



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

Office of the Speaker
ANTONIO R. UNPINGCO

Date: 8/17/98

Time: 11:15

Rec'd by: Cup

Print Name: Laurite

Refer to
Legislative Secretary

AUG 14 1998

The Honorable Antonio R. Unpingco
Speaker
Mina'Bente Kuáttro na Liheslaturan Guáhan
Twenty-Fourth Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Hagátña, Guam 96910


OFFICE OF THE LEGISLATIVE SECRETARY	
RECEIVED	
Received by	<u>[Signature]</u>
Time	<u>8:45 am</u>
Date	<u>8/18/98</u>

Dear Speaker Unpingco:

Enclosed please find Substitute Bill No. 543 (COR), "AN ACT TO AMEND §1203.1 OF ARTICLE 2, CHAPTER 1 OF TITLE 12 OF THE GUAM CODE ANNOTATED, RELATIVE TO AGREEMENTS BETWEEN THE ANTONIO B. WON PAT GUAM INTERNATIONAL AIRPORT AUTHORITY ("GIAA") AND CONCESSIONS, OTHER BUSINESSES AND SERVICE PROVIDERS; AND AGREEMENTS BETWEEN GIAA AND AIRLINES", which I have signed into law today as **Public Law No. 24-255**.

This legislation requires a competitive bid process for any contracts for a master or general concession agreement at the Airport. This is in line with the general procurement procedures of the government to allow for open competition on offering services to the government.

Very truly yours,


Carl T. C. Gutierrez
I Maga'lahen Guáhan
Governor of Guam

01971

Attachment: copy attached for signed bill
 original attached for vetoed bill

cc: The Honorable Joanne M. S. Brown
 Legislative Secretary

MINA'BENTE KUATTRO NA LIHESLATURAN GUAHAN
1998 (SECOND) Regular Session


CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUAHAN

This is to certify that Substitute Bill No. 543(COR), "AN ACT TO AMEND §1203.1 OF ARTICLE 2, CHAPTER 1 OF TITLE 12 OF THE GUAM CODE ANNOTATED, RELATIVE TO AGREEMENTS BETWEEN THE ANTONIO B. WON PAT GUAM INTERNATIONAL AIRPORT AUTHORITY ("GIAA") AND CONCESSIONS, OTHER BUSINESSES AND SERVICE PROVIDERS; AND AGREEMENTS BETWEEN GIAA AND AIRLINES," was on the 29th day of July, 1998, duly and regularly passed.



ANTONIO R. UNPINGCO
Speaker

Attested:



JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by *I Maga'lahaen Guahan* this 3rd day of August, 1998,
at 9:05 o'clock 9.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:



CARL T. C. GUTIERREZ
I Maga'lahaen Guahan

Date: 8-14-98

Public Law No. 24-255

**MINA'BENTE KUATTRO NA LIHESLATURAN GUAHAN
1998 (SECOND) Regular Session**

Bill No. 543 (COR)

As substituted by the Committee on
Transportation, Telecommunications and
Micronesian Affairs and as amended on the
Floor.

Introduced by:

C. A. Leon Guerrero
T. C. Ada
F. B. Aguon, Jr.
A. C. Blaz
J. M.S. Brown
Felix P. Camacho
Francisco P. Camacho
M. C. Charfauros
E. J. Cruz
W. B.S.M. Flores
Mark Forbes
L. F. Kasperbauer
A. C. Lamorena, V
L. A. Leon Guerrero
V. C. Pangelinan
J. C. Salas
A. L.G. Santos
F. E. Santos
A. R. Unpingco
J. Won Pat-Borja

**AN ACT TO AMEND §1203.1 OF ARTICLE 2,
CHAPTER 1 OF TITLE 12 OF THE GUAM CODE
ANNOTATED, RELATIVE TO AGREEMENTS
BETWEEN THE ANTONIO B. WON PAT GUAM
INTERNATIONAL AIRPORT AUTHORITY
("GIAA") AND CONCESSIONS, OTHER
BUSINESSES AND SERVICE PROVIDERS; AND
AGREEMENTS BETWEEN GIAA AND AIRLINES.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** The Antonio B. Won Pat
3 Guam International Airport Authority ("GIAA") is the gateway for tourists
4 coming to the Island of Guam. It is the intent of *I Liheslaturan Guahan* to
5 maximize the opportunity for local business to sell their products to our
6 visitors. It is also the intent of *I Liheslaturan Guahan* to make sure that
7 concessions available at GIAA are granted on a competitive basis.

8 **Section 2.** Section 1203.1 of Article 2, Chapter 1 of Title 12 of the Guam
9 Code Annotated is hereby *amended* to read as follows:

10 **"Section 1203.1. Agreements Between GIAA and Concessions,**
11 **Other Businesses and Service Providers; Agreements Between GIAA**
12 **and Airlines.** (a) Any agreement between GIAA and any other
13 party concerning the operation of a concession, other business or service
14 provider at the Antonio B. Won Pat Guam International Airport shall
15 conform to the following:

16 (i) allow for an exclusive right to sell certain goods or
17 provide certain services after a competitive proposal procedure,
18 according to the General Services Administration ('GSA') rules
19 and regulations and for a duration of no longer than five (5) years
20 (Any exclusive right for a duration longer than five (5) years shall
21 be given by GIAA to any party only upon subsequent approval by
22 *I Liheslaturan Guahan* by statute.);

23 (ii) criteria established for the operation of a concession,
24 other business or service provider at the GIAA, which criteria shall

1 be reviewed at a public hearing held within ninety (90) days of the
2 effective date of this Section, and held in accordance with the
3 Administrative Adjudication Law;

4 (iii) not be extended in duration or otherwise modified,
5 unless the extension or other modification conforms to the
6 requirements of this Section (Notwithstanding the foregoing
7 sentence, the exclusive concession agreement between GIAA and
8 Duty Free Shoppers, Inc. ('DFS') and any agreement derived from
9 said concession agreement, in effect on the effective date of this
10 Section, modified by a memorandum of understanding, shall be
11 modified again, but not extended in duration of term, pursuant to
12 the cooperative efforts of the parties to reach a mutual
13 understanding in the best interest of the people of Guam.);

14 (iv) GIAA cannot enter into any master or general
15 concession agreement or any agreement where the concessionaire
16 is the owner or operator providing the product or service without
17 going through the competitive bid process; and

18 (v) in order to maximize local participation in the
19 concession business at the Airport, GIAA shall abide by the
20 competitive bid process, to the extent consistent with good
21 business practice, and make available the maximum number of
22 opportunities for local businesses to provide the concession goods
23 and services at the Airport.

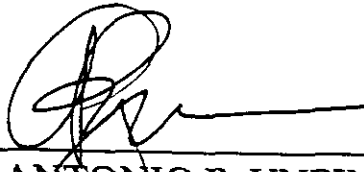
24 (b) Any agreement between GIAA and any airline offering
25 service to Guam shall charge the airline using GIAA's air terminal

1 facilities rates sufficient to cover the operating expenses of the air
2 terminal and debt service coverage of the bonds authorized to be issued
3 by this Section, and be in compliance with the requirement that no one
4 (1) or more airlines shall be reasonably discriminated against in
5 comparison with any other airline in these charges.”

MINA'BENTE KUATTRO NA LIHESLATURAN GUAHAN
1998 (SECOND) Regular Session


CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUAHAN

This is to certify that Substitute Bill No. 543(COR), "AN ACT TO AMEND §1203.1 OF ARTICLE 2, CHAPTER 1 OF TITLE 12 OF THE GUAM CODE ANNOTATED, RELATIVE TO AGREEMENTS BETWEEN THE ANTONIO B. WON PAT GUAM INTERNATIONAL AIRPORT AUTHORITY ("GIAA") AND CONCESSIONS, OTHER BUSINESSES AND SERVICE PROVIDERS; AND AGREEMENTS BETWEEN GIAA AND AIRLINES," was on the 29th day of July, 1998, duly and regularly passed.




