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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
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IN REPLY REFER TO:

February 27, 2009

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

COMMITTEE ON FINANCE

HOUSE BILL NO. 1388, H.D.1, RELATING TO AIRPORT CONCESSIONS.

The Department of Transportation (DOT) **opposes** this bill because it would require the State to modify previously bid-and-awarded concession leases in ways that fundamentally change the conditions under which the lease was initially offered for bid.

This bill requires that a concession lease, which was publicly advertised and awarded to the entity that bid the highest minimum annual guaranteed rent for each year of the term of the concession lease, be changed to eliminate the amount bid for each year after the first year of the term. In lieu thereof, this bill requires that the concession lease adjust the amount to be paid to 85% of what was paid and payable in the first year.

By changing the rules after the contract is bid and awarded, this bill undermines the statutory requirements for issuing bids. In so doing, this bill penalizes all parties – whether they bid in good faith, but failed to win the concession; or whether they reviewed the bid offering, but decided not to bid. Those parties who were not awarded the concession, would have lost the bid to the winning bidder who could be paying less than what they were willing to pay.

Additionally, the bill would prohibit the State from issuing concession agreements in the future in which bidders promised to pay the State a fixed amount each year for the privilege of doing business at the airport facilities. Currently, financial institutions that provide ATMs at the airports, pay a fixed monthly fee based on the number of ATM machines installed. This bill would require the State to establish a sliding scale for such a concession. This sliding scale would in effect guarantee that, over the course of the concession agreement, the monthly fee per ATM would decline. Although the stated purpose of this bill is to provide relief to “all airport concessions,” such will not be the case.

Further, through its broad language, the bill seeks to legislatively amend: 1) the Settlement Agreement between the Hawaii State Committee of Blind Vendors, the Hawaii Blind Vendors Association, Clyde Ota, Kenneth Oshiro, Glenn Oshiro, the Department of Human Services, State of Hawaii, and the Department of Transportation, State of Hawaii, dated April 4, 1992, and 2) the Settlement Agreement between the Hawaii State Committee of Blind Vendors, the Hawaii

Testimony of the Department of Transportation
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Blind Vendors Association, Walter Ishikawa, Charlotte Kauhane, Esrom Nihoa, Yoshiko Nishihara, Miriam Onomura, Clyde Ota, Alice Schaar, Warren Toyama, Filo Tu, Jeanette Tu, the Department of Human Services, State of Hawaii, and the Department of Transportation, State of Hawaii, dated July 28, 1993. Both Settlement Agreements do not have the economic relief provisions that would trigger the provisions of this bill.

Act 128, Session Laws of Hawaii 2006, enabled many of the same concessionaires who now seek to have this legislation passed, to get the terms of their concession agreements extended. By doing so, these concessionaires have avoided having to go out to bid again for anywhere from two to six years. In return for this contract extension, these concessionaires were required to construct "concession improvements."

Moreover, Act 128 provided that, "The rents during the extension period shall not be lower than rents paid by the concession under its existing lease or permit." Now, the concessionaires are back, seeking another adjustment to the terms of those agreements.

Finally, this bill replicates the language in Section 102-10, Hawaii Revised Statutes, which allows the concessionaire to "recoup the amount lost by such reduction." The use of this phrase in Section 102-10 is appropriate because the reduction in gross receipts is due to the impact of construction on the concession and such construction would only have taken place with the approval of the State. However, under this bill, the concessionaire would have a "right" to a previously established level of gross receipts and would thus be entitled to "recoup" the amount of any reduction, independent of any adverse action by the State. This, we believe, is inappropriate.

Accordingly, we respectfully request that this bill be held in committee.

AIRLINES COMMITTEE OF HAWAII



Honolulu International Airport
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February 27, 2009

The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair

Re: **HB 1388 HD1 – RELATING TO AIRPORT CONCESSIONS – Oppose**
Agenda #2 – Committee on Finance, Room 308, 11 AM

Aloha Chair Oshiro, Vice Chair Lee and Members of the Committee:

The Airlines Committee of Hawaii*, which is made up of 20 signatory air carriers that underwrite the Hawaii State Airport System, does not support HB 1388 HD1 because of its potential impact to airline costs.

