

SB 2337

RELATING TO TRANSPORTATION.

Authorizes the Department of Transportation to extend the term of an airport concession, and to modify and amend the terms of any concession lease or contract in exchange for revenue-enhancing improvements that are made or paid for by the concession.

Effective July 1, 2012.

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:

February 8, 2012

**SB 2337
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.





SB 2337

RELATING TO TRANSPORTATION

Senate Committee on Transportation and International Affairs

February 8, 2012

1:15 p.m.

Room 224

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB 2337, 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 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. Mahalo for the opportunity to testify on this important measure.



AIRPORT CONCESSIONAIRES COMMITTEE

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

Hearing: February 8, 2012; Room 224 at 1:15 p.m.

RE: **SB 2337** --- Relating to Transportation

Chair English and Honorable Senators:

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 a minor amendment**. On page 4, line 2 of the bill, we respectfully ask that the word "contracts" be added since for some concessions the word "contract" is used to describe its agreement with the DOT. Thus, the line would read "...amend, the terms of concession contracts, leases and permits."

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 giving 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 with suggested amendment. 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.



Greeters of Hawaii

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

Hearing: February 8, 2012; Room 224 at 1:15 p.m.
Re: SB 2337 – Relating to Transportation

Chair English and Honorable Senate 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 hardship and problems that will be faced by concession operators at our public airports due to fast-tracking of major construction improvements.

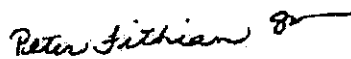
While we understand and commend the major goal of fast-tracking up to 80,000 or more square feet of additional concession space at Honolulu International Airport and likely other airports (significant goal) to meet the unmet needs and demands of our travelers, we respectfully ask that you recognize and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

Respectfully Submitted,



Peter Fithian
Greeters of Hawaii, Ltd.
President



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

Hearing: February 8, 2012; Room 224 at 1:15 p.m.
Re: SB 2337 – Relating to Transportation

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Chair English and Honorable Senate Committee Members:

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.

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
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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.

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

Respectfully Submitted,

Roberta Fithian 

Roberta Fithian
Tiare Enterprises, Inc
President



Making the Traveler's Day Better™

Honolulu International Airport

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

Hearing: February 8, 2012 at 1:15p.m., Room 224

Re: SB 2337 - RELATING TO TRANSPORTATION

Chair English and Honorable Senate 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

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An Autogrill Company 

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.

HMSHost Corporation
Hawaiian Islands

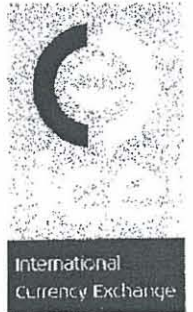
By



Alan Yamamoto
Senior Director of Operations
Hawaii

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



February 7, 2012

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

Hearing: February 8, 2012; Room 224 at 1:15 pm

RE: SB 2337 - - Relating to Transportation

Chair English and Honorable Senators;

My name is Aleta Lindsay and I am Vice President with International Currency Exchange, (ICE) at Honolulu International Airport.

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 pose many problems. 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 fair 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,



Meta M. Lindsay
VP Business Development