ANTONIO R. UNPINGCO
Speaker

Attested:



JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by *I Maga'lahen Guahan* this 3rd day of August, 1998,
at 9:05 o'clock 9 .M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:



CARL T. C. GUTIERREZ
I Maga'lahen Guahan


Date: 8-14-98

Public Law No. 24-255

MINA'BENTE KUATTRO NA LIHESLATURAN GUAHAN
1998 (SECOND) Regular Session

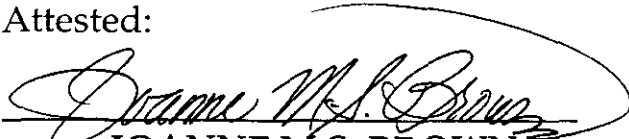
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ANTONIO R. UNPINGCO
Speaker

Attested:



JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by *I Maga'lahen Guahan* this 31st day of August, 1998,
at 9:05 o'clock 9 .M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:

CARL T. C. GUTIERREZ
I Maga'lahen Guahan

Date: _____

Public Law No. _____

**MINA'BENTE KUATTRO NA LIHESLATURAN GUAHAN
1998 (SECOND) Regular Session**

Bill No. 543 (COR)

As substituted by the Committee on
Transportation, Telecommunications and
Micronesian Affairs and as amended on the
Floor.

Introduced by:

C. A. Leon Guerrero
T. C. Ada
F. B. Aguon, Jr.
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**AN ACT TO AMEND §1203.1 OF ARTICLE 2,
CHAPTER 1 OF TITLE 12 OF THE GUAM CODE
ANNOTATED, RELATIVE TO AGREEMENTS
BETWEEN THE ANTONIO B. WON PAT GUAM
INTERNATIONAL AIRPORT AUTHORITY
("GIAA") AND CONCESSIONS, OTHER
BUSINESSES AND SERVICE PROVIDERS; AND
AGREEMENTS BETWEEN GIAA AND AIRLINES.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** The Antonio B. Won Pat
3 Guam International Airport Authority (“GIAA”) is the gateway for tourists
4 coming to the Island of Guam. It is the intent of *I Liheslaturan Guahan* to
5 maximize the opportunity for local business to sell their products to our
6 visitors. It is also the intent of *I Liheslaturan Guahan* to make sure that
7 concessions available at GIAA are granted on a competitive basis.

8 **Section 2.** Section 1203.1 of Article 2, Chapter 1 of Title 12 of the Guam
9 Code Annotated is hereby *amended* to read as follows:

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11 Other Businesses and Service Providers; Agreements Between GIAA
12 and Airlines.** (a) Any agreement between GIAA and any other
13 party concerning the operation of a concession, other business or service
14 provider at the Antonio B. Won Pat Guam International Airport shall
15 conform to the following:

16 (i) allow for an exclusive right to sell certain goods or
17 provide certain services after a competitive proposal procedure,
18 according to the General Services Administration (“GSA”) rules
19 and regulations and for a duration of no longer than five (5) years
20 (Any exclusive right for a duration longer than five (5) years shall
21 be given by GIAA to any party only upon subsequent approval by
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23 (ii) criteria established for the operation of a concession,
24 other business or service provider at the GIAA, which criteria shall

1 be reviewed at a public hearing held within ninety (90) days of the
2 effective date of this Section, and held in accordance with the
3 Administrative Adjudication Law;

4 (iii) not be extended in duration or otherwise modified,
5 unless the extension or other modification conforms to the
6 requirements of this Section (Notwithstanding the foregoing
7 sentence, the exclusive concession agreement between GIAA and
8 Duty Free Shoppers, Inc. ('DFS') and any agreement derived from
9 said concession agreement, in effect on the effective date of this
10 Section, modified by a memorandum of understanding, shall be
11 modified again, but not extended in duration of term, pursuant to
12 the cooperative efforts of the parties to reach a mutual
13 understanding in the best interest of the people of Guam.);

14 (iv) GIAA cannot enter into any master or general
15 concession agreement or any agreement where the concessionaire
16 is the owner or operator providing the product or service without
17 going through the competitive bid process; and

18 (v) in order to maximize local participation in the
19 concession business at the Airport, GIAA shall abide by the
20 competitive bid process, to the extent consistent with good
21 business practice, and make available the maximum number of
22 opportunities for local businesses to provide the concession goods
23 and services at the Airport.

24 (b) Any agreement between GIAA and any airline offering
25 service to Guam shall charge the airline using GIAA's air terminal

1 facilities rates sufficient to cover the operating expenses of the air
2 terminal and debt service coverage of the bonds authorized to be issued
3 by this Section, and be in compliance with the requirement that no one
4 (1) or more airlines shall be reasonably discriminated against in
5 comparison with any other airline in these charges.”

24 255



24th Guam Legislature
Sen. Carlotta A. Leon Guerrero

Union Bank Building, Suite 312
194 Hernan Cortez Avenue
Agana, Guam 96910

Tel : (671) **472-3416 / 3418**
Fax : (671) **477-1323**
sencig@Kuentos.guam.net

Chairperson :

Committee on
Transportation,
Telecommunications and
Micronesia Affairs

May 18, 1998

The Honorable Antonio R. Unpingco
Speaker
Twenty-Fourth Guam Legislature
155 Hesler Street
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Transportation, Telecommunications and Micronesia Affairs, to which was referred **Bill 543, "An act to amend Section 2103.1 of Title 12, Guam Code Annotated, relevant to agreements between the A.B. Won Pat Guam International Airport Authority (GIAA) and concessions, other businesses and service providers; agreements between GIAA and airlines."** has had the same under consideration, and now wishes to report back the same with the recommendation **To Pass.**

The Committee votes are as follows:

To Pass	<u> 0 </u>
Not to Pass	<u> 2 </u>
Abstain	<u> 0 </u>
Inactive File	<u> 0 </u>

A copy of the Committee Report and all pertinent documents are attached for your information and file.


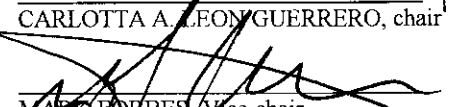
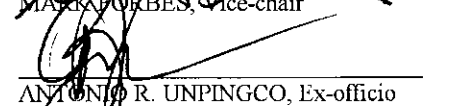

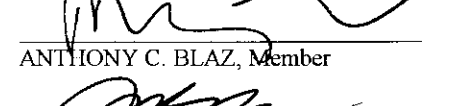
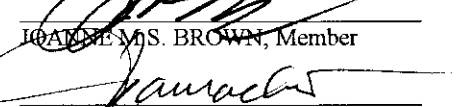
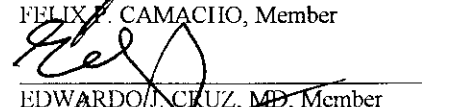

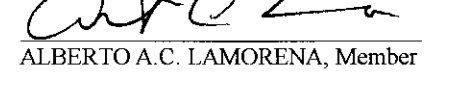
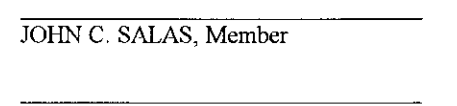
Sincerely yours,

CARLOTTA A. LEON GUERRERO
Chairperson

Committee on Transportation, Telecommunications and Micronesia Affairs
I Mina Bente Kuáttro Na Liheslaturan Guahan

Voting Record
Bill 543

“An act to amend Section 1203.1 of Title 12, Guam Code Annotated, relevant to agreements between the A. B. Won Pat Guam International Airport Authority (GIAA) and concessions, other businesses and service providers; agreements between GIAA and airlines.”

