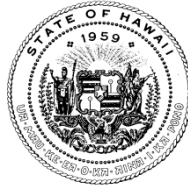


DAVID Y. IGE
GOVERNOR



REVISED TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
ROSS M. HIGASHI
EDUARDO P. MANGLALLAN
PATRICK H. MCCAIN
EDWIN H. SNIFFEN

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

April 1, 2022
10:30 am

State Capitol, Conference Room 211 & Teleconference

H.B. 1953, H.D. 2, S.D. 1
RELATING TO CONCESSIONS

Senate Committee on Ways and Means

The Department of Transportation - Airports Division (DOTA) supports the intent of H.B. 1953, H.D. 2, S.D. 1.

Thank you for the opportunity to provide testimony.

AIRLINES COMMITTEE OF HAWAII



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

Senator Donovan Dela Cruz, Chair
Senator Gilbert Keith-Agaran, Vice Chair
Committee on Ways and Means

Re: HB 1953 HD2 SD1 – RELATING TO CONCESSIONS – COMMENTS
April 1, 2022; 10:30 a.m.

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the committee:

The Airlines Committee of Hawaii (ACH), comprised of 20 signatory air carriers that underwrite the State of Hawaii Airports System, would like to offer comments on HB 1953 SD1, which, in its previous version, would have unnecessarily provided the Department of Transportation (DOT) with more flexibility and discretion to address substantial hardship situations that impact airport concession contracts.

We appreciate the amendments made in the SD1 and have no objections to the bill in its current form.

The ACH opposed prior versions of the bill due to how it would have unfairly provided subsidies to concessions that would result in directly transferring the dollar-for-dollar financial risk to the airlines. DOT has contractual agreements with both airlines and concessionaires to establish financial and operational commitments to support the airport system. Any reduction in concessions revenue to the DOT is directly passed dollar for dollar to the airlines, which would only further burden the airline industry that is still recovering from the pandemic and its resulting heavy financial burden.

Thank you for the opportunity to provide comments.

Sincerely,

Brendan Baker
ACH Co-chair

Mark Berg
ACH Co-chair



LATE

AIRPORT CONCESSIONAIRES COMMITTEE

Honorable Donovan Dela Cruz, Chair
Committee on Ways and Means
Hawaii State Senate

For Hearing: April 1, 2022, Rm: 211; 1030am

Re: HB 1953, HD2 – Relating to Concessions

Chair Delar Cruz and Honorable Committee Members,

My name is Ron Tang and I am the co-chair of the Legislative Committee along with Peter Fithian for the Airport Concessionaires Committee which assists a majority of the concessions at Hawaii's public airports.

We stand in strong support of this VERY IMPORTANT bill with amendments. The bill IS NOT A THREAT, IT DOES NOT MANDATE THE DOT TO DO ANYTHING.

- 1) It will allow DOT to correct unfairness where some concessions got an extension due to Covid, some got less and some got "nothing".
- 2) It will also prevent future unfairness to occur and permit correcting of some of the immediate-existing problems as explained, with nothing mandated, as reported to you in our March 21, 2022 letter to Senate President Ronald Kouchi with copy to all of you.
- 3) We are thankful for what the DOT is doing in financial relief which all other US mainland airports are doing to help keep concessions open and servicing passengers. This is nothing new. However, financial assistance does not last forever and other airports have means of granting relief such as "extensions" as one example which cost the airport nothing and like other airports can be used to encourage concessions to stay in place and serve passengers if so decided by the DOT, in its discretion.
- 4) As the Attorney General's Office indicated during its oral testimony, it's hands are tied by existing laws and contract provisions and thus the DOT cannot have the flexibility to grant relief like other US-mainland airports unless the Legislature gives the DOT the flexibility and discretion to do so, like other US mainland airports. Thus, it's up to this Legislature to give the DOT the flexibility, nothing mandated, to correct the unfairness and these existing problems. THIS BILL DOES NOT POSE A THREAT TO THE DOT.

