

## AIRPORT CONCESSIONAIRES COMMITTEE

Honorable Sylvia Luke, Chair  
Committee on Finance  
Hawaii State House of Representatives

For Hearing: February 23, 2022, 230pm

Re: HB 1953, HD2 – Relating to Concessions

Chair Luke 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. This bill:

- 1) Will allow DOT to correct unfairness where some concessions got an extension due to Covid, some got less and some got "nothing". It will also prevent future unfairness to occur again.
- 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. We expressed concern last session that it would happen and it did.
- 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". THIS BILL POSES NO THREAT TO THE DOT.
- 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 provided by concessions.

- 6) 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.
- 7) Reviewed and Processed. Per the review and process, 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.
- 8) 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. 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 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 airport.

**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.

- 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 up to 25 years and that was vague and problematic as to meaning . This will clear up the problem.

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. 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 result the relief 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. 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 in effect on April 1, 2020 as well as future contracts 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.

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 in measuring the start of hardship going forward the starting point for all concessions will be April 1, 2020 for concessions in effect at that time, the start of Covid per DOT.

- 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 airports can ask their airport-landlord during times of significant hardship.

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

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.

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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. [~~It~~] (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 ~~of~~ 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 3)

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*REPLACE  
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.



*EXHIBIT 1 (PAGE 2 OF 2)*

~~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 if] 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 14

- (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;

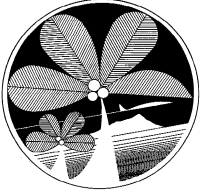
(3) Unexpected circumstances, including but not limited to rising international tariffs, construction site or design problems, UNEXPECTED INCREASE IN CONSTRUCTION COSTS, SUPPLY-CHAIN DELAY, or other circumstances resulting in the infeasibility or other significant burden for the concessionaire to proceed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

# AIRLINES COMMITTEE OF HAWAII



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

Representative Sylvia Luke, Chair  
Representative Kyle Yamashita, Vice Chair  
Committee on Finance

**Re: HB 1953 HD2 – RELATING TO CONCESSIONS – IN OPPOSITION**  
February 23, 2022; 2:30 p.m.; **Agenda #2**

Aloha Chair Luke, Vice Chair Yamashita, 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 HD2, 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.

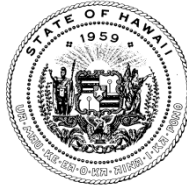
Sincerely,

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

February 4, 2022  
10:00am  
State Capitol, Teleconference

**H.B. 1953**  
**RELATING TO CONCESSIONS**

House of Representatives Committee on Transportation

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The Department of Transportation – Airports Division (DOTA) provides **comments** to H.B. 1953 with the enclosed suggested language.

H.B. 1953 offers the DOTA with additional flexibility and discretion to address substantial hardship situations that impact airport concession contracts.

The DOTA would like to 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 not be based on anticipated events, but 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.

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

11           The legislature further finds that unlike Hawaii, some  
12 airports on the mainland are granted the flexibility needed to  
13 offset any hardship faced by concessions, such as offering an  
14 extension of a contract or authorizing a modification to an  
15 existing contract to allow extra time to recoup its losses due  
16 to an unexpected crisis.   Other airports have recognized that in  
17 times of crises, if a concession closes it will take a long



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1 period to find a replacement to service passengers. For Hawaii,  
2 it typically takes eighteen to twenty-four months, or longer, to  
3 find and replace a concession. In addition, temporary operators  
4 with temporary facilities often generate more complaints and  
5 problems.

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

11 The legislature recognizes airport concession revenues are  
12 very important. Historically, airport concessions have averaged  
13 about fifty per cent of airport operation revenues, and one time  
14 going as high as seventy per cent.

15 The legislature further recognizes that concessions are  
16 unique and very challenging businesses as they have term limits,  
17 are dependent on travelers, and cannot appeal to the general  
18 public like other local businesses. Airport concessions have  
19 suffered devastating losses and the levels of pre-COVID-19  
20 passengers are not expected to return until the beginning of  
21 2026, according to the State's chief economist.