	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN FILE</u>	INACTIVE
 CARLOTTA A. LEON GUERRERO, chair	✓			
 MARK FORBES, Vice-chair	✓			
 ANTONIO R. UNPINGCO, Ex-officio				
 ELIZABETH B. ANDERSON, Member				
 ANTHONY C. BLAZ, Member				
 JOANNE M.S. BROWN, Member	✓			
 FELIX F. CAMACHIO, Member	✓			
 EDUARDO J. CRUZ, MD, Member	✓			
 LAWRENCE F. KASPERBAUER, Member	X			
 ALBERTO A.C. LAMORENA, Member				
JOHN C. SALAS, Member				
THOMAS C. ADA, Member				
FRANCISCO P. CAMACHO, Member				
WILLIAM B.S.M. FLORES, Member				
LOU LEON GUERRERO, Member				
VICENTE C. PANGELINAN, Member				
FRANCIS E. SANTOS, Member				

Committee on Transportation, Telecommunications and Micronesian Affairs

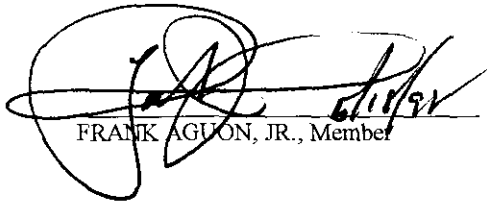
I Mina Bente Kuåttro Na Liheslaturan Guahan

(continuation sheet)

Voting Record

Bill 543

“An act to amend Section 1203.1 of Title 12, Guam Code Annotated, relevant to agreements between the A. B. Won Pat Guam International Airport Authority (GIAA) and concessions, other businesses and service providers; agreements between GIAA and airlines.”


FRANK AGUON, JR., Member

TO
PASS

NOT TO
PASS

ABSTAIN
FILE

INACTIVE

✓ _____

**I Mina' Bente Kuattro Na Lihelaturan Guahan
Committee on Transportation, Telecommunications & Micronesia Affairs**

**Legislature Temporary Building
Public Hearing Room
Tuesday, May 12, 1998
9:00 a.m.**

Bill 543

**An act to amend Section 1203.1 of Title 12 GCA
relevant to agreements between the
A. B. Won Pat Guam International Airport Authority
and concessions, other businesses and service providers;
and agreements between GIAA and airlines.**

COMMITTEE REPORT

Senator Carlotta A. Leon Guerrero, Chairperson

Senator Mark Forbes, Vice-Chairperson

Speaker Antonio R. Unpingco, Ex-Officio Member

Senator Anthony C. Blaz, Member

Senator Joanne M.S. Brown, Member

Senator Felix P. Camacho, Member

Senator Alberto A. Lamorena, Member

Senator Lawrence Kasperbauer, Member

Senator John C. Salas, Member

Senator Eduardo J. Cruz, M.D., Member

Senator Thomas C. Ada, Member

Senator Francisco P. Camacho, Member

Senator Lou Leon Guerrero, Member

Senator Vicente C. Pangelinan, Member

Senator Francis E. Santos, Member

Senator William B.S.M. Flores, Member

Senator Frank Aguon, Jr., Member

The Committee on Transportation, Telecommunications and Micronesia Affairs conducted a public hearing on Bill 543: "An act to amend Section 1203.1 of Title 12 GCA relevant to agreements between the A. B. Won Pat Guam International Airport Authority and concessions, other businesses and service providers; and agreements between GIAA and airlines" at 9:00 a.m. in the Public Hearing Room of the Guam Legislature in Hagåtña.

Committee Members present:

Senator Carlotta A. Leon Guerrero, Chairperson

Senator Ben Pangelinan

Senator Frank Aguon, Jr.

Senator Francisco P. Camacho

SUMMARY

Senator Carlotta Leon Guerrero explained the intent for Bill 543 as it relates to how the airport can enter into concessionaire agreements. As she understands it, the food vendors pay fifteen percent (15%) of gross in rent. Of this amount, ten percent (10%) goes to GIAA, five percent (5%) goes to LSG as the master concessionaire. The Senator believes that the responsibilities of the master concessionaire can be borne by the airport, thus allowing the airport to realize upward of \$200,000 in revenue; or as a second option, reduce the food vendor rental down to ten percent (10%). These two options seem more appealing at this time instead of having to pay for a master concessionaire responsible for a handful of vendors. The Senator compared this to the Port Authority of Guam wherein they deal directly with their tenants. Further, she referred to an amendment to Senator Frank Aguon's bill regarding the Chamorro village where she submitted that the manager of the Chamorro village must deal directly with the tenants. The Senator feels very strongly about this issue in all her areas of responsibility as oversight chairperson, despite conjecture that this may seem like specialized legislation.

Mr. Gil Robles, Acting Executive Manager of the A. B. Won Pat Guam International Airport Authority began testimony on Bill 543, stating the airports concerns.

In Section 1203.1 (a)(iii), the additional language in this section is unclear because the original intent was to address the authority's agreement with Duty Free Shoppers (DFS) and the modifications contemplated at that time with no extensions of term due to its exclusive nature. The only agreement GIAA has in place (which was derived from the Duty Free agreement) is the catering concession with Lufthansa Service Guam, known as LSG. The LSG agreement is nonexclusive since GIAA can contract directly with other food and beverage service providers. By consent, LSG has agreed to sub-license twelve (12) food and beverage outlets. These agreements may also be considered derivatives of the DFS agreement. Thus, the proposed amendment would preclude GIAA from extending the duration of terms for LSG and its sub-licensees and limit the authority's flexibility to exercise sound business practices. LSG and its sub-licensees have invested substantially into the fit-out improvements of each facility, currently estimated at \$3.98 million. Since the amortization schedule exceeds the remaining term of the agreement, until the year 2002, GIAA will incur a \$1.35 million liability of the un-amortized values. The extension would have saved GIAA about \$255,000/year. In addition, the authority would also reap higher concession fees which is not possible without a longer term stability.

In Section 1203 (a)(iv). The proposed language in this section would impair the authority's ability and flexibility to manage the concessions program. GIAA is concerned about this committee's intent to legislate management and business practices contrary to the authority's mandate as a public corporation. He referred to a presentation paper entitled "New Frontiers in Airport Retail" included as an attachment (A) to his testimony. This paper simplifies the four management approaches on airport concessions which are direct leasing, master concessionaire, developer and management contracts. Mr. Robles also included attachment (B) which are comments from Leigh Fisher Associates, the airport consultant for the authority. This provides additional insight to the master concessionaire concept. Finally, Mr. Robles expressed GIAA's

concerns on how Bill 543 would gravely impact its bond rating by restricting flexibility and autonomy to maximize airport revenues.

Senator Carlotta Leon Guerrero thanked Mr. Robles for his testimony, however, referred back to Mr. Robles comments regarding the inappropriateness of this legislation because the existing agreement does not expire until January 2002, and that any legislation passed will not affect concession arrangements until that time. For the record, she reminded Mr. Robles that the reason for this bill was because the airport board approved the extension of the LSG agreement from 2002 until the year 2007. Therefore, she is surprised that the authority is taking this position, citing all the reasons why she requested that the board refrain from signing the extension agreement with LSG: world conditions could change, the industry could change. She is pleased to see that the authority agrees with her concerns, however, she reminded them that this was the main reason for this bill.

The Senator asked what the board's current position is on the LSG extension for the record. Tessie Marcos explained that because LSG and its sub-licensees had invested the \$3.98 million for their facilities, they felt the need to approve the extension. However, the Senator restated her question for a direct answer. Given that she requested by letter for GIAA not to act on this extension until the board reviews and researches all possible alternatives, she wanted to know where the extension agreement is at this time with the board. Gil Robles responded that, at this time, the current agreement still exists with expiration at the year 2002. Further, the matter is still under discussion at the board level.

The Senator alluded that the airport management keeps talking circles around the main issue. Restating that the intent of her bill is to stop the authority from making the LSG extension four years before expiration, she continued by expressing her confusion at the rationale of the authority to throw her arguments back at her, using these same reasons for requesting that Bill 543 not be passed, and further stating that the board is still considering the extension.