The airlines entered into a partnership with the State and have guaranteed that all costs of the State airports system will be paid each fiscal year. The residual nature of this partnership dictates that any rent abatement for airport's system concessionaires is passed on to the airlines. Simply put, every dollar of rent abatement provided to concessionaires raises airline costs by a dollar. A fifteen percent reduction in concessionaire rental payments to the State would result in airline costs increasing by nearly \$10 million annually.

The Airlines Committee of Hawaii and the State have partnered together to develop a \$2.3 billion program to modernize and improve airports throughout the state. The economic stimulus of these construction projects is significant. Like airport concessionaires, the airline industry is also struggling financially. Thus, the Airlines Committee of Hawaii is unable to subsidize other airport tenants while supporting this capital improvement program in Hawaii.

However, the Airlines Committee of Hawaii would not oppose a reduction in concession rental payments to the State if that impact was not passed on to the airlines serving Hawaii.

Thank you for the opportunity to provide testimony on HB 1388 HD1.

**ACH members are Air Canada, Air New Zealand, Air Pacific, Alaska Airlines, All Nippon Airways, American Airlines, China Airlines, Continental Airlines, Delta Air Lines, Federal Express, go!, Hawaiian Airlines, Japan Airlines, Korean Air, Northwest Airlines, Philippine Airlines, Qantas Airways, United Airlines, United Parcel Service, US Airways, and Westjet.*



Honorable Marcus Oshiro, Chair
Committee on Finance
House of Representatives
State of Hawaii

Hearing: February 27, 2009

RE: HB 1388, HD1 Relating to Airport Concessions

Chair Oshiro and Honorable Committee Members:

My name is Alan Yamamoto and I am the District General Manager for the Hawaiian Islands with HMSHost.

We support this bill and the testimony by the Airports Concessionaires Committee proposing an amendment to this bill. The amendment gives the DOT the discretion to grant relief but if no agreement can be reached then the concessionaire has the right to ask for a rebid without any penalty, undue hardship or forfeiture of bond. This is only fair since our concession does not have the same relief provisions like other airport concessions. Other airport concessions are getting relief while we are not during these harsh economic times. This is not fair.

Many reports say the current recession is worse than the terrorist events of September 11, 2001. Airport concessions are unique and difficult businesses to operate. Just as you sought to provide relief to airport concessions after the events of September 11, 2001 we again seek your support in obtaining relief.

Our business is presently down about 10% after recently spending approximately \$15 million on improvements. Some concessions are not suffering like us since they have relief provisions in their airport agreements that we do not have.

We urge you to support this bill so airport concessions have fair relief options that allow them to survive and not close during these harsh economic times that are beyond our control. Closing an airport concession requires an airport concession to give up its performance bond and be barred from doing business with the State for five years. This is not good business and a replacement concession will most likely pay less rents to the State.

Please support this bill and keep it alive. We understand during the legislative process changes to the bill may have to be made.

Thank you for allowing us to testify.

HMSHost Corporation
Hawaiian Islands

By


Alan Yamamoto
District General Manager



Honorable Marcus Oshiro, Chair
Committee on Finance
House of Representatives
State of Hawaii

Hearing: February 27, 2009

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Many reports say the current recession is worse than the terrorist events of September 11, 2001. Airport concessions are unique and difficult businesses to operate. Just as you sought to provide relief to airport concessions after the events of September 11, 2001 we again seek your support in obtaining relief.

Our business is presently down about 10% after recently spending approximately \$15 million on improvements. Some concessions are not suffering like us since they have relief provisions in their airport agreements that we do not have.

We urge you to support this bill so airport concessions have fair relief options that allow them to survive and not close during these harsh economic times that are beyond our control. Closing an airport concession requires an airport concession to give up its performance bond and be barred from doing business with the State for five years. This is not good business and a replacement concession will most likely pay less rents to the State.

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HMSHost Corporation
Hawaiian Islands

By


Alan Yamamoto
District General Manager



Honorable Marcus Oshiro, Chair
Committee on Finance
House of Representatives
State of Hawaii

Hearing: February 27

RE: HB 1388, HD1 Relating to Airport Concessions

Chair Oshiro and Honorable Committee Members:

My name is Aleta Lindsay and I am Vice President with International Currency Exchange (ICE).