- 5) It will clarify antiquated laws and any contract provisions that result in unfairness and no consideration for relief when "significant hardships" occur such as with Covid. We expressed concern last session that it would happen and it did.
- 6) Will allow the DOT to have flexible powers like other US airports to grant relief in times of crisis like Covid and future hardships which presents new-future challenges to airports across the United States and elsewhere.
- 7) Contrary to misleading arguments, this bill does not create any financial hardships for the DOT since it can say "no" to any request for relief for "any reason". THIS BILL POSES NO THREAT TO THE DOT.
- 8) Contrary to past arguments by the airlines that this bill will burden them is not a fair statement. The DOT can say "no" and it's the DOT --- not the airlines -----that decides what type of relief is fair, if any, and what is in the "best interest of the airports" including services to passengers provided by concessions.
- 9) Will clearly explain the discretion the DOT has to say "yes" or "no" to relief in times of significant hardships such as Covid and as described.
- 10) DOT's past testimony has been confusing and misleading. It says it already has flexibility and discretion but as mentioned unfairness occurred. DOT says it already has adequate powers per HRS 102-10 but it does not unless proposed amendments to HRS 102-10 as proposed by this bill with our amendments are made. It does not want to grant relief based on "anticipated events" and it doesn't have to and can say "no" to any such request. The bill has no mandates for the DOT to do anything.

The DOT states the types of relief in the bill are broad along with the trigger mechanisms but they are no different than triggers other airports can consider in granting relief. Also they need to be board since future events are very difficult to predict. Who predicted Covid and its sufferings around the world now lasting 2+ years?

The DOT argues that the request for relief may not be due to substantial hardship situations and place undue risk and obligations on the DOT. Also, DOT argues the request creates any undue risk or obligation to the DOT. All of these matters being problems are simply not true, since the DOT clearly has the discretion to say "no" to any request for relief in DOT's sole discretion for any reasons. So why is the DOT arguing these matters when simply not true?

11) Reviewed and Processed. Per existing administrative reviews and procedures, any relief granted will be reviewed by DOT staff, Deputy Airport Director, DOT Director, Attorney General's office and likely other State officials. Other airports have a similar process of multiple review and Hawaii will be no different with multiple reviews as part of the process before any relief is granted.

12) Will Require DOT to Roll Up It's Sleeves; Think Outside the Box: Nobody likes change but change and creative thinking is necessary during times of Covid and significant hardships and likely future events. IT'S THE NEW FRONTIER, DOT MUST BE PREPARED AND HAVE THE FLEXIBILIT AND DISCRETION . An airport needs all the flexibility and tools to ensure services to passengers while collecting reasonable rents depending on the circumstances.

Hawaii needs to have the flexibility and tools like other US mainland airports.

Covid/Delta/Omicron....Next? _Again, it is the new frontier that DOT needs to prepare for and have all of the tools and flexibility to act immediately and respond like other US mainland airports.

13) Please don't let the Legislature be blamed. Don't let the DOT argue it cannot consider correcting the unfairness because the Legislature failed to pass this bill. Please do not let the DOT argue that it cannot consider the request for relief due to Covid/significant hardships since the Legislature did not give the DOT the flexibility and discretion with nothing mandated to consider granting such types of relief like other US mainland airports.

Proposed Amendments: NOTE – referenced attached exhibits may not line up exactly with exact lines of the current bill but should be easy to locate. Our apologies for any inconvenience but we felt exhibits would be helpful to you.

ALSO, we have for reference attached a copy of HD2 to this bill which we suggest for ease of reference serve as a basis for our proposed amendments.

THUS, our proposed amendments using HD2 as a basis are as follows:

1) Page 5, line 10, pg 6, line 1 – Please add back the words “verbal agreement” and related language that were deleted as noted. Since DOT was not able to finalize new agreements in time, some concessions were operating under prior agreements and thus “verbal” since nothing was in writing. These concessions continued to perform during Covid, Delta, Omicron, next? and should not be overlooked and thus considered and not barred from being able to ask for relief. Please Exhibit 1.

- 2) Page 5, line 14 – We added the word “sole” to emphasize DOT’s discretion and the fact that DOT is not mandated to grant relief and has the “sole discretion” to say “no” to any request for relief. This bill is not a threat to DOT which has sole discretion and to say otherwise is misleading. Please see Exhibit 2.
- 3) Page 6, line 13 --- An employee recall provision was added to the bill and we suggest that it be deleted since not all employees may agree to being recalled to work as in the past. Please see Exhibit 3. If such provision is going to be added to all employee-type contracts that would be fine but to single concessions that are struggling to recover places an undue burden on concessions. Also, many employees do not want to return to work at the airports given the ups and downs as to such businesses.
- 4) Page 7, line 1– Language clarifies that maximum extension the DOT can grant due to significant hardship is up to 10 years in DOT’s sole discretion. Please see Exhibit 4. Prior language in the bill had the figure of up to 25 years and that was vague and problematic as to meaning . This will help to clarify any misunderstanding.