Senator Leon Guerrero pointedly asked the board members present what their personal position was on this issue. GIAA Board Vice-Chair Tessie Bagtas-Marcos referred to the presentation made by LSG wherein they cited the amount of money expended by their company and sub-licensees. Senator Leon Guerrero said that this reason may have been an issue in a time period nearer to the expiration year of 2002, however, not now, not four years before the agreement expires. Thus, she does not accept Ms. Marcos' reason about a possible liability issue for the authority in case all the food vendors leave or their contracts are not renewed in the year 2002. The Senator then directed the same question to GIAA Director Frank Taitano, He stated that the matter is still under discussion at the board level and no decision has been made at this time. Mr. Taitano also clarified that he believes there are two agreements being discussed at this time: the vendor's agreement and the master concessionaire. The Senator stated that the subject currently being discussed is LSG. She re-stated her question to ask the board members pointedly whether they think that this concession agreement should be extended now (four years before its time) or at the time closer to its expiration date. Mr. Taitano responded that if the amount of investment requires more time for the company to recover, then he believes that the lease should be extended regardless if it is extended now or 2002.

Senator Ben Pangelinan asked if GIAA decided to extend the LSG contract today, would it limit their flexibility and ability to enter into any alternative contract methodology more advantageous to the airport. The senator referred back to the four types of concessionaire agreements as stated by Gil Robles earlier. Senator Ben asked what the airport's loss and opportunity costs of the four year extension today versus three or four years down the line; and the conditions of the airport and the traveling public that could limit GIAA's opportunities to maximize its assets. Mr. Taitano responded that if the existing agreement is inadequate for the concessions based on their capital outlay, ultimately GIAA would have to pay the balance amount. He further stated that if the extension would assure the amount of investment monies each concession has already expended, the concessions would be able to recover their financial outlay. Senator Ben asked what GIAA expected, in additional economic gain or loss, by jumping ahead four years? What scenario has GIAA costed out to convince themselves that the best financial decision for the airport today is to renew the contract now and not when contract renewal is required? Mr. Robles answered that at the time the Board made a decision, management took another step back and evaluated the consultant's recommendation. Therefore, they stand by their recommendation to the Board that the Board rescind approval to extend LSG's contract but that the sub-licensees should be extended the five years (for amortization purposes) and minimize the airport's liability in 2007. Senator Ben echoed Mr. Robles comments that management recommend the Board hold off on the master concessionaire lease extension but go forth with the sub-licensee extensions. Mr. Robles agreed to that effect.

Senator Aguon expressed concern about the master concessionaire agreement. Who requested for the extension, LSG or the airport? He believes that if LSG initiated the request and is looking into investing more money into the expansion of the airport, then he understands the need to extend the lease agreement. The senator cited a similar situation at the Port Authority but when the extension for the port tenant was not approved, the tenant took his business elsewhere in Micronesia. From the business perspective, if LSG requested the extension and is going to invest money to expand its business at the airport, then it is a crucial factor in determining whether the airport should extend LSG's lease or not. Mr. Robles admitted that LSG did, in fact, initiate the request for extension at the request of their sub-licensees and was intended to be able to amortize investments until the year 2007. Senator Aguon acknowledged that it was a business decision and Mr. Robles concurred. Senator addressed the committee chair stating that this is a critical factor in determining whether or not to extend LSG's lease.

Senator Carlotta, addressed Mr. Robles' claim that LSG requested the lease extension on the urging of its sub-licensees and identified a few of the sub-licensees sitting in the audience shaking their heads "no," they did not request the extension through LSG. Mr. Robles explained to the senator that when management first asked the vendors whether they would want an extension for their own concessions, all the vendors responded in favor of the extension. The senator then clarified that there is a difference between the sub-licensees wanting their own extensions vice them pushing for LSG to get another five years.

Senator Frank Camacho stated that there is a difference between the concessionaire and the master concessionaire. The concessionaire (sub-licensees) wants to ensure continuance of

business to be able to amortize investments. From the legislature's perspective, it is the Board's responsibility to examine and determine whether the airport can run the food and beverage service themselves or hire a concessionaire to assume that responsibility. The senator stated that the intent of Bill 543 is to challenge the board's decision to address this extension issue years ahead of time? Is it based on individual concessionaire's need to amortize their investments? Why give a 3-4 year lead on granting an extension of the master concessionaire when the possibility exists that better benefits may result from waiting until the appropriate time. The key question is whether the management structure of the master concessionaire is in the best interest of the airport. Can the airport operate without a master concessionaire for the food court more economically? What is management's and the board's perspective on this? Mr. Robles stated that management is re-examining that whole structure and confidently stated that if the airport were to take on the food and beverage service, it would not be economically feasible to the airport; that the airport does not want to get into the food and beverage service business and that they would contract it out.

Senator Frank Camacho asked the same of the Board. Mr. Taitano again replied that the discussion is still on-going and that he would be more inclined to continue with contracting this work out, whether it be with a master concessionaire or a consultant. He believes it is an economical business decision. In past airport conferences, Tessie Marcos explained that the issue is whether we patronize the airport or public-private partnerships. There is a privatization program happening in Europe and the United States. New York and New Jersey airport authorities are current examples of this new move. This new move, a public-private partnership, is the current trend for airport concessions. She believes that the board promotes business entrepreneurs locally. Ms. Marcos believes that LSG has invested so much money already and the board would not want to bear the costs of this type of service.

Senator Leon Guerrero voiced her fears about this type of thought process. By-passing the bidding process, denying other businesses the opportunity to bid for space at the airport for the convenience of the board is not a comfortable thought. For whatever reason, Senator Leon Guerrero wants to see local businesses have the opportunity to get their foot in the door. She wants to see process, she wants to see bidding, and she doesn't want to see decisions being made any earlier than possible. The Senator doesn't want to see the board favoring a few people. This is her position and believes that it is important for her make this statement very clear to the board. The board may feel that this is only about LSG, but the Senator sees Duty Free coming up right behind this issue.

Gil Robles stated that Duty Free, by law, must go out for an Request for Proposal (RFP) at the end of their term. The terms are explicit in the bond agreement, that this must go out for bid.

Senator Leon Guerrero, then questioned Mr. Robles about his statement because the LSG agreement is a derivative of the Duty Free agreement. Therefore, why is Duty Free required to follow the bid process and not LSG?

Frank Santos clarified that the food and beverage rights were relinquished by Duty Free. As a result, GIAA assumed the contract with LSG (or Dairy Farm, at the time). In addition, one of

the main reasons to extend the master concessionaire was to extend the sub-licensees. The authority did not think it was possible to extend the sub-licensees without also extending the master concessionaire.

In reference to Senator Leon Guerrero's comments about the unsolicited opinion of the authority's former legal counsel (Oliver Bordallo) that the authority could, in fact, do so, Mr. Santos clarified that Mr. Bordallo addressed the direct contract approach with McDonalds, not the Phase I vendors under LSG. Mr. Santos conceded that he believes that the sub-licensees can be granted the extension now and the board can discuss LSG's extension at a later date. It is his understanding that Mr. Robles' recommendation to the board is that the sub-licensees be granted an extension of lease and to defer action on the master concessionaire until a later date.

Mr. Phillip Torres, Law Offices of Gayle & Teker and representing LSG Lufthansa Service Guam, Inc. (LSG) read his written testimony in opposition of Bill 543. He stated that the bill is aimed directly at LSG and impaired the contractual relationship between LSG and GIAA with respect to the Master Concessionaire Agreement (MCA). Mr. Torres believes that the attempt of this bill is inorganic. Mr. Torres cited that Bill 543 seeks to maximize local participation within the confines of good business practices, which LSG believes is already being done. It would prevent GIAA from entering into a Master or General Concessionaire Agreement which LSG believes is not a good business practice.

LSG has worked with GIAA to maximize opportunities for granting the concessions on a competitive basis. The concept of a Master or General Concessionaire is practiced in many international airports and requires the expertise in the food and beverage management.

In reference to Section 1203(a)(v), the reference to local participation of businesses at GIAA is misleading. Mr. Torres states that all the concessionaires at the airport are local. If the bill is aimed at promoting specific local products or items, then it should so state.

In summary, LSG opposes Bill 543 because it works as an impairment to its contractual relationship with GIAA and therefore is inorganic. For reference, he cites *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978) and *Northshore Cycles, Inc. v Yamaha Motor Corporation*, 919 F.2d 1042 (1990).

