



TESTIMONY BY:

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DIRECTOR

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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

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.

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:

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~~
 any modification shall in no event result in a total term of more than twenty-five years,
 2 ~~shall not be more than twenty-five years, which shall include~~
 which maximum term shall be cumulative and include the initial term of the contract and any and all extensions thereof
 3 ~~the remaining term of the contract and any extension thereof.~~

4 ~~(d) To the extent that the provisions of chapter 171~~
 conflict with the purpose and intent of this section, chapter
 5 ~~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~~
14 ~~recoupment of the concessionaire's loss or the loss of~~
15 ~~time for the concessionaire to amortize the cost of~~
16 ~~the concession improvements, or both, due to the loss~~
17 ~~of volume of business as described paragraphs (1)(A)~~
18 ~~and (1)(B)."~~

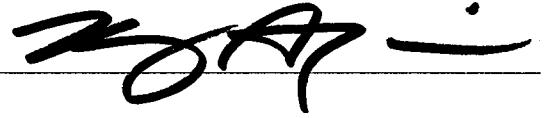
19 SECTION 3. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

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



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INTRODUCED BY:

A handwritten signature in black ink, appearing to be "M. J. A. i", written over a horizontal line.

JAN 24 2022



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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.



Wendell F. Brooks, Jr.

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

January 3, 2022

Honorable Henry Aquino, Chair
Transportation Committee
House of Representatives
State of Hawaii
State Capitol Building
Honolulu, Hawaii

Re: HB 1953 Relating to Airport Concessions - Room 423 at 10:00 am on February 4, 2022

Dear Chair Aquino 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.

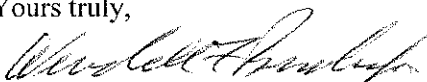
I support Bill 1953 for the following reasons:

- 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.
- 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. I will be pleased to attempt to answer any questions you may have.

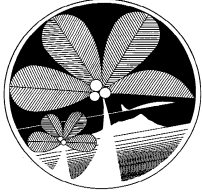
Yours truly,



Wendell F. Brooks, Jr.

Copy: James Stone, Esq.

AIRLINES COMMITTEE OF HAWAII



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

February 4, 2022

Representative Henry Aquino, Chair
Representative Greggor Ilagan, Vice Chair
Committee on Transportation

Re: HB 1953 – RELATING TO CONCESSIONS – IN OPPOSITION

Via Videoconference; 10:00 a.m.

Aloha Chair Aquino, Vice Chair Ilagan, 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, 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.

Additionally, we question the ambiguity and reliance on the term “by verbal agreement” in section 2 Modification of Contract Terms, on page 4, line 10 and page 6, lines 1 and 2.

For these reasons, 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.*



AIRPORT CONCESSIONAIRES COMMITTEE

Honorable Henry Aquino, Chair
Committee on Transportation
House of Representative
State of Hawaii

For Hearing: February 4, 2022, 10am; Room 423

Re: HB 1953 – Relating to Concessions

Chair Aquino 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 which:

- 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.

We have 2 proposed changes to this bill which are attached. On page 7 we seek to clarify that the effective date of this bill is from the start of Covid about April 1, 2020 . On page 8, we seek to also recognize "significant hardships" due to unexpected increases in construction costs and supply-chain delays that are significantly increasing concession improvement and causing delay.

We've also attached our letter dated December 30, 2021 to Governor David Ige with some excerpts that explains the importance of having the flexibility to provide relief to airport concessions in times of significant hardship like Covid.

Please pass this bill which: 1) corrects unfairness; 2) gives DOT the same flexibility and powers like other airports; and 3) does not place any burdens on the DOT since it can say "no" to any request for relief "for any reason".

We thank you for allowing us to testify. Please don't hesitate to ask us any questions.

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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: *SINCE APRIL 1, 2020;*

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;

- 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;





AIRPORT CONCESSIONAIRES COMMITTEE

Honorable David Ige
Governor, State of Hawaii
State Capitol Building, 5th Floor
Honolulu, HI 96813

December 30, 2021

Dear Governor,

Like mainland airports, it's important that Hawaii's airports adapt its business models for airport concessions and have the flexibility and discretion to provide relief in times of crisis as we have been experiencing.

As you likely are aware, unfairness occurred since only some Hawaii airport concessions received Covid/virus relief. Thus, some concessions got something, some got less, and some got nothing. This occurred in spite of the fact that all these concessions remained in place, ready to serve and suffered through the same Covid virus and continue to do so.

Having watched your career over the years, we recognize that such unfairness is not acceptable to you and to your administration.

Such unfairness did not occur at other mainland airports, where those who suffered through the Covid virus all got the same relief.

Unfortunately, our previously expressed concerns became a reality. Hawaii's various laws and restrictions apparently prevented DOT-Air from granting the same relief to all concessions like other airports. Statutory change is needed to correct this problem now and in the future.

Thus, we have been in active discussions for many months now with your Department of Transportation in passing such legislation to: 1) correct such unfairness; and 2) in times of crisis ensures that Hawaii's airports have the same flexibility and "sole discretion" to grant a variety of relief like other mainland airports. The legislation does not mandate that any relief requested be granted.

