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**Alison Powers**  
Executive Director

## TESTIMONY OF ALISON POWERS

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SENATE COMMITTEE ON WAYS AND MEANS  
Senator Rosalyn H. Baker, Chair  
Senator Shan S. Tsutsui, Vice Chair

Thursday, February 21, 2008  
9:30 a.m.

### **SB 2916, SD1**

Chair Baker, Vice Chair Tsutsui and members of the committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 60% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council takes no position on the merits of this measure. However, if the intent of this bill is to impose "car rental customer facility charges" on every rental motor vehicle transaction in the State we request that SB 2916, SD1 be amended to exempt from the facility charges those transactions where the lessor is renting the vehicle to replace a vehicle of the lessee that is being repaired. This exemption would be similar to the current exemption applicable to the Rental Motor Vehicle and Tour Vehicle Surcharge Tax contained in Section 251 -2, Hawaii Revised Statutes.

Thank you for the opportunity to comment on this measure.



544 Ohohia Street  
Honolulu HI 96819

Honorable Rosalyn H. Baker, Chair  
Ways and Means Committee  
Hawaii State Senate  
State of Hawaii

February 21, 2008

RE: SB 2916 – Relating to Transportation

Honorable Chair Baker and Honorable Committee Members:

My name is Wayne Tanaka and I am the Vice President/General Manager of Enterprise Rent-A-Car Company of Hawaii. Enterprise Rent-A-Car currently has 25 rental locations within Hawaii.

Enterprise Rent-A-Car is opposed to this bill in its present form for the following reasons:

1. **No defined project.** – The Department of Transportation would like to improve various airports and projects across the State of Hawaii. This bill does not identify any specific new rent-a-car Consolidated Facility. We are opposed to the collection of a Customer Facility Charge for a project or projects that have not been identified or defined. Before moving forward we would like 1) an acceptable location defined, 2) an approved conceptual project design, and 3) a reasonable financing plan.
2. **Consolidated Facility Budget** - Currently there is no budget in place for this Consolidated Facility.
3. **Fee Collection** – This proposed bill is not clear on what rent-a-car locations would collect this fee. We do not feel it would be fair or legal to collect a CFC fee from renters on Maui, Big Island, Molokai, and Kauai for a CFC facility built on Oahu. We have concerns about local residents renting cars in local neighborhoods (Kaneohe, Waipahu, Kihei, Kaanapali, Hilo, Keauhou, etc.) and having to pay this CFC fee. We also have a number of rent-a-car offices on military bases (Hickam, Schofield, Pearl Harbor, Kaneohe MCAS, etc) that should not have to pay this CFC fee.

4. **Rulemaking Process** – This bill states the “department may establish a car rental customer facility charge by rule”. Does this mean the department can set any amount for this CFC fee? Would the rent-a-car companies have any input on the amount, length of the collection period, or what locations collect this fee? We would like to have a better understanding of this rulemaking process.
5. **Transfer of Funds** – We have concerns that the rent-a-car CFC money collected may be diverted to other projects not related to a new Consolidated Facility for rent-a-car companies at Hawaii Airports. It is our understanding that in the past, millions of dollars collected from our renters to improve the State Highways have been transferred out of the State Highway fund for other projects not related to our State Highways.
6. **Existing Facilities** – We feel strongly that existing facilities needing “improvement, enhancement, or renovation” should be paid for by the current tenant. It has been over 15 years since there has been a bid to operate on-site at many of the major Hawaii airports. Using CFC money collected to “improve, enhance, or renovate existing facilities” is not fair. CFC money collected should only be used to build a new Consolidated Facility for rent-a-car companies.
7. **Property Acquisition** – CFC money collected should not be used to acquire property. CFC money collected should only be used to build new Consolidated Facilities for rent-a-car companies.

In closing, Enterprise Rent-A-Car is opposed to the introduction of this proposed CFC legislation for the 2008 legislative session. We are willing to continue to work in good faith with the DOT and the rent-a-car industry to address the concerns listed above. Should you decide to pass this bill today, we have attached some proposed amendments to clarify some of our concerns with this current bill. Thank you for allowing us to testify.

**Report Title:**

*Transportation; Airports*

**Description:**

*Establishes a car rental customer facility charge special fund to be used for enhancement, renovation, operation and maintenance of existing rental car customer facilities, and the development of car rental customer facilities at state airports; authorizes the Department of Transportation to establish, by rule, car rental customer facility charges for deposit in the fund. (SD1)*

THE SENATE  
TWENTY-FOURTH LEGISLATURE, 2008  
STATE OF HAWAII

**S.B. NO.** 2916  
S.D. 1

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# A BILL FOR AN ACT

*RELATING TO TRANSPORTATION.*

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. Airports throughout the United States have renovated, reconfigured, and relocated car rental customer facilities as an appropriate means of efficiently and effectively dealing with increased demands for space. Many, if not most, of these airports commonly use the collection of a car rental customer facility charge to finance the renovation, construction, operation, and maintenance of car rental customer facilities, and pay for associated shuttle bus systems to transport passengers to and from these car rental customer facilities without adversely affecting general airport funds.