Senator Leon Guerrero explained her position on Bill 543, acknowledging that they both disagreed on several points, citing that this bill was not meant to prevent a master concessionaire. She objects to the master concessionaire simultaneously being a tenant of the authority. She also does not agree that the board extend this agreement another five years and four years earlier than necessary. The Senator continued to state that she is pleased that the board stepped forward to explain their position and decision to maintain a master concessionaire for the food vendors. This bill is in response to a situation which unfolded over the last few months causing concern amongst the tenants and users of the authority in board decisions that appeared to by pass important steps such as the bidding process.

Mr. Torres focussed on Section 1203.1(a)(iv) which prohibits the master concessionaire from being a vendor. He explained that the sub-licensees have an agreement under LSG, therefore, the sub-licensees request for an extension affects LSG, as well. Mr. Torres explained that some of the responsibilities of LSG as the master concessionaire is that, in addition to the required monthly reports, LSG is responsible for payment from the tenants. Therefore, if the tenants don't pay, LSG is still obligated to pay the authority. Mr. Torres divulged that for 1997, the master concessionaire earnings was \$140,000.

Senator Leon Guerrero questioned this information because the airport board quoted \$250,000 in payment to the master concessionaire; and LSG's management reported an earning of \$180,000. The bottom line, according to the Senator, is that it is not an insignificant amount of money. The Phase I vendors have voiced that they don't make the anticipated revenues to date, citing an *unfair advantage of LSG's position and benefits as having the only smoking area in the airport*. These vendors were asking to delay opening food vendors in Phase II until the economic climate is better for all parties.

Mr. Torres stated that these vendors knew what they were getting in to from the onset. They knew that there would be vendors in both Phase I and Phase II. There will be the same numbers of travellers coming through the airport. Now, the distribution will be between Phase I and Phase II. If anything, the revenue will be even smaller at each end because the vendors at each end will only benefit from the travellers going through their particular end of the airport.

Mr. Torres believes that the logic to extend the LSG contract now is the same as the logic to extend the sub-licensees.

Senator Pangelinan asked if LSG would still be able to operate their bar and other concessions once the master concessionaire contract expires and is bid out again. He also questioned whether the prohibition aspect in this legislation is an impairment of the contract.

Mr. Torres clarified that the legislature can pass bills that have an impact on existing contracts, however, there are strict criteria that the court follow. This request for an extension is written into the master concessionaire agreement to address the amortization issue. Therefore, he recommends the committee review this issue because it is already a part of the negotiated contract. Further, he questioned what type of a relationship would exist between the sub-licensees and LSG upon expiration of the LSG contract, if in fact, the sub-licensees contracts were extended.

Steve Holbrook, President of Domino's Pizza-Guam, stepped forward to reiterate the sub-license position. He states that the economic climate is getting worse from the last time he came before the committee. He opposes the expanding of any additional food vendors at the airport, at this time. He feels there is an adequate number of outlets currently operating which could handle the number of tourists at the airport. He concurred with Mr. Torres that they were aware that there would be a Phase II and had no problems with that. However, they did not foresee the decline in the numbers going through the airport. He believes that someone needs to put a halt to the plans at this time to re-assess the situation. If more vendors are allowed to operate now, there may be

some outlets shutting down, which would create open space at the airport that no one would want to rent. His position has not been against LSG or the concept of the master concessionaire, however, there have been decisions made at that level which has adversely affected the revenue of businesses at the food court which have benefited LSG. This makes for a very difficult environment to work under, paying a check each month with this situation in mind. If LSG wants to continue either as the master concessionaire or a food vendor, he foresees no problem with that. It is definitely an unfair arena right now because he contends that, as a master concessionaire, LSG can make decisions that benefits LSG and not the group of food vendors as a whole. He believes that all tenants should benefit from decisions made at the authority.

Senator Leon Guerrero is concerned with the comments made about Phase II situation. Taking into consideration Mr. Torres' comments as well, she is planning to take a tour of the facility to assess the situation visually. Mr. Holbrook stated that, at one time, there was standing room only at the food court. Today, it is virtually empty at key times of the day.

Senator Leon Guerrero asked Gil Robles if it is possible for this committee to work with the authority to re-assess the conditions at the airport to address these problems. Mr. Robles replied that it is an INS issue. The airport is on a trial basis right now. INS reviews the co-mingling of passengers annually. If INS ever feels that it is not appropriate, they could close us down.

Senator Leon Guerrero further asked if there was any consultant who can be requested to help out with advice and recommendations. Mr. Robles continued that at one point, the food court was open to the public, and it was at the insistence of the food vendors that they close themselves off to the public so that they can appeal to the tourist market. The Senator asked Mr. Robles if this means that it is one or the other, not both. Mr. Robles confirmed, one or the other.

Mr. Holbrook asked if the existing vendors be given first rights on refusal on the Phase II side for food vendors to allow the existing vendors to make money instead of reducing the revenue pie to several different owners.

Senator Leon Guerrero will review this matter with her committee members to determine where the legislature fits in this situation. Referring back to the last GIAA oversight hearing, Senator Leon Guerrero inquired about the status of the cooperative co-advertising effort of TCAT and DFS and the airport vendors. Mr. Holbrook responded that it is at a standstill and that the only additional change is digital signage announcing the smoking area at Gate 15 in the airport. Mr. Robles responded by advising that there is signage on order to improve the food court area.

Senator Francisco Camacho asked Mr. Holbrook that if he is asking for first rights of refusal, would he be willing to incur the additional costs to rent another space. Mr. Holbrook answered in the affirmative.

Mr. Phil Torres advised that the Phase II operation was open for public bid. If these Phase I vendors wanted to increase their operations to the Phase II section, there was nothing that would have stopped them. However, he referred to Mr. Holbrook's request as being in direct opposition

to the intent of Bill 543, because who you have now will be who you will always have, leaving out other businesses who may want to vie for airport space.

He further stated that initially, there were eighteen vendors slated in the original plan. However, in a feasibility study, it was determined that no one will make any money if there were that many vendors.

Senator F. Camacho asked Mr. Robles if the Phase II plans is still on schedule or would the board take time to make modifications. Mr. Robles would not answer for the board, however, he did state that the original number of seven vendors was reduced to three by decision of the board, one on the secured side (Delicatessen) and two on the public side (Shirley's and McDonalds).

Mr. Holbrook stated that the current vendors do not object to other vendors in the Phase II section. He understands the need for the Deli inside and Shirley's outside. However, he does question McDonald's presence there, citing that it would hurt the Burger King operation on the secured side because the tourists recognize the "golden arches," there being 2400 McDonald's in Japan.

Senator Leon Guerrero believes that there has been an effort to control the number of food vendors from the original eighteen. Relating to concerns of the Phase I vendors, the threat of the Phase II vendors possibly increasing to seven from the approved three vendors, she realizes that this is something that the board should address.

Before moving on to another issue, Senator Leon Guerrero asked for the LSG concessionaire agreement as well as the attachments referred to in *Gil Robles' testimony*.

On the issue of smoking at the airport, Senator Leon Guerrero understands that the law states there is no smoking allowed in government buildings, yet there is a smoking area at the airport. How did this happen? Can the airport board make this decision to smoke there? If so, why is there only one? She believes that if the airport allows it for one vendor, it should be allowed for any vendor who is willing to incur the costs to set up the necessary ventilation for compliance.

Mr. Robles' believes that the law allows for smoking to be permitted where there is a bar. Public Health cleared this and concluded that smoking can be allowed in a bar area. The only vendor with a bar at that time was LSG, so a smoking area was established there. They put in the added equipment to keep smoke out of the concourse area. There is another bar area in the food court area now and there is ongoing discussion to set up another smoking area in that location.

Senator Leon Guerrero wants to review statute on this issue because tenants have approached her about the unfairness that they cannot be allowed to install a smoking section in their area. In addition, she is interested in the language of the current statute on this issue as it relates to the authority's liability (from lawsuits, for example).

Tessie Marcos does not approve of smoking, personally, but she is aware of the nature of the tourists and their need to be provided a smoking area.

