

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

February 16, 2021
3:00 p.m.
State Capitol, Via Videoconference

S.B. 1308
RELATING TO CONCESSIONS

Senate Committee on Transportation

The Department of Transportation – Airports Division (DOTA) **opposes** S.B. 1308 which seeks to provide flexibility and discretion to address substantial hardship situations that impact airport concession contracts.

We would like to emphasize that all airport concession agreements already provide the DOTA with the discretion to modify the terms of the agreement in the event of a “Sudden Event” (defined in the concession agreements as “the occurrence of an event that is sudden, extraordinary, and generates relatively immediate severe adverse economic impacts for the State of Hawaii”). Consequently, the DOTA has provided over \$100M in rent relief and continues to meet and listen to requests of its concessionaires on a frequent basis.

Normally, rent paid by the concessionaires to the DOTA is the greater of the Minimum Annual Guarantee (MAG) or a Percentage Fee of gross receipts. In response to the COVID-19 pandemic, the DOTA implemented MAG relief provisions effective April 1, 2020 and has continued the policy through February 28, 2021. Whereas, the relief terms provided by the DOTA to its airport concessions allowed the concessionaires to pay the lower of MAG or Percentage Fee of gross receipts, providing substantial relief. This relief program has also been utilized by many major US airports, with very few airports offering further relief.

Again, the MAG relief has decreased the DOTA’s operating revenue by more than \$100 million since April 1, 2020.

While the DOTA recognizes and understands the financial hardship also suffered by airport concession sublessees, it should be noted that the DOTAs contractual agreement is with the lessee -- not the sublessee.

The proposed bill creates broad relief trigger mechanisms which may not be directly related to the pandemic and creates undue risk and obligation to the DOTA. Such

language could be utilized **beyond** a sudden event period such as a pandemic. A decrease in gross receipts may not relate to a sudden event, but rather be related to:

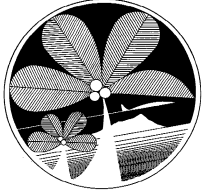
- a) Changes in customer spending habits and needs, instead of a sudden event.
- b) Concessionaire unable to adjust to market trends and demands
- c) Product offerings
- d) Customer service and sales force
- e) Hours of operation

The DOTA utilizes a residual rate setting methodology to calculate airport landing fees and terminal charges. Under this methodology, the signatory airlines are responsible for any financial shortfall, and NOT the concessions.

The DOTA continues to understand the financial impacts to its airport concessionaires, but must be cognizant of its own financial challenges, as it endures the slow economic recovery of the pandemic.

Thank you for the opportunity to provide testimony.

AIRLINES COMMITTEE OF HAWAII



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February 16, 2021

Senator Chris Lee, Chair
Senator Lorraine Inouye, Vice Chair
Committee on Transportation

Re: SB 1308 – RELATING TO CONCESSIONS – IN OPPOSITION

Via Videoconference; 3:00 p.m.

Aloha Chair Lee, Vice Chair Inouye, and members of the committee:

The Airlines Committee of Hawaii (ACH), which is comprised of 19 signatory air carriers that underwrite the State of Hawaii Airports System, appreciates the opportunity to provide testimony in opposition to SB 1308, which provides the Department of Transportation with more flexibility and discretion to address substantial hardship situations that impact airport concession contracts.

This bill is unnecessary as the Department of Transportation already has the discretion to address substantial financial hardship situations and has, in fact, provided over \$100 million in relief to date to airport concessionaires since the start of the pandemic.

Any reduction in concessions revenue to the Department of Transportation is directly passed on to the airlines. This added financial burden to the airlines could not come at a worse time, with the airline industry reporting multi-billion dollar losses each quarter.

For these reasons, we respectfully ask the committee to hold this bill. Thank you.

Sincerely,

Matthew Shelby
ACH Co-chair

Brendan Baker
ACH Co-chair

Mark Berg
ACH Co-chair

**ACH members are Air Canada, Air New Zealand, Alaska Airlines, All Nippon Airways/Air Japan, Aloha Air Cargo, American Airlines, China Airlines, Delta Air Lines, Federal Express, Fiji Airways, Hawaiian Airlines, Japan Airlines, Korean Air, Philippine Airlines, Qantas Airways, Southwest Airlines, United Airlines, United Parcel Service, and WestJet.*

SB-1308

Submitted on: 2/15/2021 12:38:26 PM

Testimony for TRS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Marianne Lin	Testifying for Chiefly Company Ltd	Support	No

Comments:

I support SB 1308.

SB-1308

Submitted on: 2/15/2021 12:46:12 PM

Testimony for TRS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Pam Wheat	Testifying for Tiare Enterprises	Support	No

Comments:

I'm in support of the bill



Honorable Chris Lee, Chairman
Senate Committee on Transportation
Hawaii State Legislature

Hearing: February 16, 2021 at 3pm

Re SB 1308 – Relating to Concessions

Chairman Senator Lee, Vice-Chairperson Senator Inouye and Committee Members,

My name is Roberta Fithian and I am the President of a small local company Tiare Enterprises that has been operating the retail concessions at the Hilo and Kona Airports under current contract terms since September 2015.

