

Wendell F. Brooks, Jr.

Real Estate & Business Consultant
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February 10, 2022

Honorable Aaron Ling Johanson, Chair
Consumer Protection & Commerce Committee
House of Representatives
State of Hawaii
State Capitol Building
Honolulu, Hawaii 96813

Re: HB 1953, HD1 Relating to Concessions

Dear Chair Johanson and Committee Members,

My name is Wendell F. Brooks, Jr. and by profession I am a Real Estate & Business Consultant with over fifty years of experience in Hawaii, the U.S. Mainland, parts of the South Pacific and parts of Asia. I speak in support of Bill 1953.

I strongly support Bill 1953 for the following reasons:

- 1) In times of Covid or other crisis, it's critical a landlord such as the Hawaii Department of Transportation ("HDOT") have discretion and flexibility to help concessionaires remain open and continue to service airport passengers. Many other airports have such powers and flexibility, and HDOT should have no less.

Bill 1953 as originally drafted provided allowing a twenty-five (25) year extension based on the circumstances. The prior Committee reduced the allowable extension by ten (10) years, to fifteen (15) years, thus significantly reducing one of the key elements needed to ensure flexibility in resolving concessionaire hardship. I urge you to restore the maximum twenty-five (25) year extension during times of significant hardships.

Other airports in the continental United States recognize that extensions are an important means of granting relief due to significant hardship as the result of the Covid virus and in the event of future major disruptions of airport operations.

Similarly, Bill 1953 now provides "for the airport concession to recall employees who were laid off due to an act of God." This provision is vague and could serve to limit a concessionaire's staffing flexibility while working to recover from major disruptions of airport operations.

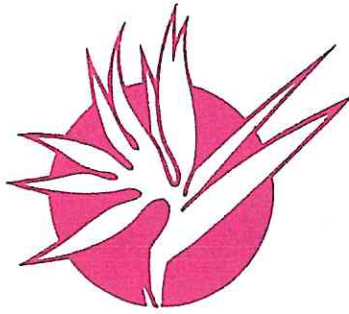
- 2) In the future, Federal and/or other financial support may not be available or as generous as in the past. Flexibility to grant relief to help concessionaires stay open is critical to service the traveling public and to the concessionaires' own survival.
- 3) Bill 1953 does not create risk for HDOT since it is not a mandate to agree to requests for relief for any reason. Requests must be merit based.
- 4) Bill 1953 clearly states the flexible powers the HDOT would have which will significantly reduce the uncertainty of laws and contract provisions which currently exists.

With Covid and continuing uncertainties that will likely challenge Hawaii airport concessionaires in the future, it's important this Bill pass giving HDOT the flexibility it needs to manage a major element of Hawaii's airport operations and Hawaii's Visitor Industry.

Thank you for your time and consideration.

Yours truly,


Wendell F. Brooks, Jr.



AIRPORT CONCESSIONAIRES COMMITTEE

Honorable Aaron Ling Johanson, Chair
Committee on Consumer Protection & Commerce
House of Representative
State of Hawaii

For Hearing: February 11, 2022, 2pm; Room 329

Re: HB 1953 – Relating to Concessions

Chair Johanson and Honorable Committee Members,

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

We stand in strong support of this bill with amendments:

- 1) Will allow DOT to correct unfairness where some concessions got an extension due to Covid, some got less and some got "nothing".
- 2) 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.
- 3) Will allow the DOT to have flexible powers like other US airports to grant relief in times of crisis like Covid which presents new-future challenges to airports across the United States and elsewhere.
- 4) 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".
- 5) 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.
- 6) Will clearly explain what discretion the DOT has to say "yes" or "no" to relief in times of significant hardships such as Covid.

Proposed Amendments:

- 1) Page 6, line 13 – Request the “call back” provision be deleted unless you are going to require it for not only airport concessions but all other businesses in Hawaii on and off the airport. It’s a struggle finding employees to begin with who are all demanding higher hourly pay. This provision will complicate things and make things more difficult.
- 2) Page 7, line 6 – The 15 years should be changed back to the original 25 years in the original version of this bill. No other airports have maximum term limits and thus in times of Covid/significant hardships other airports can do whatever the airports deem fair. Thus, while arguably Hawaii should have no limits at all including a 25-year limit, extending the limit to no more than an extra 10 years is reasonable.

By keeping at 15 years, the current language in HD1 means no extension can be granted during times of significant hardship.

One needs to recognize a concession with a 10 or 15 year contract (as allowed by current law, see Exhibit 1 attached) may face a number of ups and downs as to business during the 10 to 15 year term of contract. So far the Covid/Delta/Omicron crisis has dragged on for 2 years (April 1, 2020 to March 31, 2022) and State’s economist/UH Hero have predicted there will be no return to 2019 travel/visitor levels until the end of 2025 “assuming” no more virus or other significant hardships.

Thus, given the number of potential ups and downs and time a concession may need to help recover it’s loss of gross receipts, a maximum of an additional 10 added to the current limit of 15 years when significant hardships occur is reasonable especially when other airports have no limits.

Please also recognize with this bill the DOT has the discretion to say “no” to any such request if it doesn’t want to say yes for any reason.

- 3) Page 7, line 13, to ensure that DOT has the flexibility to grant relief to 1) those who got “nothing” as to relief while some got relief; and 2) any further granting of relief will be fairly applied to all concessions who suffered as of the start of Covid , April 1, 2020 going forward, we suggest the following language be added, please see Exhibit 2 attached.
- 4) Page 8, line 17, we suggest that given the sudden rise in construction costs following Covid and also supply chain delays, that the words suggested on Exhibit 3 attached be added to identify consideration of significant hardship events.

In closing allow us to again say we thank you for seeking to provide flexibility to Hawaii's airports like mainland airports.

