

Honolulu, Hawaii

, 2009

MAY 01 2009

RE: S.B. No. 1224  
S.D. 1  
H.D. 2  
C.D. 1

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Madam and Sir:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 1224, S.D. 1, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO AIRPORT CONCESSIONS,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to provide economic relief to airport concessionaires by giving the Governor, or Director of the Department of Transportation (DOT) if so directed by the Governor, the discretion and authority to:

- (1) Provide relief to airport concessionaires:
  - (A) Whose leases or contracts were entered into on or after November 1, 2006, and who spent capital improving their concession premises; or



- (B) Who spent capital improving their concession premises as a result of any agreement entered into with DOT under Act 128, Session Laws of Hawaii 2006;
- (2) Reach a relief agreement with the concessionaire to extend the term of the lease or contract, grant or modify existing relief provisions, reduce or waive rent, and otherwise modify and amend any terms of the concession lease or contract;
- (3) Grant fair and reasonable relief to a concessionaire whose concession has suffered operating losses for any period starting on or after November 1, 2006;
- (4) Grant lease or contract provisions that:
  - (A) Provide for annual adjustments in the guaranteed rents of all airport concessionaires that are to be paid to the State; and
  - (B) For each airport concession lease or contract not having economic emergency relief provisions, modify and adjust these contracts to contain emergency relief provisions similar to those in other concession leases or contracts issued after September 11, 2001, and for any lease or contract, provide for optional additional relief during dire economic times; and
- (5) Take into account the concession's economic circumstances and whether the concession received relief by way of annual adjustment in guaranteed rents or other governmental relief to avoid duplicate economic relief benefits to a concessionaire.

Your Committee on Conference finds that airport concessions need continuing relief to that previously provided by Act 201, Session Laws of Hawaii 2004, and Act 128, Session Laws of Hawaii 2006, similar temporary enactments that have since sunset. However a few concessions are left that could not obtain rent relief in time of the sunset of those prior Acts. These Acts are necessary because the concession contracts are awarded pursuant to competitive sealed bids which cannot be amended without enabling legislation, in the interests of fairness to all bidders.

Your Committee on Conference has amended this measure by:



- (1) Clarifying the purpose section to more accurately reflect the amended measure;
- (2) Removing the provisions that:
  - (A) Require a concession to be withdrawn by the Department of Transportation and rebid or negotiated within six months, if requested by the concessionaire, if negotiations granting relief to certain concessionaires fail within one hundred twenty days following the effective date of the measure or an agreed extension between the parties; and
  - (B) Prohibit a concessionaire from requesting a withdrawal and rebid or withdrawal and renegotiation if the concessionaire has refused to accept relief from the Department of Transportation under certain circumstances;
- (3) Requiring negotiations for relief for a concession to commence within ninety days or within any extension agreed to between the Governor or the Governor's designee and a concessionaire from the date of mailing of a written request for relief to the Governor;
- (4) Clarifying that the rent may be adjusted, rather than reduced or waived, and terms may be added to the concession lease or contract;
- (5) Granting the Governor or the Director of Transportation, if so directed by the Governor, similar and fair relief ("fair and reasonable relief" in H.D. 2) to concessionaires whose concessions have suffered operating losses, including concessionaires who have suffered reduced business or other losses;
- (6) Deleting the provision that considered granting certain lease or contract provisions to be within the Governor or Director of Transportation's discretion;
- (7) Including under the Governor or the Director of Transportation's discretion and authority to provide relief, a concession lease or contract that remains in effect on or after November 1, 2006;




- (8) Adding statutory cross-references for clarity; and
- (9) Making technical, nonsubstantive amendments.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 1224, S.D. 1, H.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1224, S.D. 1, H.D. 2, C.D. 1.

Respectfully submitted on behalf  
of the managers:

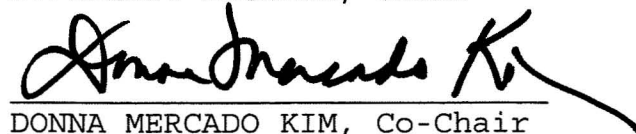
ON THE PART OF THE HOUSE

ON THE PART OF THE SENATE

  
JOSEPH M. SOUKI, Co-Chair

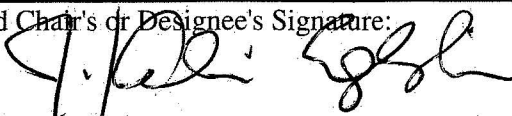
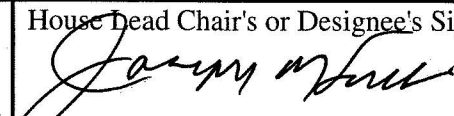
  
J. KALANI ENGLISH, Chair

  
MARCUS R. OSHIRO, Co-Chair

  
DONNA MERCADO KIM, Co-Chair



# Record of Votes of a Conference Committee

Bill / Concurrent Resolution No.: <b>SB 1224, SD 1, HD 2</b>					Date/Time: <b>30 April 2009 10:31 pm</b>					
<input checked="" type="checkbox"/> The recommendation of the House and Senate managers is to pass with amendments (CD).										
<input type="checkbox"/> The Committee is reconsidering its previous decision.										
<input type="checkbox"/> The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure					<input type="checkbox"/> The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.					
Senate Managers	A	WR	N	E	House Managers	A	WR	N	E	
ENGLISH, J. Kalani, Chr.	✓				SOUKI, Joseph M., Co-Chr.	✓				
KIM, Donna Mercado, Co-Chr.	✓				OSHIRO, Marcus R., Co-Chr.	✓				
SLOM, Sam	✓				AWANA, Karen Leinani	✓				
					PINE, Kymberly Marcos	✓				
TOTAL	3	-	-	-	TOTAL	4	-	-	-	
A = Aye		WR = Aye with Reservations			N = Nay		E = Excused			
Senate Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted					House Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted					
Senate Lead Chair's or Designee's Signature: 					House Lead Chair's or Designee's Signature: 					
<b>Distribution:</b> <b>Original</b> File with Conference Committee Report					<b>Yellow</b> House Clerk's Office		<b>Pink</b> Senate Clerk's Office		<b>Goldenrod</b> Drafting Agency	