Senator Pangelinan asked if the board sought a legal opinion on this matter. Mr. Robles' replied that it was Public Health's approval that they were concerned with and this was the only approval they sought to date.

Senator Camacho asked if the food court qualified as a restaurant. If so, they would fall in the category allowing smoking in a designated area of their space.

Mr. Torres also shared that he heard that in certain areas in the United States, smokers are using the American Disabilities Act (ADA) because smoking is an addiction.

Senator Leon Guerrero called for a mark-up meeting with her committee to review the comments submitted for Bill 543 which she intends to introduce at session scheduled for next week.

Hearing no other requests to testify, this hearing was adjourned.

COMMITTEE FINDINGS

The Committee met on Friday, May 15th at 1:00 p.m. in Senator Leon Guerrero's office to discuss the testimonies submitted for Bill 543. The committee agrees that sections 1203.1(a)(iv) and (v) should be restated to clarify that the legislature does not intend to take away GIAA's ability to make sound, business decisions. However, this committee does want to make a statement that the GIAA board thoroughly consider all alternatives, especially in the bidding process, prior to making these sound, business decisions. As such, the committee has made changes to Bill 543 and will introduce this bill, as substituted by the committee.

COMMITTEE RECOMMENDATIONS

The Committee on Transportation, Telecommunications and Micronesia Affairs hereby submits Bill 543: "An act to amend Section 1203.1 of Title 12 GCA relevant to agreements between the A. B. Won Pat Guam International Airport Authority and concessions, other businesses and service providers; and agreements between GIAA and airlines," as substituted by the committee, with a recommendation **To Pass**.

24th Guam Legislature
Senator Carlotta A. Leon Guerrero
Chairperson
Committee on Transportation, Telecommunications & Micronesian Affairs

Legislature Temporary Building
Public Hearing Room
Tuesday, May 12, 1998
9:00 a.m.

Public Hearing on Bill 543:
An act to amend Section 2103.1 of Title 12 GCA
relevant to agreements between the
A. B. Won Pat Guam International Airport Authority
and concessions, other businesses and service providers;
and agreements between GIAA and airlines.

1. Gilbert E. Robles written/oral
2. Phil Torres written
3. FRANK R. SANDS oral
4. Bessie Deyter-Marcos oral
5. Frank R. Sautera oral
6. Steve Holbrook oral
7. _____
8. _____
9. _____
10. _____

**A.B. Won Pat Guam International Airport Authority
Testimony on Public Hearing for
Bill No. 543 (COR); An Act to Amend Section 1203.1 of Title 12
Twenty - Fourth Guam Legislature
Committee on Transportation, Telecommunications and Micronesian Affairs**

Good morning Madame Chairman and Senators of this Committee. My name is Gilbert Robles, Acting Executive Manager of the A.B. Won Pat Guam International Airport Authority and I thank you for this opportunity to submit testimony for this public hearing on Bill No. 543 (COR).

The proposed amendments to Section 1203.1 of Title 12 contained in Bill No. 543 are of grave concern to us. My testimony, thus, addresses each of the three amendments being considered followed by GIAA's official position on Bill No. 543.

I. First Amendment - Section 1203.1.(a) (iii)

“.... and any agreement derived from said concession agreement....”

1. We fail to understand the legislative intent of incorporating this proposed phrase since the original intent was to address GIAA's agreement with Duty Free Shoppers (DFS), Inc. and the modifications contemplated at the time with no extension of term, due to its exclusive nature.

2. The only agreement GIAA has in place which is derived from the DFS agreement is the Catering Concession Agreement with Lufthansa Service Guam (LSG) which was a major discussion item during last month's oversight hearing. The LSG agreement is non-exclusive since GIAA could contract directly with other food and beverage service providers.

3. By consent, LSG agreed to sublicense presently 12 food and beverage outlets to the likes of Burger King, Dominos and Shirley's. These sub-license agreements may also be considered derivatives of the DFS agreement. Thus, the proposed amendment will

preclude GIAA from extending the duration of terms for LSG and its sub-licensees and limit our flexibility to exercise sound business practices.

4. LSG and its sub-licensees have invested substantially into the fit out improvements for the food and beverage facilities. This is currently estimated at \$3.98 million. Since the amortization schedules exceed the remaining term of the agreement (2002), GIAA will incur a future financial liability of about \$1.35 million which represents the unamortized values. Granting the extension saves GIAA about \$255,000 a year and because of longer term stability, GIAA will also reap higher concession fees which will not be possible for the short term. The proposed amendment will prohibit similar scenarios from occurring where costs are minimized and revenues are maximized, i.e. good business practices.

II. Second Amendment - Section (a) (iv) [new section]

“(iv) GIAA is prohibited from entering into any master or general concession agreement or any agreement where the concessionaire is not the owner or operator providing the product or service.

1. The proposed language of this new section would impair GIAA’s ability and flexibility to manage our concessions program. We are, thus, concerned about this Committee’s intent to legislate management and business practices contrary to GIAA’s mandate as a public corporation.
2. For this Committee’s information, we are enclosing a presentation paper dated, October 12, 1993 by the Unison Consulting Group entitled “New Frontiers In Airport Retail”. This paper simplifies discussions on the four management approaches on airport concessions which are direct leasing, master concessionaire, developer and management contracts. Essentially, Bill No. 543 would prohibit all alternatives except direct leasing.

3. We are also enclosing our airport consultant's comments on Bill No. 543 from Leigh Fisher Associates dated April 27, 1998. Their comments provide additional insight as to the master concessionaire concept. An item to note, however, is the statement that a master concessionaire typically operates between 60% to 80% of the facilities and services. In GIAA's case, our food and beverage master concessionaire, LSG, would only be operating 25% of all outlets upon project completion.
4. In 1995, the Authority finalized a non-airline lease and concession policy which included objectives for maximizing revenues, minimizing Authority costs, and ensuring high-quality service. This policy was coordinated with the Guam Legislature. The proposed Bill No. 543 could limit the Authority's flexibility in pursuing these objectives by eliminating one concessions management approach—the master concessionaire agreement—an approach that has proven successful at many U.S. airports
5. The intent in developing the non-airline lease and concessionaire policy was to distinguish between matters to be determined by Authority policy and matters to be determined by legislation. The policy clearly indicates that selecting a particular concessions management arrangement is a policy matter, subject to the guidelines of competition, revenue maximization, and service quality.
6. The Authority has made considerable progress in implementing public-private partnerships at the Airport, reducing required staffing levels, and creating incentives for enhanced efficiency. Prohibiting the use of master concessionaire agreements would increase the administrative burden of the Authority and could result in increased staffing, which would be in direct conflict with ongoing efforts to increase private business participation at the Airport.

7. Even if it could be concluded that master concessionaire agreements are not desirable for Guam (a conclusion we question), the timing for such legislation (today) does not seem appropriate. The existing food and beverage agreement does not expire until January 2002, and any legislation passed today will not affect concession arrangements until that time. Because conditions in Guam and the concessions industry may change-- and change considerably-- between now and 2002, it would be prudent to wait until then to determine what concession management arrangements should or should not be considered.

8. In financing the terminal expansion, a particular concern of the bond rating agencies was the degree of autonomy the Authority had in managing the performance of the Airport. The draft non-airline lease and concession policy was used as an example of the guiding principles to assure flexibility and autonomy in maximizing Airport revenues. The proposed Bill 543 would contradict these representations and possibly raise concerns that the Authority does not have the assumed flexibility to maximize Airport revenues.

III. Third Amendment - Section 1203.1 (a) (v) [new section]

“(V) In order to maximize local participation in the concession business at the airport, the GIAA shall, to the extent consistent with good business practice, make available the maximum number of opportunities for local businesses to provide the concession good and services at the airport.

1. GIAA does not oppose the intent of this section, however, a clarification has to be made on the definitions of local participation and local businesses. What criteria classifies a company to be local business? Such criteria should not be unconstitutional, inorganic nor conflict with federal or local statutes relative to equal opportunity. Such conflict may occur since GIAA is recipient of federal grants and, thus, provided assurances to the Federal Aviation Administration to maximize

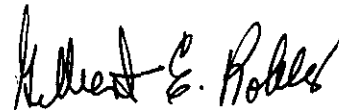
revenues in order to be self-sustaining.