Note: Please understand some concessions have 10 and 15 year contracts at the start and during that length of time they can suffer multiple/lingering significant hardship events. Covid/Delta/Comicon has lasted 2 years and the lingering effects remain. There may be more than one such significant hardship periods and DOT should have the discretion to grant relief if it deems it appropriate with no requirement that it must do so as provided in this bill. The granting of an extension of time costs the DOT nothing and especially important during times the DOT cannot grant monetary relief.

- 5) Page 7, line 9 – April 1, 2020 is when Covid started to effect all airport concessions per DOT. As a while the effective date of this bill can be the traditional July 1, 2022 the granting of relief must be considered from the start of Covid on April 1, 2020 which was the DOT start date for airport concessions. For this bill/Act to fairly measure the sufferings by concessions it has to be clarified that the starting point is for contracts that “were in place and operating with and with your contracts” on April 1, 2020 as well as future contracts/concession operations suffering significant-hardship events thereafter. Please see Exhibit 4.

Also, by referring to April 1, 2020, those concessions that got “no extension” or “less extension than other concessions” will be allowed to be recognized for relief in all fairness that they should have received but did not get if so decided by the DOT in its discretion.

Without this requested change, the unfairness to concessions who were not fairly treated shall remain as an unfair act that DOT will not be allowed to

correct. Also if the DOT wants to grant further extension relief, it cannot do so in a fair manner unless this bill passes.

- 6) Page 8, line 13, Covid has reportedly also resulted in “unexpected increase in construction costs” and “supply-chain delays”. As a result, during times of significant hardship we suggest that these words be added as reasons DOT may consider in granting relief Please see Exhibit 5.

As you are aware, there are reports that construction costs have increased 30% and more and that all materials may not arrive on time for a project to proceed and be finished on time.

Concessions unexpectedly confronted with such problems, should be allowed to ask for relief like concessions at other US-mainland airports during times of significant hardship such as COVID, with no obligation for the DOT to say “yes’ to an relief asked.

Again, this change poses no threat since the DOT can always say no.

- 7) GUT AND REPLACE GUIDELINES – Please keep those in mind as you plan your future deliberations including those that may take place during any conference deliberations.

CLOSING --- In closing allow us to again say we thank you for seeking to provide flexibility to Hawaii’s airports like mainland airports with no mandate that Hawaii airport provide any relief. THIS IS A VERY IMPORTANT AND FAIR BILL THAT RESULTS IN NO HARDSHIP.

The DOT can say “no” to any request for relief and any arguments that this bill will cause problems or burden the DOT is simply not valid.

This bill will avoid “unfairness” in the granting of relief such as explained.

It’s in the best interests of Hawaii’s airports that like other mainland airports it has the flexibility and discretion to provide relief to concessions so they are able to maintain services to passengers during times of Covid or other significant hardships. Other airports have such important flexibility and so should Hawaii’s airports to help ensure passengers are served to the maximum extent feasible.

Further, again, it should be noted that one way of providing relief to concessions is an extension of time to help concessions recover their losses suffered during periods of significant hardship . Granting such extensions of time cost the airports nothing which is important when an airport can no longer provide significant monetary relief.

Thank your for allowing us to testify on this important bill that gives the DOT the discretion to correct unfairness which it presently does not have and also powers to provide relief in its discretion like other US mainland airports.

Please don't hesitate to ask any questions you may have . Mahalo.

H.B. NO. 1953

1 provide fair and important relief to concessions who are
2 struggling in times of unpredictable crisis to remain in place
3 and provide services to passengers.

4 SECTION 2. Section 102-10, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§102-10 Modification of contract terms. [~~if~~] (a)
7 Notwithstanding any other law to the contrary, if during the
8 term of the contract [~~+~~], including [~~contracts which have~~] any
9 type of contract that has been executed [~~and are~~] or is *REPLACES*
10 presently in force [~~+~~ there] by verbal agreement, or both *deleted*

11 (1) There has been a reduction of fifteen per cent or more
12 in the volume of business of the concessionaire for a
13 period of sixty days or more, computed on the average
14 monthly gross income for the eighteen months [~~just~~
15 ~~prior to~~] immediately preceding the period or [~~as long~~
16 ~~as~~] the length of time that the concessionaire has
17 been in the business, whichever period is shorter, and
18 [~~such~~] the reduction, as determined by the officer
19 letting the contract, is caused by construction work
20 conducted during the period of time on, or within or
21 contiguous to, the public property upon which the

