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LINDA LINGLE
GOVERNOR

GOV. MSG. NO. 574

June 6, 2003

The Honorable Robert Bunda, President
and Members of the Senate
Twenty-Second State Legislature
State Capitol, Room 003
Honolulu, Hawaii 96813

Dear Mr. President and Members of the Senate:

I am transmitting herewith Senate Bill Number 44 SD2 HD2 CD1, without my approval, and with the proclamation and the statement of objections relating to the measure.

S.B. No. 44 SD2 HD2 CD1 A BILL FOR AN ACT RELATING TO
TRANSPORTATION

Sincerely,

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

June 6, 2003

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 44

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 44, entitled "A Bill for an Act Relating to Transportation."

The purpose of Senate Bill No. 44 is to ensure that economic relief is provided to airport concessionaires, either in an amount agreed to in negotiations between the State Department of Transportation (the "State") and the concessionaires or as mandated by this bill.

This bill is fiscally irresponsible and philosophically objectionable for a number of reasons. First, it implies that each and every concessionaire is deserving of more relief than is likely to be agreed to by the State in separate arms-length negotiations with each concessionaire. While it is true and proper that the State will always put the interests of the public ahead of those of concessionaires, this does not mean that the State would be unreasonable or shortsighted in negotiating agreements. This bill implies the opposite.

Second, this bill essentially mandates open-ended relief that could easily exceed \$100 million, with the bulk of that relief going to a single airport concessionaire, DFS Group L.P. ("DFS"), who holds the statewide in-bond concession and the retail concessions at Honolulu International Airport and Kona International Airport at Keahole. It is relevant that the State has a lawsuit pending against DFS, alleging that DFS fraudulently transferred significant sums of moneys to its corporate parent at a time when DFS owed the State tens of millions of dollars. Such a transfer to its controlling shareholder is highly relevant

because DFS subsequently claimed to be financially unable to pay amounts due to the State, and then threatened to declare bankruptcy if the State attempted to enforce its contract with DFS.

The State and DFS are presently discussing a possible settlement of this lawsuit. A few weeks ago, DFS made a \$25 million payment, meeting one of the preconditions for these discussions. If Senate Bill No. 44 were to become law, it would dramatically and adversely affect these discussions. Based on DFS' original position, the State anticipates that DFS would, at a minimum, either demand return of the \$25 million payment, or insist that the State forgive most of DFS' back rent obligation, as if the State had guaranteed that DFS would never lose money.

Third, the mandated open-ended relief required by this bill poses an unacceptable threat to the continued viability of the State's airport system. It would make it impossible for the State to guarantee the financial integrity of the airport revenue fund. This, in turn, could result in sanctions by the Federal Aviation Administration and in potential violations of agreements with the State's bondholders.

Fourth, this bill singles out a tiny number of businesses for an unprecedented amount of economic relief. While the events of September 11, 2001, and resulting changes in our society certainly have had a big impact on airport concessionaires, they are not alone. It would be inherently unfair for the State to provide tens of millions of dollars, or more, in relief to such a narrow group of affected businesses.

Fifth, this bill would have the airport system's primary mission be one of serving the concessionaires rather than serving the public. While the State has no desire to put any existing concessionaire out of business, it would be wrong to make that the primary goal of negotiations. That is exactly what

this bill would do.

Sixth, many of the terms of this bill are vague, ambiguous, or even inconsistent. Deciphering the rights and entitlements of the airport concessionaires and ensuring that all of the relief mechanisms are properly followed would be an administrative nightmare. For example, it is difficult to understand and harmonize the subsections within section 4 of the bill, as well as discern how section 4 would be applied in conjunction with other sections such as section 5. It appears that under section 4 of the bill, those concessions that receive relief under section 5 of the bill could potentially receive substantial additional relief over and above the relief mandated under section 5.

Section 4 of the bill provides that, if cancellation or modification of the contract cannot be agreed to within sixty days, "a party may seek relief through the courts." But this bill also states, "[t]he concessionaire shall have no right to make any claims against the State due to such cancellation." Inconsistencies like this one would virtually guarantee the need for expensive litigation to sort out the controlling rule.

Further, under sections 1 and 4 of this bill, the State would have to negotiate relief with any concessionaires that had contracts as of January 1, 2003, which would include at least two concessionaires whose contracts have since been terminated and are no longer airport tenants.

Also of note is that under section 5 of this bill, one concession could potentially continue receiving mandated "break-even no profit" relief through 2008.

While section 7 seems to be intended to prevent concessionaires receiving relief under section 5 from receiving duplicate relief or benefits, it is unclear what such concessionaires could receive or what the State would be required

to do or negotiate if an event similar to September 11, 2001, were to occur in the future.

Based on sections 3, 4, and 5 of the bill, the State could easily find itself caught in an unending cycle of renegotiations with no ability to determine whether and to what extent relief should be granted.

Seventh, under section 5 of the bill, if, for example, the State is unable to reach agreement with a concessionaire who had previously received relief under Act 15, Third Special Session Laws of Hawaii 2001, the State must either: (1) terminate the contract, give up any right to claim the concessionaire's performance bond, and give up the right to collect most (if not all) of any back rent amounts or (2) permit a court-appointed certified public accountant to determine the amount of relief the State must provide to the airport concession.

Preventing the State from calling upon the very security it obtained to ensure that each concessionaire completed performance under each respective contract would be unwise and extremely detrimental to the State. For example, the performance bonds provided by DFS alone to secure its performance add up to approximately \$50 million.

Eighth, as a property owner and lessor, the State should have the discretion to determine if relief is warranted and at what level. These rights are basic to any property owner or lessor. The bill denies these rights to the State.

Ninth, and particularly troubling, is the tenor of distrust that runs through this bill. Without having given this administration a meaningful opportunity to work with the concessionaires, some legislators may have assumed or already concluded that this administration cannot be trusted to negotiate settlements that are fair and reasonable, and in the best interests of all of the people of Hawaii.

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SENATE BILL NO. 44
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Tenth, and most troubling of all, is the possibility that this bill was motivated by a fear that the administration would indeed put the best interests of all of the people of this State ahead of all other interests. Under this bill, the airport concessions seemingly are guaranteed relief regardless of the impact on the public or the State's ability to operate the state airport system. To the extent that this bill reflects narrow-minded favoritism of a single special-interest group over the interests of the public, that alone is reason enough to veto it.

For the foregoing reasons, I am returning Senate Bill No. 44 without my approval.

Respectfully,



LINDA LINGLE
Governor of Hawaii

P R O C L A M A T I O N

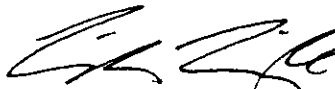
WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented to the Governor after adjournment sine die of the Legislature; and

WHEREAS, Senate Bill No. 44, entitled "A Bill for an Act Relating to Transportation," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 44 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 44 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 6th day
of June, 2003.



LINDA LINGLE
Governor of Hawaii