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

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

20           Accordingly, the purpose of this Act is to provide the  
21 department of transportation flexibility and discretion to



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.** ~~It is~~ (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  
10 presently in force [)there] ~~by verbal agreement, or both:~~

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, caused by construction work  
20 conducted during the period of time on, or within or  
21 contiguous to, the public property upon which the





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

10 (2) A significant hardship is anticipated or has occurred  
 11 to one or more airport concession, as determined by  
 12 the officer letting the contract, the officer, with  
 13 the approval of the governor, shall have the  
 14 discretion to ~~grant recoupment for the amount lost as~~  
 15 ~~limited to, modifying the agreed upon rent or~~  
 16 ~~may be applicable for the period that the~~  
 17 ~~extending the term without any requirement of further improvements~~  
 18 ~~concessionaire has been in business; provided that the~~  
 19 ~~for a period which will allow the concessionaire to recoup the amount lost~~  
 20 ~~recoupment may periodically include one or more of the~~  
 21 ~~due to such significant hardship.~~  
following:

19 (A) ~~Entering into a new contract; and~~

20 (B) ~~Modifying the terms of any type of existing~~

21 ~~contract, including without limitation holdover~~



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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 ill 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.



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Notwithstanding any provision herein to the contrary, for airport concessions,

1       ~~(C) For airport concessions, the term of the contract~~  
2       ~~any modification shall in no event result in a total term of more than twenty-five years,~~  
3       ~~shall not be more than twenty-five years, which shall include~~  
4       ~~which maximum term shall be cumulative and include the initial term of the contract and any and all extensions thereof~~  
5       ~~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~~



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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;~~

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

18           ~~111 situations in which one or more concession contracts~~  
19           ~~have more favorable relief terms to address financial~~  
20           ~~or operating hardships when compared to the relief~~  
21           ~~terms of other concession contracts;~~



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- 1           (5) ~~Situations in which one or more of a concessionaire's~~  
2           ~~locations are in default, withdrawn, or in the process~~  
3           ~~of being transferred and a sublessee, a joint venture~~  
4           ~~partner, or licensee generating less than twenty-five~~  
5           ~~per cent or less of the total gross receipts of the~~  
6           ~~concessionaire will not be allowed to continue~~  
7           ~~operations and amortize the cost of the sublessee,~~  
8           ~~joint venture partner, or licensee's concession~~  
9           ~~improvements over the remaining term of the sublessee,~~  
10           ~~joint venture partner, or licensee's contract with the~~  
11           ~~concessionaire; or~~
- 12           (6) ~~Situations in which an extension of time on the~~  
13           ~~contract would assist the concessionaire in the~~  
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17           ~~of volume of business as described paragraphs (1)(A)~~  
18           ~~and (1)(B)."~~

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20 and stricken. New statutory material is underscored.

21           SECTION 4. This Act shall take effect upon its approval.



# H.B. NO. 1953

INTRODUCED BY:



JAN 24 2022



# H.B. NO. 1953

**Report Title:**

DOT; Airport Concessions; Substantial Hardship; Contracts

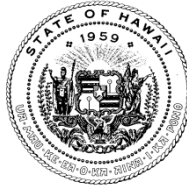
**Description:**

Provides the department of transportation with more flexibility and discretion to address substantial hardship situations that impact airport concession contracts.

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



DAVID Y. IGE  
GOVERNOR



REVISED TESTIMONY BY:

JADE T. BUTAY  
DIRECTOR

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

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

February 23, 2022  
2:30 p.m.  
State Capitol, Teleconference

**H.B. 1953, H.D. 2  
RELATING TO CONCESSIONS**

House of Committee on Finance

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The Department of Transportation – Airports Division (DOTA) **provides comments** to H.B. 1953, H.D. 2 and a modified red-line version of the proposed bill as attached. H.B. 1953, H.D. 2 offers the DOTA with additional flexibility and discretion to address substantial hardship situations that impact airport concession contracts.