We support this bill and the testimony by the Airports Concessionaires Committee proposing an amendment to this bill. The amendment gives the DOT the discretion to grant relief but if no agreement can be reached then the concessionaire has the right to ask for a rebid without any penalty, undue hardship or forfeiture of bond. This is only fair since our concession does not have the same relief provisions like other airport concessions. Other airport concessions are getting relief while we are not during these harsh economic times. This is not fair.

Many reports say the current recession is worse than the terrorist events of September 11, 2001. Airport concessions are unique and difficult businesses to operate. Just as you sought to provide relief to airport concessions after the events of September 11, 2001 we again seek your support in obtaining relief.

Our business is presently down about 30%, this even after investing over \$150K on improvements. Some concessions are not suffering like us since they have relief provisions in their airport agreements that we do not have.

We urge you to support this bill so airport concessions have fair relief options that allow them to survive and not close during these harsh economic times that are beyond our control. Closing an airport concession requires an airport concession to give up its performance bond and be barred from doing business with the State for five years. This is not good business and a replacement concession will most likely pay less rents to the State.

Please support this bill and keep it alive. We understand during the legislative process changes to the bill may have to be made.

Thank you for allowing us to testify.

Sincerely yours,
Aleta M. Lindsay
Vice President

Honorable Marcus Oshiro, Chair
Committee on Finance
Hawaii State Senate

Hearing: February 27, 2009

Re: HB 1388, HD1 Relating to Airport Concessions

Honorable Chair Oshiro and Honorable Committee Members:

My name is Peter Fithian and I am the Chair of the Airport Concessionaires Committee whose membership consists of most of the major concessions at Hawaii's public airports.

We support this very important bill with amendment that provides that if a concessionaire and the DOT cannot reach an agreement on relief then the concession be put out to rebid without penalty or hardship or forfeiture by the concession of its performance bond. This is only fair since the DOT is not willing to grant the concession relief provisions like it granted to other concessions. This is a matter of the DOT being fair to all concessions and not just some concessions during this historic economic downfall.

However, if you don't have time to consider the amendment we ask that you pass it out with defective date to allow discussions to continue. It is critical that a bill pass this legislative session to avoid closure by airport concessions. One concession is suffering a loss of business of more than 30% and another concessions is suffering a loss of business of more than 40%. This cannot continue much longer.

DOT and the concessions have been discussing alternative relief language and thus further changes to the bill are likely to be suggested in the future.

Response to DOT Prior Comments The Legislature has the authority and in the past it has allowed amendments to bid contracts due to dire economic circumstances such as the events of September 11, 2001. Such authority and granting of relief by the Legislature during dire economic events does not undermine agreements or prohibit the DOT from issuing further agreements as stated by the DOT. Such an interpretation of the bill or the Legislature's right and authority is simply not valid or correct. The Legislature in the past has recognized the difficulties of airport concessions and has granted relief.

Representatives of the concessionaires have meet with the DOT to try and narrow the focus of the bill given DOT's concerns that the bill is too broad. Language has been discussed that avoids various problems referred to by the DOT including amending any settlement agreements. The DOT simply and incorrectly interprets Act 128 when it states such Act removes any existing provisions in a contract or lease that grants rent relief. The Act intended there would be no reduction in rents in exchange for improvements a concessionaire may construct. Clearly, the Act did not state that if the concessionaire made such improvements it lost all of its rights to rent relief including but not limited to economic emergency rent relief.

Recent language proposed by concessionaires to the DOT does not require the DOT to provide a recoupment of amount lost by the concessionaire. It is an option for relief that the DOT may consider providing. It is fundamentally unfair and discriminatory for the DOT not to consider granting relief to only some concessions in these dire economic times and not grant the same relief provisions to other concessions.

Background. This legislature kindly came to our aid at least on two (2) occasions following the events of September 11, 2001. We again seek your assistance.

Airport Concessions are Unique Businesses. As you recognized in the past, airport concessions are unique businesses especially following the events of September 11, 2001 since you now need a ticket and security clearance before you can eat or shop at airport concessions. Also, unlike other Hawaii businesses, airport concessions cannot offer Kamaiana discounts or 75% off sales like major shopping centers. Further airport concessions must remain open from the first flight to the last flight to service our traveling public regardless of the dwindling number of passengers. And yet during these times, Hawaii's DOT expects its guaranteed rents to be paid. Even further, airport concessions are not like airlines which can cut expenses by reducing their number of flights or increase their revenues by fuel surcharges and charging for extra luggage. Airport concessions are unique and difficult businesses to successfully operate.