This bill provides "flexibility" to the DOT so it has powers to provide relief to concessions during times of significant hardship like Covid, etc as set forth in this bill.

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

Since it can say "no" for DOT to oppose this bill is simply not fair or appropriate in our view.

It's in the best interests of Hawaii's airports seeking to maintain services to passengers during times of Covid or other significant hardships that this bill pass to grant flexibility to deal with a variety of problems as they may arise.

Again, this bill does not require DOT to do anything and thus not a burden as some try to argue or suggest .

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.

§102-2 Contracts for concessions; bid required, exception. (a) Except as otherwise specifically provided by law, no concession or concession space shall be leased, let, licensed, rented out, or otherwise disposed of either by contract, lease, license, permit or any other arrangement, except under contract let after public notice for sealed bids in the manner provided by law; provided that the duration of the grant of the concession or concession space shall be related to the investment required but in no event to exceed fifteen years for the initial term, and if amended, any then remaining term plus any agreed extension thereof awarded or granted by the government agency making a lease or contract or other arrangement relating to a concession; provided further that and subject to approval by county council resolution, the fifteen-year limit shall not apply to nonprofit corporations organized pursuant to chapter 414D.

(b) The bidding requirements of subsection (a) shall not apply to concessions or space on public property set aside for the following purposes:

- (1) For operation of ground transportation services and parking lot operations at airports, except for motor vehicle rental operations under chapter 437D;
- (2) For lei vendors;
- (3) For airline and aircraft operations;
- (4) For automated teller machines and vending machines, except vending machines located at public schools operated by blind or visually handicapped persons in accordance with section 302A-412;
- (5) For operation of concessions set aside without any charge;
- (6) For operation of concessions by handicapped or blind persons; except concessions operated in the public schools by blind or visually handicapped persons in accordance with section 302A-412;
- (7) For operation of concessions on permits revocable on notice of thirty days or less; provided that no such permits shall be issued for more than a one year period;
- (8) For operation of concessions or concession spaces for a beach service association dedicated to the preservation of the Hawaii beach boy tradition, incorporated as a nonprofit corporation in accordance with state law, and whose members are appropriately licensed or certified as required by law;
- (9) For operation of concessions at county zoos, botanic gardens, or other county parks which are environmentally, culturally, historically, or

EXHIBIT I

H.B. NO.

1 (c) For airport concessions, the term of the contract
 2 shall not be more than twenty-five years, which shall include
 3 the remaining term of the contract and any extension thereof.

4 (d) To the extent that the provisions of chapter 171
 5 conflict with the purpose and intent of this section, chapter
 6 171 shall not apply to airport concessions.

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

10 (1) A reduction of:

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

18 (B) Ten per cent or more in the volume of business of
 19 the concessionaire for a period of one hundred
 20 eighty days or more, computed on the average
 21 monthly gross income for the period one hundred

EXHIBIT 2



*SHALL BE APRIL 1, 2020;
 FOR AGREEMENTS IN EFFECT
 APRIL 1, 2020 AND FURTHER
 AGREEMENTS
 THEREAFTER;*

H.B. NO.

1 eighty days immediately preceding the period or
2 the length of time that the concessionaire has
3 been in business, whichever is shorter;

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

- CHAIR DELAY,

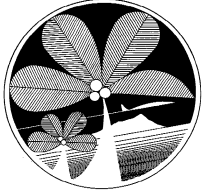
11 (3) Unexpected circumstances, including but not limited to
12 rising international tariffs, construction site or
13 UNEXPECTED INCREASE IN CONSTRUCTION COST, SUPPLY
14 design problems, or other circumstances resulting in
15 the infeasibility or other significant burden for the
16 concessionaire to proceed with the improvements
17 described in the concessionaire's contract with the
18 State;

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

EXHIBIT 3



AIRLINES COMMITTEE OF HAWAII



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

Representative Aaron Ling Johanson, Chair
Representative Lisa Kitagawa, Vice Chair
Committee on Consumer Protection & Commerce

Re: HB 1953 HD1 – RELATING TO CONCESSIONS – IN OPPOSITION
February 11, 2022; 2:00 p.m.

Aloha Chair Johanson, Vice Chair Kitagawa, 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, is in opposition to HB 1953 HD1, 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 \$120M 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. The airline industry is still recovering from the pandemic, reporting multi-billion dollar losses each quarter, and this would add to our already heavy financial burden.

We respectfully ask the committee to hold this bill. Thank you.

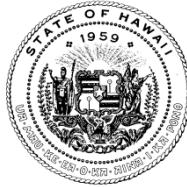
Sincerely,

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, Sun Country Airlines, United Airlines, United Parcel Service, and WestJet.*

DAVID Y. IGE
GOVERNOR



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

LATE

February 11, 2022
2:00 pm
State Capitol, Teleconference

**H.B. 1953, H.D. 1
RELATING TO CONCESSIONS**

House Committee on Consumer Protection & Commerce

The Department of Transportation – Airports Division (DOTA) provides **comments** to H.B. 1953 HD1 which offers the DOTA with more flexibility and discretion to address substantial hardship situations that impact airport concession contracts.

The DOTA would like to again emphasize that it already has the flexibility and discretion to grant relief to airport concessions under Section 102-10, Hawaii Revised Statutes, and provisions in the concession agreements.

Any type of relief should be based upon an actual “Sudden Event” (defined in the concession agreements as “the occurrence of an event that is sudden, extraordinary, and generates relatively immediate severe adverse impacts for the State of Hawaii”), which is also beyond the control of the airport concessionaire, such as COVID-19. The proposed bill creates broad relief trigger mechanisms which may not be directly related to substantial hardship situations and may create undue risk and obligation to the DOTA.

Thank you for the opportunity to provide testimony.