The DOTA would like to 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 not be based on anticipated events, but 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.



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

11           The legislature further finds that unlike Hawaii, some  
12 airports on the mainland are granted the flexibility needed to  
13 offset any hardship faced by concessions, such as offering an  
14 extension of a contract or authorizing a modification to an  
15 existing contract to allow extra time to recoup its losses due  
16 to an unexpected crisis.   Other airports have recognized that in  
17 times of crises, if a concession closes it will take a long



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1 period to find a replacement to service passengers. For Hawaii,  
2 it typically takes eighteen to twenty-four months, or longer, to  
3 find and replace a concession. In addition, temporary operators  
4 with temporary facilities often generate more complaints and  
5 problems.

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

11 The legislature recognizes airport concession revenues are  
12 very important. Historically, airport concessions have averaged  
13 about fifty per cent of airport operation revenues, and one time  
14 going as high as seventy per cent.

15 The legislature further recognizes that concessions are  
16 unique and very challenging businesses as they have term limits,  
17 are dependent on travelers, and cannot appeal to the general  
18 public like other local businesses. Airport concessions have  
19 suffered devastating losses and the levels of pre-COVID-19  
20 passengers are not expected to return until the beginning of  
21 2026, according to the State's chief economist.



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

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

20           Accordingly, the purpose of this Act is to provide the  
21 department of transportation flexibility and discretion to



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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.** ~~It is~~ (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  
10 presently in force [)there] ~~by verbal agreement, or both:~~

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, caused by construction work  
20 conducted during the period of time on, or within or  
21 contiguous to, the public property upon which the



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

10 (2) A significant hardship is anticipated or has occurred  
11 to one or more airport concession, as determined by  
12 the officer letting the contract, the officer, with  
13 the approval of the governor, shall have the  
14 discretion to grant recoupment for the amount lost as  
15 limited to, modifying the agreed upon rent or  
16 may be applicable for the period that the  
17 extending the term without any requirement of further improvements  
18 concessionaire has been in business; provided that the  
19 for a period which will allow the concessionaire to recoup the amount lost  
20 recoupment may periodically include one or more of the  
21 due to such significant hardship.  
following:

(A) Entering into a new contract; and

(B) Modifying the terms of any type of existing  
contract, including without limitation holdover



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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 ill 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.



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Notwithstanding any provision herein to the contrary, for airport concessions,

1       ~~(C) For airport concessions, the term of the contract~~  
2       ~~any modification shall in no event result in a total term of more than twenty-five years,~~  
3       ~~shall not be more than twenty-five years, which shall include~~  
4       ~~which maximum term shall be cumulative and include the initial term of the contract and any and all extensions thereof~~  
5       ~~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~~



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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;~~

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

18           ~~111 Situations in which one or more concession contracts~~  
19           ~~have more favorable relief terms to address financial~~  
20           ~~or operating hardships when compared to the relief~~  
21           ~~terms of other concession contracts;~~





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- 1           (5) ~~Situations in which one or more of a concessionaire's~~  
2           ~~locations are in default, withdrawn, or in the process~~  
3           ~~of being transferred and a sublessee, a joint venture~~  
4           ~~partner, or licensee generating less than twenty-five~~  
5           ~~per cent or less of the total gross receipts of the~~  
6           ~~concessionaire will not be allowed to continue~~  
7           ~~operations and amortize the cost of the sublessee,~~  
8           ~~joint venture partner, or licensee's concession~~  
9           ~~improvements over the remaining term of the sublessee,~~  
10           ~~joint venture partner, or licensee's contract with the~~  
11           ~~concessionaire; or~~
- 12           (6) ~~Situations in which an extension of time on the~~  
13           ~~contract would assist the concessionaire in the~~  
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# H.B. NO. 1953

INTRODUCED BY:

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JAN 24 2022



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