportation

Honolulu, Hawaii 96820

Chair Souki and Honorable Committee Members:

Phone: (808) 836-3322

My name is Roberta Fithian, and I am the President with Tiare Enterprises, Inc. My company supports this bill and the position of the Airports Concessionaires Committee.

Fax: (808) 833-7756

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.

Email: RBFHNL@aol.com

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.





## Greeters of Hawaii

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Honorable Joseph Souki, Chair  
Committee on Transportation  
House of Representatives

Hearing: March 14, 2012; Room 309 at 9:00 a.m.

Re: SB 2337, SD1- Relating to Transportation

Chair Souki 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.

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



## Island Shoppers, Inc.

Honolulu International Airport  
300 Rodgers Boulevard #3  
Honolulu, Hawaii 96819  
Tel: 808.834.1136  
Fax: 808.834.1137

Honorable Joseph Souki, Chair  
Committee on Transportation  
House of Representatives

Hearing: March 14, 2012; Room 309 at 9:00 a.m.

Re: SB 2337, SD1-- Relating to Transportation

Chair Souki and Honorable Committee Members:

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

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

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 more square feet of additional concession space at Honolulu International Airport and likely other airports to meet the 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

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Honorable Joseph Souki, Chair  
Committee on Transportation  
House of Representatives

Hearing: March 14, 2012; Room 309 at 9:00 a.m.

Re: SB 2337, SD1- Relating to Transportation

Chair Souki and Honorable Committee Members:

My name is Aleta Lindsay and I am the Vice President with ICE Currency Services.

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

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.

ICE Currency Services



Making the Traveler's Day Better™

Honolulu International Airport

Honorable Joseph Souki, Chair  
Committee on Transportation  
House of Representatives

Hearing: March 14, 2012; Room 309 at 9:00 a.m.

Re: SB 2337, SD1- Relating to Transportation

Chair Souki and Honorable Committee Members:

My name is Alan Yamamoto and I am the Senior Director of Operations for the Hawaiian Islands with HMSHost.

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

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.

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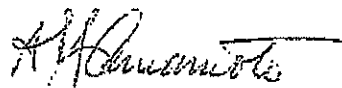
We urge you to pass this bill that gives the DOT the authority to solve such problems by providing the DOT with the flexibility and discretion to amend concession contracts including extending the term of a concession contract if the operator pays for improvements relating to such new space. An extension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

P. O. Box 40428 Honolulu, HI 96820 Phone: 808.836.2566 Fax: 808.834.0968

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

HMSHost Corporation  
Hawaiian Islands

By



Alan Yamamoto  
Senior Director of Operations  
Hawaii