EXHIBIT 1 (PAGE 1 OF 2)

H.B. NO. 1953

REPLACES
deleted

1 agreements, revocable permits, or by verbal
 2 agreement; the adjustment of rent; granting of an
 3 extension of the contract's term with or without
 4 any further required investments or obligations;
 5 permitting the assumption or transfer, or both,
 6 of a contract; permitting the withdrawal of the
 7 contract without a concessionaire being in
 8 default or barred from doing business with the
 9 State, or both; and any other form of relief to a
 10 concession suffering significant hardship.

11 (b) Subsection (a) shall not apply:

12 (1) If the contract includes provisions allowing
 13 modification for all of the [above] contingencies [
 14 this section shall not be applicable thereto; provided
 15 further that this provision shall not apply to] and
 16 types of relief described in this section; and

17 (2) To any particular concession if the application
 18 [thereto] may impair any contractual obligations with
 19 bondholders of the State or counties or with any other
 20 parties.

CRAMPTON 1 (PAGE 2 OF 2) 6

~~are]~~ or is presently in force ~~(- there]~~ by verbal agreement, or both:

(1) There has been a reduction of fifteen per cent or more in the volume of business of the concessionaire for a period of sixty days or more, computed on the average monthly gross income for the eighteen months [just prior to] immediately preceding the period or [as long as] the length of time that the concessionaire has been in the business, whichever period is shorter, and [such] the reduction, as determined by the officer letting the contract, is caused by construction work conducted during the period of time on, or within or contiguous to, the public property upon which the concession is located by either the state or county governments, or both, the officer, with the approval of the governor in the case of a state officer and the chief executive of the respective county in the case of a county officer, may modify any of the terms of the contract, including the agreed upon rent, for a period which will allow the concessionaire to recoup the amount lost by [such] the reduction; [provided that ~~is~~] and

(2) A significant hardship is anticipated or has occurred to one or more airport concession, as determined by the officer letting the contract, the officer, with the approval of the governor, shall have the SOLE discretion to grant recoupment for the amount lost as may be applicable for the period that the concessionaire has been in business; provided that the recoupment may periodically include one or more of the following:

- (A) Entering into a new contract; and
- (B) Modifying the terms of any type of existing contract, including without limitation holdover agreements, revocable permits, or by verbal agreement; the adjustment of rent; granting of an extension of the contract's term with or without any further required investments or obligations; permitting the assumption or transfer, or both, of a contract; permitting the withdrawal of the contract without a concessionaire being in

EXHIBIT 2

1 (B) Modifying the terms of any type of existing
 2 contract, including without limitation holdover
 3 agreements or revocable permits; the adjustment
 4 of rent; granting of an extension of the
 5 contract's term with or without any further
 6 required investments or obligations; permitting
 7 the assumption or transfer, or both, of a
 8 contract; permitting the withdrawal of the
 9 contract without a concessionaire being in
 10 default or barred from doing business with the
 11 State, or both; and any other form of relief to a
 12 concession suffering significant hardship; and

13 (C) A requirement for the airport concession to
 14 recall employees who were laid off due to an act
 15 of God.

*DELETE
added*

16 (b) Subsection (a) shall not apply:
 17 (1) If the contract includes provisions allowing
 18 modification for all of the [above] contingencies [
 19 this section shall not be applicable thereto; provided
 20 further that this provision shall not apply to] and
 21 types of relief described in this section; and

EXHIBIT 3

default or barred from doing business with the State, or both; and any other form of relief to a concession suffering significant hardship.

(b) Subsection (a) shall not apply:

(1) If the contract includes provisions allowing modification for all of the [above] contingencies, this section shall not be applicable thereto; provided further that this provision shall not apply to] and types of relief described in this section; and

(2) To any particular concession if the application [thereto] may impair any contractual obligations with bondholders of the State or counties or with any other parties.

(c) For airport concessions the term of the contract DUE TO SIGNIFICANT HARDSHIP shall not be EXTENDED more than 10 YEARS BEYOND THE MAXIMUM CONCESSION TERM AND SHALL SUPPLEMENT ALL OF THE RIGHTS GRANTED TO CONCESSIONS AS SET FORTH IN SECTION 102-2 ~~twenty five years, which shall include remaining term of the contract and any extension thereof.~~

(d) To the extent that the provisions of chapter 171 conflict with the purpose and intent of this section, chapter 171 shall not apply to airport concessions.