DOT Grants Relief To Some But Not All Concessions; This Unfairness Must Be Corrected Given These Harsh Economic Times. While Hawaii's DOT following the events of September 11, 2001 has sought to provide relief in concession contracts and leases, such relief provisions unfortunately are not in all concession contracts and leases. Thus, while some concessions are presently enjoying relief other concessions are not. This is not fair during these harsh economic times.

85% Formula. One of these relief provisions allows the guaranteed rents a concession must pay the airport to rise and fall depending on the concession's level of success during the previous 12 months. This is what we call the "85% formula" that is done on an annual basis. Thus, if during a prior 12-month period your business did better then your guaranteed rents to be paid to the airport for the next 12-month period would likely increase. The formula also provides for the opposite in that if your business suffered in the prior 12-month period then your guaranteed rents for the next 12-month period would be reduced up to a maximum of 15%.

Economic Emergency Relief Formula. Recognizing that this 85% formula may not grant sufficient relief in that it was limited to a maximum of 15% and also a one time annual adjustment, the airports also started to include in their leases an "economic-emergency-relief formula". This formula allowed for an adjustment to be made immediately (and not annually) and the granting of relief of more than 15% when necessary and thus not just limited to 15% pursuant to the 85% formula.

Unfairness; Relief To Some But Not Others During Extremely Harsh Times Not Fair. As stated, while some concessions are enjoying the benefits of both relief provisions, some concessions have only one of these provisions and some concessions may not have any of these provisions. Given the harsh economic times this bill seeks to correct this unfairness by providing that all concessions (and not just some) should be allowed to seek relief under both types of

relief provisions and an optional economic relief provision that measures a concession's hardship from the start of concession based on its published gross receipts as long as the hardship is due to reasons beyond the control of the concessionaire.

Prevents Duplicate Relief. This bill contains provisions that allows the Director of Transportation to prevent duplicate benefits to a concessionaire under both formulas or other similar governmental relief.

Precludes Relief Prior to November 1, 2006. Although some concessions may have suffered financial losses prior to November 1, 2006 since they failed to have both formulas, this Act seeks to limit and recognize relief for losses incurring on and after November 1, 2006, a 12-month period of time prior to the reported commencement of the recession as of November 1, 2007. Thus, although a concession may have been in business and suffered losses many years prior to November 1, 2006 it cannot seek relief prior to November 1, 2006.

Summary. Given the dire economic hardship being experienced by a number of airport concessions, we believe this bill is both necessary and fair. At the same time, the bill seeks to avoid the duplication of relief and limits the start of any relief period to only on and after November 1, 2006. Thank you for allowing us to testify. Please pass this bill with a defective date so discussions may continue. This bill is vital to the survival of airport concessions. Thank you.



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Honorable Marcus Oshiro, Chair
Committee on Finance
House of Representatives
State of Hawaii

Hearing: February 27, 2009

RE: HB 1388, HD1 Relating to Airport Concessions

Chair Oshiro and Honorable Committee Members:

My name is Harvey Hee and I am the Area Manager
With Smarte Carte Inc..

We support this bill and the testimony by the Airports Concessionaires Committee proposing an amendment to this bill. The amendment gives the DOT the discretion to grant relief but if no agreement can be reached then the concessionaire has the right to ask for a rebid without any penalty, undue hardship or forfeiture of bond. This is only fair since our concession does not have the same relief provisions like other airport concessions. Other airport concessions are getting relief while we are not during these harsh economic times. This is not fair.

Many reports say the current recession is worse than the terrorist events of September 11, 2001. Airport concessions are unique and difficult businesses to operate. Just as you sought to provide relief to airport concessions after the events of September 11, 2001 we again seek your support in obtaining relief.

Our business usage is presently down about 40%. Some concessions are not suffering like us since they have relief provisions in their airport agreements that we do not have.

We urge you to support this bill so airport concessions have fair relief options that allow them to survive and not close during these harsh economic times that are beyond our control. Closing an airport concession requires an airport concession to give up its performance bond and be barred from doing business with the State for five years. This is not good business and a replacement concession will most likely pay less rents to the State.



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