2. Despite the lack of a clear definition, GIAA has always and continues to promote local enterprises for our retail concessions. An excellent example is the exclusive agreement with DFS where we were able to negotiate three Guam Business Enterprises (GBE's) into their retail environment. These GBE's are now in operation handling books and magazines, electronics and sundries.

IV. Summary

Based on our foregoing testimony, GIAA opposes the passage of Bill 543. We are willing to work with this Committee, by policy or practice, on determining the best approaches to GIAA's concession management.

Thank you and Si Yuus Maase.



GILBERT E. ROBLES

Acting Executive Manager

ALTERNATIVE APPROACHES TO AIRPORT CONCESSIONS MANAGEMENT

ATTACHMENT A

"NEW FRONTIERS IN AIRPORT RETAIL"

October 12, 1993

Presented By:
Susan C. Luzar - *Vice President*

Unison Consulting Group, Inc.

Chicago - Los Angeles - Denver - Miami

(312)400-1100 - FAX: (312)421-3840

(714)693-9152 - FAX: (312)779-0332

OBJECTIVES OF CONCESSIONS PROGRAM

- ▶ **Maximize/optimize Airport concession revenues.**
- ▶ **Address passenger needs and preferences.**
- ▶ **Maximize customer service, convenience, and value of products & services.**
- ▶ **Promote local themes and concepts.**
- ▶ **Optimize DBE participation.**
- ▶ **Retains Airport control of concessions program.**
- ▶ **Minimize Airports capital investment in program.**
- ▶ **Minimize concessionaire's risk associated with changes/fluctuations in Airline activity.**
- ▶ **Optimize merchandise mix & efficient use of facilities.**
- ▶ **Minimize Airport's administrative costs.**

DIRECT LEASING

Advantages/Disadvantages

ADVANTAGES:

- ▶ **Airports control the selection of concession types and operators.**
- ▶ **Tends to allow a greater variety of concession operators to participate in the program.**
- ▶ **Tends to promote competition, in pricing and quality of products and services.**
- ▶ **Airport controls space and concession types for DBE participation.**

DISADVANTAGES:

- ▶ **May require more support space.**
- ▶ **May not allow new DBE concession operators, with limited experience, to participate in the program.**
- ▶ **Airport assumes the financial risk associated with vacant space.**
- ▶ **Higher administrative costs incurred by the Airport.**

MASTER CONCESSIONAIRE

Advantages/Disadvantages

ADVANTAGES:

- ▶ **Tends to optimize concession revenues to the Airport - economies of scale.**
- ▶ **Can operate facilities directly or operate as a developer/manager.**
- ▶ **Tends to insure uninterrupted service to the airport & eliminates the risk of vacant space and loss of revenues.**
- ▶ **Ability to relocate individual operators more quickly in the event airline activity fluctuates or airlines are relocated.**
- ▶ **Provides management training programs for new DBE operators.**
- ▶ **Consistent operating and design standards.**
- ▶ **Minimizes airport's administrative costs.**
- ▶ **As an operator, does not add another layer of cost, which serves to drive prices up and/or revenues to the airport down.**

MASTER CONCESSIONAIRE

Advantages/Disadvantages

(Continued)

DISADVANTAGES:

- ▶ **There are a limited number of operators who are qualified to act as a "Master."**
- ▶ **Precludes DBE operators from direct leasing with the Airport.**
- ▶ **Historical tendency of non-branded facilities to look the same/"generic."**

DEVELOPER *Advantages/Disadvantages*

ADVANTAGES:

- ▶ **Potential to optimize revenues to the airport - assuming nationally recognized operators will generate high enough revenues to cover the developer's fees.**
- ▶ **Assumes the financial risk of unoccupied space.**
- ▶ **Contacts in the retail industry, and knowledge of national retail trends.**
- ▶ **Tends to provide greater variety of retail shops and eating establishments.**
- ▶ **Tends to promote competition, in pricing and quality of products and services.**
- ▶ **Minimizes airport's administrative costs.**

DEVELOPER *Advantages/Disadvantages*

ADVANTAGES:

- ▶ **Potential to optimize revenues to the airport - assuming nationally recognized operators will generate high enough revenues to cover the developer's fees.**
- ▶ **Assumes the financial risk of unoccupied space.**
- ▶ **Contacts in the retail industry, and knowledge of national retail trends.**
- ▶ **Tends to provide greater variety of retail shops and eating establishments.**
- ▶ **Tends to promote competition, in pricing and quality of products and services.**
- ▶ **Minimizes airport's administrative costs.**

DEVELOPER

Advantages/Disadvantages

(Continued)

DISADVANTAGES:

- ▶ **There are a limited number of developers with airport experience.**
- ▶ **Precludes DBE operators from direct leasing with the airport.**
- ▶ **The developer may have less flexibility in relocating concessionaires in the event airline activity declines/fluctuates.**
- ▶ **The developer is paid a fee to manage the program, which may reduce revenues to the Airport and/or concessionaire depending on the negotiated agreement.**
- ▶ **The inherent competition created by this approach may have an adverse effect on small businesses.**
- ▶ **Tendency for leases to be long-term.**
- ▶ **May require more support space for individual tenants.**

MANAGEMENT CONTRACTS

Advantages/Disadvantages

ADVANTAGES:

- ▶ **Airport controls the selection of concession types and operators.**
- ▶ **Airport has financial control over concessions.**
- ▶ **Tends to allow a greater variety of concession operators to participate in the program.**
- ▶ **Airport controls space and concession types for DBE participation.**

DISADVANTAGES:

- ▶ **Airport funds capital improvements.**
- ▶ **Construction/renovation projects tend to take longer.**
- ▶ **Airport assumes the financial risk associated with vacant space.**
- ▶ **Tendency for higher airport administrative costs associated with managing the program.**



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April 27, 1998

Mr. Gilbert E. Robles
Acting Executive Manager
Guam International Airport Authority
P. O. Box 8770
Tamuning, Guam 96931

Re: Comments and Conclusions Concerning the Proposed Bill No. 543 to Amend Section 1203.1, Title 12, GCA

Dear Mr. Robles:

In response to your request, we have reviewed the proposed Bill No. 453 and prepared this letter with our comments and conclusions.

Background on Concession Management Approaches

We understand that the purpose of Bill No. 543 is to regulate master/operator agreements. You have asked us to comment upon industry practices with regard to such agreements and the advantages and disadvantages of this and other management approaches. Our comments, from our experience at U.S. airports, may be summarized as follows:

1. The master concessionaire/operator agreement has been used—and is being used—at many U.S. Mainland airports today, including Anchorage, Baltimore, Charleston, Cleveland, Fort Lauderdale, Los Angeles, Louisville, Memphis, Minneapolis, San Francisco, Seattle, St. Louis, Tampa, and Tucson, among others. At some of the larger airports (e.g., San Francisco), there may be more than one master agreement. Its use has been so widespread it is now considered a “traditional” model. As a matter of interest, this arrangement is typically called “master” concessionaire; the “operator” part is implicit in the industry definition (see next paragraph).