(e) For purposes of this section, "significant hardship" includes one or more of the following that may occur or continue, or both, from time to time FOR CONTRACTS IN EFFECT AS OF APRIL 1, 2020 AND ANY FURTHER CONTRACTS THEREAFTER SUFFERING SIGNIFICANT HARDSHIP:

(1) A reduction of:

EXHIBIT *if*

- (A) Fifteen per cent or more in the volume of business of the concessionaire for a period of sixty days or more, computed on the average monthly gross income for the eighteen months immediately preceding the period or the length of time that the concessionaire has been in business, whichever is shorter; and
- (B) Ten per cent or more in the volume of business of the concessionaire for a period of one hundred eighty days or more, computed on the average monthly gross income for the period one hundred eighty days immediately preceding the period or the length of time that the concessionaire has been in business, whichever is shorter;

(2) A delay of more than ninety days in the anticipated substantial completion of premises being constructed by the State resulting in less time for the concessionaire to construct, occupy, and amortize the concessionaire's tenant improvements over the remaining term of the concessionaire's contract with the State;

(3) Unexpected circumstances, including but not limited to rising international tariffs, construction site or design problems, UNEXPECTED INCREASE IN CONSTRUCTION COSTS, SUPPLY-CHAIN DELAY, or other circumstances resulting in the infeasibility or other significant burden for the concessionaire to proceed with the improvements described in the concessionaire's contract with the State;

(4) Situations in which one or more concession contracts have more favorable relief terms to address financial or operating hardships when compared to the relief terms of other concession contracts;

(5) Situations in which one or more of a concessionaire's locations are in default, withdrawn, or in the process of being transferred and a sublessee, a joint venture partner, or licensee generating less than twenty-five per cent or less of the total gross

EXHIBIT 5

*PART OF &
BASIS FOR AMENDMENTS*

A BILL FOR AN ACT

RELATING TO CONCESSIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that like airports on the
2 continental United States, the department of transportation
3 needs flexibility and discretion to grant relief to airport
4 concessions in times of hardship, such as the coronavirus
5 disease 2019 (COVID-19) pandemic. The current lack of
6 flexibility resulted in the department of transportation not
7 being able to grant the same relief to all airport concessions
8 who suffered through the COVID-19 pandemic. This resulted in
9 unfair treatment as some concessions received an extension on
10 their contracts, while others did not receive any form of
11 relief.

12 The legislature further finds that unlike Hawaii, some
13 airports in the continental United States are granted the
14 flexibility needed to offset any hardship faced by concessions,
15 such as offering an extension of a contract or authorizing a
16 modification to an existing contract to allow extra time to
17 recoup its losses due to an unexpected crisis. Other airports



1 have recognized that in times of crises, if a concession closes
2 it will take a long period of time to find a replacement to
3 service passengers. For Hawaii, it typically takes eighteen to
4 twenty-four months, or longer, to find and replace a concession.
5 In addition, temporary operators with temporary facilities often
6 generate more complaints and problems.

7 The legislature also finds that the State's antiquated laws
8 and contract provisions must be modified to address any unfair
9 treatment of concessions and to allow the department of
10 transportation the ability to better support airport
11 concessions.

12 The legislature recognizes airport concession revenues are
13 very important. Historically, airport concessions have averaged
14 about fifty per cent of airport operation revenues, and has, at
15 least on one occasion, reached as high as seventy per cent.

16 The legislature further recognizes that concessions are
17 unique and very challenging businesses as they have term limits,
18 are dependent on travelers, and cannot appeal to the general
19 public like other local businesses. Airport concessions have
20 suffered devastating losses, and the levels of pre-COVID-19



1 passengers are not expected to return until the beginning of
2 2026, according to the State's chief economist.

3 The legislature additionally finds that the unpredictable
4 and devastating hardships of COVID-19 and its variants are a
5 wakeup call and require the development of new business models
6 between airports and concessions. While the department of
7 transportation expeditiously utilized direct federal relief
8 funds to support airport concessions, the legislature is
9 concerned that the department has not yet moved forward in the
10 development of new concession-business models. In June 2021,
11 this position was strongly advocated for all continental United
12 States airports by national organizations such as American
13 Association for Airport Executives, Airports Council
14 International - North America, and the Airport Restaurant and
15 Retail Association.