As we informed you in our letter dated July 14, 2021, Hawaii airports like other mainland airports in addition to such flexibility must develop new "business models" in dealing with airport concessions during these new-serious-ongoing challenges of Covid viruses, strains and likely new viruses. It's a new frontier that cannot be ignored.

This important necessity for new business models was further recognized by prominent members of a national organization representing airport concessions, ARRA (Airport Restaurant & Retail Association). Please glance through this informative report dated June 2021 which is attached and have your staff review it more closely .

For our airports, it's critically important that your administration, before leaving office and with the assistance of our Legislature, create new options and flexibility to deal with such airport crisis for our island State. As we all now realize, such a crisis can happen any time and is devastating. Thus, we must be prepared and ready to act.

While Congress grants direct and substantial relief to airlines, it provided significantly-less relief in their grants to airports to share with their concessions. Thus, the focus should not be concentrated on airlines to whom Congress grants direct relief but rather on our airports and their concessions that must remain open to provide important services and experiences to Hawaii's visitors.

Congress is now leaving it to airports and their concessions to develop new business models to work together and survive in times of crisis since Congress in future may not be as generous as to what Congress has done so far.

Airport concessions are important operations that need to be dealt with fairly in keeping with new business models to be developed that recognize crisis periods for many reasons among which include:

- 1) Airport concessions are unique from other businesses outside the airport, i.e. you need a boarding pass to visit a concession and the airport concession cannot appeal to local residents like hotels and other businesses during times of crisis. Traveling customers either pass their airport stores/locations or simply walk in other directions to get to their gates. When partially open, an airport concession is typically not able to recover all of its fixed expenses such as key staff, warehousing and paying loans on concession improvements.
- 2) Compared to mainland-airport concessions, Hawaii concessions have suffered much greater hardship due to its dependence on tourism and strict rules regarding travel to Hawaii during peak crisis periods and the lack of commuter-interstate travelers experienced by other airports.
- 3) Post Covid, Delta, Omicron, next? recovering of losses and returning to business is not easy for concessions due to new-health-safety guidelines, labor recruitment for a concession-employer with a business likely to fluctuate, and substantially rising and increased construction costs due to inflation and supply-chain delays with dwindling remaining fixed terms on their contracts to allow for recovery.
- 4) Pre-covid Hawaii concessions have generated on average 50% — and at times as much as 70% --- of the operating revenues for our airports. This average is among the highest in the US. To maintain/regain this level, new

- business models need to be developed to be able to deal fairly with concessions during crisis situations so they can continue to provide services to travelers.
- 5) High concession revenues paid to the airports help to keep airline-landing fees low.
 - 6) Concession offerings/opportunities are important in providing a positive-last-impressions of Hawaii. Travelers compare Hawaii's airports experiences to other airports. Will it leave a positive impression?
 - 7) In times of viruses and other catastrophic disruptions many airports have recognized it's often preferable to work with concessions already in place that are ready to rapidly change operations levels to respond to changes to passenger traffic.
 - 8) If one or more concessions finds it necessary to terminate their lease agreement because of a crisis, the airport is forced to look for a temporary operator, if one can be found during a crisis. History shows temporary operators pay lower rents, utilizing less attractive facilities, generating more complaints until a new concession operator can be selected. Only after the crisis subsides, often many months later, and then a new operator is selected following an RFP/selection/negotiation process that on average takes 18 months to complete. Thereafter, an additional 9 to 18 months for drafting of plans, obtaining permits and completion of construction before the concession opens.
 - 9) An airport concession that terminates is forced to surrender it's performance bond and barred from doing business with the State for 5 years. All because of an unexpected/devasting crisis? Clearly new business models need to be adapted as other airports are doing to work with concessions during crisis situations.
 - 10) Airport concessions have been fair and generous airport partners in the past having contributed DOT-Air improvements at DKI airport over \$20 million in airport improvements: air-conditioning checkpoint 3, widening the main concourse to generate more airports concession sales/services, refurbishing the 2 elevators to the gardens in the central concourse, and refurbishing the landscaping and ponds to 2 of the gardens in the central concourse area.
 - 11) Without the ability and flexibility to provide fair and reasonable relief during crisis like mainland airports, overtime Hawaii airports will likely be deemed too risky to do business by major concession operators.
 - 12) In addition, it's important that Hawaii's airports consider the preservation of concession operations and infrastructure not only for the near term but also keeping in mind their long-term future benefits.


In closing and as a follow up to prior requests, we respectfully ask to meet with you at your earliest convenience to discuss such unfairness and support corrective legislation providing flexibility and discretion with nothing mandated . If you have any concerns with this then please meet with us and let's discuss them and clarify matters.

To schedule our meeting with you, please have someone on your staff contact our legislative liaison, Jim Stone, who can be reached at 223-7810.

Your cooperation and understanding is much appreciated. We look forward to meeting with you.

Please take extra care and stay safe. Happy Holidays. Mahalo.