ATTACHMENT B



Mr. Gilbert E. Robles
April 27, 1998

2. In industry parlance, the master concessionaire arrangement is defined as the award of all food and beverage privileges, or all merchandise privileges, or both, to a single experienced retail* company, who is then obligated, as a condition of the agreement, to enter into subcontracts with one or more subtenants (e.g., brand or local retailers) for a given percentage of the estimated sales to be generated from the privilege. The purpose of the master concessionaire arrangement is to place the responsibility for development and operation of all the services and facilities—and the administration of all (sub)tenants—under a single experienced operator, with financial and management depth, to ensure the highest possible revenues and the highest level of public service—and to reduce the administrative burden on airport staff (staff must deal with only one concessionaire rather than multiple concessionaires).
3. A master concessionaire typically operates more than 60% of the facilities and services under the agreement—and sometimes as much as 80%. If the master concessionaire company were prohibited from operating any facilities or services, it would have little incentive to enter into a contract that requires the company to develop facility designs, make the necessary investment, administer the subcontracts, and be solely responsible for the operation of all the facilities and services.
4. The master concessionaire arrangement has worked successfully at most airports where used, particularly in those where it has been administered consistent with the contractual intent, i.e., only the master concessionaire deals with the airport operator; the subcontractors deal only with the master concessionaire.
5. The master concessionaire arrangement can have many advantages. It permits attaining a high level of revenues and a high level of service; it ensures participation by local business enterprises, by brand name businesses, and by any other category of retailer desired by the airport; it ensures continuous, uninterrupted operation of all facilities in case a subcontractor fails; and, if operated consistent with the contractual intent, it minimizes the administrative burden on the airport operator. This minimization of administrative burden has been a primary reason that many airports have selected this approach for awarding retail concession privileges.

* For purposes of this letter, the term "retail" refers to both food and beverage and merchandise services.



Mr. Gilbert D. Sobles
April 27, 1998

Other management approaches also can be effective. The direct leasing approach has worked well at many airports but, where there are numerous tenants, this approach requires staff dedicated solely to concessions, with such staff ideally having strong commercial retail management background.

Similarly, the third-party developer approach has been effective at several airports, but, from the developer's standpoint, this approach typically requires at least 6 million annual enplanements and the privilege ideally should cover all retail operations (food/beverage and merchandise).

Conclusions

On the basis of our experience in assisting U.S. airports with retail concessions management, our knowledge of the situation in Guam, and our review of the proposed legislation, we offer the following comments and conclusions.

1. **Alternative Concessions Management Approaches.** There are alternative approaches to retail concessions management which have different advantages and disadvantages, but each of which has proven effective in individual circumstances. The preferred approach for any one airport will depend on specific conditions at a given time—and these conditions may change from time to time. While the Authority, or any other airport operator, may determine that a particular approach is most desirable today, this determination may change in the future—and such determinations should be a board/management decision based on then current industry and local conditions. Permanently excluding any concession management option through legislation will limit the Authority's flexibility to respond to future conditions and to select what may be a different and preferable approach to maximize competition, revenues, and service—or to achieve new or different objectives.
2. **Non-Airline Lease and Concession Policy.** In 1995, the Authority finalized a non-airline lease and concession policy which included objectives for maximizing revenues, minimizing Authority costs, and ensuring high-quality service. This policy was coordinated with the Guam Legislature. The proposed Bill No. 543 could limit the Authority's flexibility in pursuing these objectives by eliminating one concessions management approach—the master concessionaire agreement—an approach that has proven successful at many U.S. airports.
3. **Policy versus Legislation.** The intent in developing the non-airline lease and concession policy was to distinguish between matters to be deter-



Mr. Gilbert E. Robles
April 27, 1998

mined by Authority policy and matters to be determined by legislation. The policy clearly indicates that selecting a particular concessions management arrangement is a policy matter, subject to the guidelines of competition, revenue maximization, and service quality.

4. **Public-Private Partnerships.** The Authority has made considerable progress in implementing public-private partnerships at the Airport, reducing required staffing levels, and creating incentives for enhanced efficiency. Prohibiting the use of master concessionaire agreements would increase the administrative burden of the Authority and could result in increased staffing, which would be in direct conflict with ongoing efforts to increase private business participation at the Airport.
5. **Timing.** Even if it could be concluded that master concessionaire agreements are not desirable for Guam (a conclusion we question), the timing for such legislation (today) does not seem appropriate. The existing food and beverage agreement does not expire until January 2002, and any legislation passed today will not affect concession arrangements until that time. Because conditions in Guam and the concessions industry may change—and change considerably—between now and 2002, it would be prudent to wait until then to determine what concession management arrangements should or should not be considered. As you know, we are currently assisting the Authority in evaluating strategies for rebidding retail concession agreements in 2002. At the very least, it would seem appropriate to wait for the outcome of these analyses before limiting future options.
6. **Financing Representations.** In financing the terminal expansion, a particular concern of the bond rating agencies was the degree of autonomy the Authority had in managing the performance of the Airport. The draft non-airline lease and concession policy was used as an example of the guiding principles to assure flexibility and autonomy in maximizing Airport revenues. The proposed Bill No. 543 would contradict these representations and possibly raise concerns that the Authority does not have the assumed flexibility to maximize Airport revenues.

In summary, we are concerned that the proposed Bill No. 543 would unnecessarily limit the Authority's options to both maximize Airport revenue and enhance private sector participation. We believe it would be more desirable—and certainly more prudent—to keep open all available concession management options, subject to reasonable objectives, and allow the Authority, as an



Mr. Gilbert L. Nobles
April 27, 1998

autonomous agency, to determine the preferred concessions management approach in the future in relation to then current industry conditions.

* * * * *

We hope these comments are of value. Please call if you have any questions or if we can be of further assistance.

Sincerely,

Mark D. Taylor
Principal Associate

MDT/sjh
Enclosure
ENCLOSURE

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MEMORANDUM

**TO: TWENTY-FOURTH GUAM LEGISLATURE;
COMMITTEE ON TRANSPORTATION, TELECOMMUNICATIONS
AND MICRONESIAN AFFAIRS**

**FROM: LAW OFFICE OF GAYLE & TEKER and LSG LUFTHANSA SERVICE
GUAM, INC.**

DATE: May 12, 1998

RE: PUBLIC HEARING FOR BILL 543

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Our office, and our client LSG Lufthansa Service Guam, Inc. ("LSG") have reviewed Bill No. 543 for this public hearing. We oppose Bill No. 543. Bill No. 543 is a Bill that is aimed directly at LSG and impairs the contractual relationship between LSG and the Guam International Airport Authority ("GIAA"), with respect to the existing Master Concessionaire Agreement between the two. In that way it is our opinion that the Bill is inorganic.

The stated intent of the Bill is to maximize the opportunity for local businesses to sell their products to visitors and to make sure that concessions available at GIAA are granted on a comparative basis. We think that the intent is admirable but that the language is broad and open to interpretation. We also think the GIAA, which must approve all concessionaires, has worked with LSG to maximize opportunities for granting the concessions on a competitive basis. All concessionaires at the Airport have Guam business licenses and are local businesses.

Bill No. 543 is clearly aimed at LSG by the amendment to §1203.1(a)(iii) and prevents the current Master Concessionaire Agreement from being modified or extended. The current agreement between LSG and GIAA has an option provision and this section would prevent GIAA from executing that option. Furthermore, in §1203.1(a)(iv) GIAA

To: Twenty-Fourth Guam Legislature
From: Phillip Torres
Date: May 12, 1998
Page: 2

would be barred from entering into a Master Concessionaire Agreement and we fail to see the logic for such a provision. LSG is aware of no international airport in the world that does not have a Master Concessionaire to oversee the concessions at the airport. We think that it is a task which requires expertise in the area of food and beverage, health laws, constructions laws, financial matters, management and administration. We believe that function is handled better by contract with the private sector than by having the government manage such a task.

Finally, the last amendment provides at §1203(a)(v) that the provision that the Airport shall maximize the number of concessions to give more opportunities to local businesses. We believe that that is what has happened in the past. It is important to remember that one of the Airport's responsibilities in this regard is to put responsible concessionaires into the Airport so that it would generate the maximum revenues and not jeopardize its bond debt of financial standing. That is a good business practice and that is not at odds with maximizing local participation. Again, the Bill is confusing with its use of "local participation" because all businesses which are up there are local. Is this Bill aimed at specific products or items. If it is, it should so state.

In summary, LSG opposes this Bill because it works as an impairment to its contractual relationship with GIAA and therefore is inorganic. *See Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978) and *Northshore Cycles, Inc. v. Yamaha Motor Corporation*, 919 F.2d 1042 (1990). It furthermore seeks to maximize local participation within the confines of good business practices, which LSG believes is already being done and it would prohibit GIAA from entering into a Master or General Concessionaire Agreement which LSG believes is not a good business practice.