16 The intent of this Act is to give the department of
17 transportation flexibility and discretion to grant relief like
18 other continental United States airports in times of crisis.
19 While this Act does not mandate that the department of
20 transportation provide any relief, it gives the department the
21 option to consider all types of relief opportunities.



1 Accordingly, the purpose of this Act is to provide the
2 department of transportation flexibility and discretion to
3 provide fair and important relief to concessions who are
4 struggling in times of unpredictable crisis to remain in place
5 and provide services to passengers.

6 SECTION 2. Section 102-10, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§102-10 Modification of contract terms.** [~~ff~~] (a)
9 Notwithstanding any other law to the contrary, if during the
10 term of the contract [~~+~~], including [~~contracts which have~~] any
11 type of contract that has been executed [~~and are~~] or is
12 presently in force [~~+~~ ~~there~~]:

13 (1) There has been a reduction of fifteen per cent or more
14 in the volume of business of the concessionaire for a
15 period of sixty days or more, computed on the average
16 monthly gross income for the eighteen months [~~just~~
17 ~~prior to~~] immediately preceding the period or [~~as long~~
18 ~~as~~] the length of time that the concessionaire has
19 been in the business, whichever period is shorter, and
20 [~~such~~] the reduction, as determined by the officer
21 letting the contract, is caused by construction work



1 conducted during the period of time on, or within or
2 contiguous to, the public property upon which the
3 concession is located by either the state or county
4 governments, or both, the officer, with the approval
5 of the governor in the case of a state officer and the
6 chief executive of the respective county in the case
7 of a county officer, may modify any of the terms of
8 the contract, including the agreed upon rent, for a
9 period which will allow the concessionaire to recoup
10 the amount lost by ~~such~~ the reduction; ~~provided~~
11 ~~that if~~ and

12 (2) A significant hardship has occurred to one or more
13 airport concession, as determined by the officer
14 letting the contract, the officer, with the approval
15 of the governor, shall have the discretion to grant,
16 in any form as may be applicable, recoupment for the
17 amount lost as may be applicable for the period that
18 the concessionaire has been in business; provided that
19 the form of recoupment may periodically include one or
20 more of the following:

21 (A) Entering into a new contract;



1 (B) Modifying the terms of any type of existing
2 contract, including without limitation holdover
3 agreements or revocable permits; the adjustment
4 of rent; granting of an extension of the
5 contract's term with or without any further
6 required investments or obligations; permitting
7 the assumption or transfer, or both, of a
8 contract; permitting the withdrawal of the
9 contract without a concessionaire being in
10 default or barred from doing business with the
11 State, or both; and any other form of relief to a
12 concession suffering significant hardship; and

13 (C) A requirement for the airport concession to
14 recall employees who were laid off due to an act
15 of God.

16 (b) Subsection (a) shall not apply:

17 (1) If the contract includes provisions allowing
18 modification for all of the [above] contingencies[
19 this section shall not be applicable thereto; provided
20 further that this provision shall not apply to] and
21 types of relief described in this section; and



1 (2) To any particular concession if the application
2 ~~[thereto]~~ may impair any contractual obligations with
3 bondholders of the State or counties or with any other
4 parties.

5 (c) For airport concessions, the term of any contract
6 shall not be more than years, which shall include the
7 remaining term of the contract and any extension thereof.

8 (d) To the extent that the provisions of chapter 171
9 conflict with the purpose and intent of this section, chapter
10 171 shall not apply to airport concessions.

11 (e) For purposes of this section, "significant hardship"
12 includes one or more of the following that may occur or
13 continue, or both, from time to time:

- 14 (1) A reduction of:
15 (A) Fifteen per cent or more in the volume of
16 business of the concessionaire for a period of
17 sixty days or more, computed on the average
18 monthly gross income for the eighteen months
19 immediately preceding the period or the length of
20 time that the concessionaire has been in
21 business, whichever is shorter; and



- 1 (B) Ten per cent or more in the volume of business of
2 the concessionaire for a period of one hundred
3 eighty days or more, computed on the average
4 monthly gross income for the period one hundred
5 eighty days immediately preceding the period or
6 the length of time that the concessionaire has
7 been in business, whichever is shorter;
- 8 (2) A delay of more than ninety days in the anticipated
9 substantial completion of premises being constructed
10 by the State resulting in less time for the
11 concessionaire to construct, occupy, and amortize the
12 concessionaire's tenant improvements over the
13 remaining term of the concessionaire's contract with
14 the State;
- 15 (3) Unexpected circumstances, including but not limited to
16 rising international tariffs, construction site or
17 design problems, or other circumstances resulting in
18 the infeasibility or other significant burden for the
19 concessionaire to proceed with the improvements
20 described in the concessionaire's contract with the
21 State;