Very Truly Yours,


For Peter Fithian, Chair
Government Affairs Committee

cc: Jade Butay, Director, Hawaii Department of Transportation (DOT).
Ross Higashi, Deputy Director, DOT Airports Division
Ronald D. Kouchi, President, Hawaii Senate
Donovan Dela Cruz, Senate Ways and Means Committee Chair
Chris Lee, Senate Transportation Committee Chair
Scott Saiki, Speaker, Hawaii House of Representatives
Sylvia Luke, Finance Committee Chair, Hawaii House of Representatives
Henry Aquino, Transportation Committee Chair, Hawaii House of Representatives
Jim Stone, Legislative liaison, cell: 223-7810

Facing Facts III:

Survival, Revival and Braving the Future

Issued by: The Airport Restaurant and Retail Association (ARRA), June 2021.

Executive Summary

As summer begins, passenger confidence is returning. Two months ago, the aviation industry enjoyed a strong spring break. Since then, after a short dip, passenger traffic resumed its steady growth. Summer is starting strong and appears to be robust. However, the longevity of this leisure passenger-driven recovery is unknown. Further, what will the recovery of business and international travel look like? This uncertainty means the concessions industry recovery is far from certain. Moreover, recovery—when it occurs—will not resolve systemic issues in the airport concessions business that were evolving before the pandemic.

The COVID-19 pandemic has had a devastating impact on the airport concessions industry. Retail and restaurant operators lost over 90% of their business early last year—this following a decade of increasing headwinds from escalating capital and labor costs, and revenue and margin challenges. Today, traffic is beginning to improve, yet losses continue to accumulate. Just to survive, concessionaires, large and small, have incurred tremendous levels of debt and dramatically altered operating procedures. While devastating in its immediate impact, the pandemic crisis has also exposed fundamental flaws in the decades-old airport concessions business model, which prompts a reexamination of the business structure under which the industry has operated. It is clear that a more equitable and sustainable business model—in addition to continued relief efforts—is a requirement for a true, sustainable recovery of the airport concessions industry.

Retail and restaurant operators lost over 90% of their business early last year following a decade of increasing headwinds from escalating capital and labor costs, and revenue and margin challenges.

In this third installment of the Airport Restaurant and Retail Association's (ARRA) *Facing Facts* papers, ARRA examines the impact of the COVID-19 crisis on the airport concessions business as the industry begins to recover and looks to a brighter future. More importantly, we offer collaborative solutions to better align airports and concessions operators' collective economic interests. Together we can modify the business model to support today's cost and operational realities, which will enable operators to realize a truly sustainable recovery and provide exceptional restaurant and retail services to the traveling public for years to come.

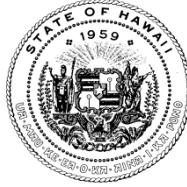
Background

Facing Facts III: Survival, Revival and Braving the Future is presented as a continuation of ARRA's series of white papers discussing the COVID-19 pandemic and its impact on the airport restaurant and retail industry. This installment is informed by contributions from our weekly *COVID-19: Survival and Revival* industry calls, discussions with airport leaders and industry experts, and close collaboration among ARRA's Board of Directors and members—large and small, primes and Airport Concession Disadvantaged Business Enterprises (ACDBEs). The paper is intended to generate rigorous discussion throughout our channel regarding the airport concessions business model in order to restore a robust business environment and provide travelers with world-class service.

In issuing this latest paper, ARRA thanks—on behalf of its members and all concessionaires—our airport partners for the considerable support provided with rent waivers and other relief during this challenging period. We are grateful to the Airports Council International—North America (ACI-NA), American Association of Airport Executives (AAAE), and the Airport Minority Advisory Council (AMAC) for their partnership with us in advocating for the inclusion of concessionaires in the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) and American Rescue Plan Act of 2021 (ARPA). We also recognize the airlines for their assistance in sharing real time information regarding flights, capacity, load factors and passenger counts—all essential to our ability to plan and manage our businesses.

We cannot overemphasize the importance of partnership. As stated in our *Facing Facts II* paper, airports, airlines, and restaurant and retail operators are deeply intertwined and interdependent—each contributing to an airport's overall operations and the travel experience. ARRA believes it is in our collective best interest to come together with open communication to restore the passenger experience we had all come to benefit from and enjoy.

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

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.

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~~
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11 (3) ~~Unexpected circumstances, including but not limited to~~
12 ~~rising international tariffs, construction site or~~
13 ~~design problems, or other circumstances resulting in~~
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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;~~



H.B. NO. 1953

1 (5) ~~Situations in which one or more of a concessionaire's~~
2 ~~locations are in default, withdrawn, or in the process~~
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17 ~~of volume of business as described paragraphs (1)(A)~~
18 ~~and (1)(B)."~~

19 SECTION 3. Statutory material to be repealed is bracketed
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:

A handwritten signature in black ink, appearing to be "M. J. A.", written over a horizontal line.

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.





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

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10 presently in force [)there] ~~by verbal agreement, or both:~~

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 6 the contract, including the agreed upon rent, for a
 7 period which will allow the concessionaire to recoup
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H.B. NO. 1953

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H.B. NO. 1953

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4 ~~(d) To the extent that the provisions of chapter 171~~
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H.B. NO. 1953

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INTRODUCED BY:

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