I am in strong support of this bill to give DOT the discretion to grant my company relief which it cannot consider granting since it does not have the discretion powers like other mainland airports. The bill does not mandate the DOT provide any relief. However, it clearly gives me the right to ask and the DOT the right to at least listen.

Please. We do not want the DOT later saying to us “we don’t have to listen since the Legislature did not give us (the DOT) the discretion to consider granting you the type of relief you’re talking about”.

My husband and I took out a 2nd mortgage on our residence to support \$3.4 million in Kona improvements to 2 new stores DOT laid out. We were about to sign a “contract extension agreement” to meet airport planned “new improvements opening” and to support amortization costs and operations when Covid 19 struck. We have \$700,000 of store fixtures in storage, county approved construction plans and building permits but could not move forward with signing an extension contract that had no relief adjustments due to Covid.

We have 5 years left on our contract and if we don’t go forward with these improvements or meet other contract terms the DOT can default my company, impose penalties, pull our performance bond and bar us from doing business with the DOT for 5 years by Hawaii law.

In September 2020 we reminded DOT of these problems and issues and so far there is no solution from DOT on how to address these problems. Thus, it is our belief that the DOT does not have the discretion to listen to all possible solutions which will include no financial burden to the DOT.

We are faced with about 5 years left on our contract and even with no MAG rent payments to the DOT temporarily we are still losing monies keeping core staff so we are ready to open with increased travel and paying loans/expenses for the planned store improvements that are at a standstill. We can’t open now since there are not enough departing travelers to support covering the added costs of bringing back sales staff, new inventory and Covid-related expenses. Unlike food and beverage which

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people purchase before getting on a long flight, retail sales are expected to be lower since such purchases are not required for a long flight and shopping will be difficult following Covid Rules with only so many people in a store, distancing around store racks, and willing to wait in lines to get into the store in the hot Kona sun.

Please support this bill which is critical to our survival and ability to discuss relief measures for the DOT to consider at its discretion. This bill does not mandate DOT to do anything.

We also support the testimony of the Airports Concessionaires Committee.

Thank you for allowing us to testify. We are willing to answer any questions you may have. Please support the passage of this bill.



AIRPORT CONCESSIONAIRES COMMITTEE

Honorable Chris Lee, Chair
Senate Committee on Transportation
Hawaii State Legislature

February 16, 2021 - 3pm Hearing

Re SB 1308 – Relating to Concessions

Chair Lee, Vice-Chair Inouye and Honorable Committee Members,

My name is Peter Fithian of the Airport Concessionaires Committee that represents the majority of Airport Concessions at our public airports. Airport concessions have historically provided 50% or more of the operating revenues in support of our airports.

We strongly support and urge you to pass this bill especially given the ongoing Historic Covid Pandemic Crisis as airport concessions struggle for survival.

There is no valid or logical reason for anyone to oppose this bill that only provides “discretion” to grant relief and “no requirement that any relief be granted”.

How can anyone be opposed to such a measure unless 1) it does not want to grant or be bothered in having to deal with requests for relief from airport concessions; and/or 2) it wants to be able to say the Legislature did not give it (DOT) the discretion to consider granting such relief. Thus Legislature and not DOT is at fault if a concession business fails.

Because the DOT has the “right to say no to any request for relief” there is no way this bill poses an undue risk or obligation on the DOT. To say otherwise is misleading in our view. As to any financial burden to airlines, concessions or other airport tenants that is for the DOT to decide as to what is fair and/or appropriate and not for the airlines to decide depending on the circumstances. Again, the DOT can always say “no” to any request for relief.

As the airlines know along with the DOT, the airlines asked and were granted in the past by the DOT a \$76 million waiver in landing fees over 2 years with the request from the State that the airlines in return not reduce the travelling-seat capacity to Hawaii. What the airlines do? They took the \$76 million waiver and reduced the seat capacity to Hawaii. So Hawaii got nothing. The \$76 million came from concession-

generated-surplus revenues and the concession got nothing. So where did the airlines spend the \$76 million in savings? Elsewhere outside of Hawaii must be the answer.

The airlines to date received reportedly \$75 billion in grants and aid from Congress. In comparison, all US Airports received only about \$10 billion of which they had to share among airports with some monies going to airport concessions. So airports and concessions got some relief but not significant when compared with airlines.

While we are grateful and remain grateful to what the DOT has done to date including its recent plan of granting a 2 year extension on concession contracts to assist in the recoupment of ongoing losses by concessions it knows such relief is not enough to help with survival since other airports have granted a minimum of 3 years and other forms of relief including the right for a concession to close without any penalty were granted by some other airports.

In Hawaii the DOT presently has no flexibility and if a concession defaults in its payments or contract terms, DOT must pull the concessions performance bond, default the concession from doing business with the State for 5 years and pursue the concession for whatever more it can collect from the concession. Other airports have such flexibility when there are significant hardships to a concession and when it occurs and such other airports can grant relief of no penalties but our DOT does not such discretion and flexibility? Why shouldn't Hawaii's airports have the same discretion to grant relief without penalties to a concession? Regardless, Hawaii concessions don't want to leave as long as there is an extension of time that allows them to remain in place and survive.