- 1 (4) Situations in which one or more concession contracts
2 have more favorable relief terms to address financial
3 or operating hardships when compared to the relief
4 terms of other concession contracts;
- 5 (5) Situations in which one or more of a concessionaire's
6 locations are in default, withdrawn, or in the process
7 of being transferred and a sublessee, a joint venture
8 partner, or licensee generating less than twenty-five
9 per cent or less of the total gross receipts of the
10 concessionaire will not be allowed to continue
11 operations and amortize the cost of the sublessee,
12 joint venture partner, or licensee's concession
13 improvements over the remaining term of the sublessee,
14 joint venture partner, or licensee's contract with the
15 concessionaire; or
- 16 (6) Situations in which an extension of time on the
17 contract would assist the concessionaire in the
18 recoupment of the concessionaire's loss or the loss of
19 time for the concessionaire to amortize the cost of
20 the concession improvements, or both, due to the loss



1 of volume of business as described paragraphs (1) (A)
2 and (1) (B)."

3 SECTION 3. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 4. This Act shall take effect on July 1, 2050.

6



H.B. NO. 1953
H.D. 2

Report Title:

DOT; Airport Concessions; Substantial Hardship; Contracts

Description:

Provides the department of transportation with more flexibility and discretion to address substantial hardship situations that impact airport concession contracts. Effective 7/1/2050. (HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

2022-1454 HB1953 HD2 HMSO



Wendell F. Brooks, Jr.

Real Estate & Business Consultant
Broker/Realtor - CPM - CRE

Senator Donovan M. Dela Cruz, Chair
Committee on Ways and Means

Hearing – April 1, 2022

Re: Testimony HB 1953 SD1 - Relating to Airport Concessions

Dear Chair Dela Cruz & Honorable Committee Members.

Thank you for the opportunity to submit testimony in support of HB 1953 SD1 Relating to Hawaii airport concessions.

My name is Wendell F. Brooks, Jr. and by profession I am a Real Estate & Business Consultant with over fifty (50) years of experience in Hawaii, parts of the U. S. Mainland, parts of Asia and parts of the South Pacific. Most of my work is focused on Commercial Real Estate, including Retail and Food & Beverage.

I strongly support HB 1953 SD1 with amendments proposed by the Airports Concession Group for the following reasons:

1. In times of crisis, it is critical that a landlord, such as the Hawaii Department of Transportation (“HDOT”), have discretion and flexibility to timely help concessionaires remain open and operating to serve the traveling public, for their survival and like other commercial landlords.

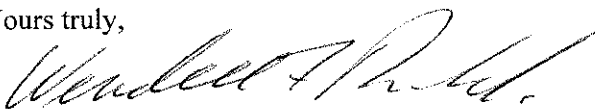
Other airports on the Mainland U.S. recognize that discretion and flexibility are important as a means of granting relief due to significant hardship resulting from events such as the current Coronavirus outbreak. History tells us that it is impossible to know what the crisis might be, how severe it might be or when it might occur.

2. In the future, Federal and/or other financial support may not be available or as generous as in the past.
3. HB 1953 does not create risk for HDOT or airlines or anyone else since the type or amount of relief is not mandatory and HDOT can deny a relief request for any reason. It is not fair or honest for anyone to argue that there is any risk or harm caused by this HB 1953 with proposed amendments.
4. HB 1953 corrects the unfairness that occurred and is needed to clearly state the flexible powers HDOT would have and reduce the uncertainty of applicable laws and contract provisions, which currently exist and as interpreted by the State’s Attorney General.

The hopeful signs that Covid, Delta and Omicron are fading, but a new variant has emerged. Businesses are still struggling and uncertain challenges for the future exist for concessionaires. It is important that HB 1953 be passed to provide HDOT with the flexibility it needs now, and likely in the future, to manage a major element of Hawaii’s airport operations.

Thank you for your time and consideration. I will be happy to attempt to answer any questions.

Yours truly,



Wendell F. Brooks, Jr., CPM – CRE – B/R