Also, as the DOT knows many concessions have only 5 years remaining on their term (when return to normalcy is like to take 3 to 5 years) and also building-improvement obligations which improvements can't be built due to lack of funds within such 5 years. So is DOT going to default and penalize such concessions for failing to meet improvement deadlines set forth in their contracts? Make an exception for these concessions in granting relief but not other concessions with slightly different problems? Hawaii's DOT needs not only partial powers but full powers to grant different types of relief.

Given our studies of contracts and laws and meetings with the DOT, it is our opinion that DOT has some powers and flexibility to grant some types of relief for concessions but not the broad powers and flexibility like other airport concessions. Thus, some concessions will benefit from the limited powers of DOT but some concessions that may be need in relief of different type the DOT will have to say "no" to because for it does not have such flexible powers like other airports. Is this fair that some get relief but others do not due to limitation in flexibility of powers?

Further, the powers that DOT has appears to be in contracts that can be changed over time and/or proclamation powers that are temporary. The bill seeks to codify (state in law) what the DOT's discretions are so there are there for the present

Covid event, future Covid and other events of significant hardships for which the hardships only trigger the right to ask the DOT for relief. DOT at all times will have the "discretion" to consider and listen to varied proposals with some likely placing no undue financial burden on the DOT. If a request /proposal places an undue burden then the DOT has the right to say "no".

It should be noted that airport departing travel while down at one point at 98% Hawaii is presently down about 85%. It's difficult for concessions to open and survive. Various experts report that concessions don't start to make a profit until the traffic is no more than 40% to 20% down compared to past traffic levels. Even when closed your losing monies maintaining key staff so ready to open when travel picks up but at the same time paying for such staff, improvement loans and other expenses but not ready to open unless such opening costs covers the extra costs of sales staff, inventory and Covid regulations. Otherwise a concession will lose more revenues each month.

We believe House Transportation failed to pass the bill based on misunderstanding of relief being provided by DOT to concessions to date. While DOT by no MAG rent charges and only percentage rent payments required is providing concessions same relief as many other concessions at other airports which are not suffering as much as Hawaii concessions, the \$100 million the DOT speaks of in relief provided to concessions was monies provided by Congress to our airports to make available as MAG relief and other relief to concessions. Thus, it was monies provided by Congress and not a decrease of existing operating revenues as suggested in DOT's testimony. We are pleased that Congress is posed to pass on more monies to airports which our airport plans to continue to pass on to concessions. But as mentioned such type of relief is likely only to be temporary from Congress and likely not enough to allow a concession to survive and having a chance to recoup its losses. Thus it's important that this bill become law so DOT has the same discretion to help concession like other airports do for their concessions.

Thank you for allowing us to testify. Please don't hesitate to ask us questions. Please support this important bill so DOT has the same discretion and flexibility to consider granting relief (no mandate that it has to do so) like other airports have in granting to their concessions. That is only fair. Please contact our legislative liaison Jim Stone at 223-7810 if questions.

SB-1308

Submitted on: 2/15/2021 10:05:24 AM

Testimony for TRS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ronald Tang	Individual	Support	No

Comments:

I support SB 1308

SB-1308

Submitted on: 2/15/2021 11:41:34 AM

Testimony for TRS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sharon Mori	Testifying for Daniel K Inouye International Airport Concession	Support	No

Comments:

I am testifying as an employee of a concession at the Daniel K Inouye International Airport. I support SB1308.

SB-1308

Submitted on: 2/15/2021 11:50:53 AM

Testimony for TRS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Monico Castillo	Individual	Support	No

Comments:

I fully support SB 1308.

This Bill will help everyone!

SB-1308

Submitted on: 2/15/2021 12:34:12 PM

Testimony for TRS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joel Oasan	Individual	Support	No

Comments:

I am in support of this bill because it will allow DOT to respond to hardship for concessions at the Hawaii airport locations, in a timely manner.

SB-1308

Submitted on: 2/15/2021 12:45:10 PM

Testimony for TRS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dennis Vanairsdale	Individual	Support	No

Comments:

I support the intent and purpose of SB 1308. The pandemic has presented us with unprecedented challenges and a rapidly changing situation requires flexible responses. SB 1308 provides additional tools for DOT to respond to this crisis, it does not mandate any particular action by DOT. Application and use of these tools remains up to the sound discretion of DOT.

LATE

SB-1308

Submitted on: 2/15/2021 3:15:13 PM

Testimony for TRS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Bobby Chang	Testifying for KC Hawaii	Support	No

Comments:

Aloha, we are in support of SB1308.

LATE

SB-1308

Submitted on: 2/15/2021 4:59:30 PM

Testimony for TRS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kim Cortez	Testifying for Tiare Enterprises Inc.	Support	No

Comments:

I support this Bill