Further, the legislature finds that concessionaires, including car rental companies, have historically contributed about fifty per cent or more of Hawaii's airport revenues by way of concession rental payments. Such revenues have typically been used primarily to pay for improvements for airlines, as well as some improvements for airport concessions. It is not the intent of the legislature to preclude the use of such revenues for facility improvements and other support for car rental concessions at public airports by the passage of this Act. Given the future expenditure plans and present shortage of airport revenues for facility and other improvements, it is the intent of the legislature to expedite the provision of needed car rental facilities that can better serve Hawaii's visitors and residents.

The purpose of this Act is to provide the department of transportation with the authority to establish and collect a car rental customer facility charge and use the revenues collected for the ~~[renovation and]~~ development of car rental customer facilities including, ~~[without limitation, acquisition of property or property rights;]~~ acquisition of equipment for and operation of a unified shuttle bus system to and from passenger terminals and rental car facilities; and design, construction, ~~[renovation,]~~ operation, and maintenance of the car rental customer facilities. It is the intent of the legislature to have the collected car rental facility charges from each state

airport be used only on approved car rental facilities at the  
respective state airport from which the moneys were collected.

SECTION 2. Chapter 261, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§261- \_\_\_\_\_ Car rental customer facility charge special fund.** (a) There is established in the state treasury the car rental customer facility charge special fund to be administered by the director and into which shall be deposited all proceeds from the car rental customer facility charge.

(b) Moneys in the car rental customer facility charge special fund shall be used for [~~enhancement, renovation, operation and maintenance of existing rental car customer facilities, and~~] the development of car rental customer facilities at state airports, [~~including acquisition and maintenance of property or property rights,~~] acquisition of equipment for and operation of a unified shuttle bus system to and from passenger terminals and the rental car facilities, consultant fees, and design, construction, operation, and maintenance of, or allocable to, the approved car rental customer facilities. In planning the future needs and expenditures of such moneys, the director shall, at least once a year, consult with lessors, as defined in section 437D-3, who are using or who in the future may use such facilities and services.

- (c) The car rental customer facility charge special fund shall be exempt from sections 36-30 and 103-8.5."
- (d) Moneys in the car rental customer facility charge special fund shall be used only for approved car rental customer facilities at the state airport from which the moneys were collected.
- (e) The car rental customer facility charge will only be collected by on-airport rent-a-car operators.

SECTION 3. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- "(a) Each special fund, except the:
- (1) Transportation use special fund established by section 261D-1;
  - (2) Special out-of-school time instructional program fund under section 302A-1310;
  - (3) School cafeteria special funds of the department of education;
  - (4) Special funds of the University of Hawaii;
  - (5) State educational facilities improvement special fund;
  - (6) Special funds established by section 206E-6;
  - (7) Aloha Tower fund created by section 206J-17;
  - (8) Funds of the employees' retirement system created by section 88-109;
  - (9) Unemployment compensation fund established under section 383-121;

- (10) Hawaii hurricane relief fund established under chapter 431P;
- (11) Convention center enterprise special fund established under section 201B-8;
- (12) Hawaii health systems corporation special funds and the subaccounts of its regional system boards;
- (13) Tourism special fund established under section 201B-11;
- (14) Universal service fund established under chapter 269;
- (15) Emergency and budget reserve fund under section 328L-3;
- (16) Public schools special fees and charges fund under section 302A-1130(f);
- (17) Sport fish special fund under section 187A-9.5;
- (18) Neurotrauma special fund under section 321H-4;
- (19) Center for nursing special fund under section 304A-2163;
- (20) Passenger facility charge special fund established by section 261-5.5;
- (21) Court interpreting services revolving fund under section 607-1.5;
- (22) Trauma system special fund under section 321-22.5;
- (23) Hawaii cancer research special fund;
- (24) Community health centers special fund; [~~and~~]
- (25) Emergency medical services special fund; and



(26) Car rental customer facility charge special fund  
established under section 261-\_\_\_\_\_ ,

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned."

SECTION 4. Section 103-8.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is created a works of art special fund, into which shall be transferred one per cent of all state fund appropriations for capital improvements designated for the construction cost element; provided that this transfer shall apply only to capital improvement appropriations that are designated for the construction or renovation of state buildings. The one per cent transfer requirement shall not apply to appropriations from the passenger facility charge special fund established by section 261-5.5[~~-~~] and the car rental customer facility charge special fund established by section 261-\_\_\_\_\_ ."

SECTION 5. Section 261-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except for:

- (1) That portion of the payments received by the department under a contract entered into as authorized by section 261-7 and deposited in the transportation .

use special fund pursuant to section 261D-1~~[, and~~  
~~except for all]~~;

(2) All proceeds from the passenger facility charge and deposited in the passenger facility charge special fund [7]; and

(3) All proceeds from the car rental customer facility charge and deposited in the car rental customer facility charge special fund,

all moneys received by the department from rents, fees, and other charges collected pursuant to this chapter, as well as all aviation fuel taxes paid pursuant to section 243-4(a)(2), shall be paid into the airport revenue fund created by section 248-8.

All moneys paid into the airport revenue fund shall be appropriated, applied, or expended by the department for any purpose within the jurisdiction, powers, duties, and functions of the department related to the statewide system of airports, including, without limitation, the costs of operation, maintenance, and repair of the statewide system of airports and reserves therefor, and acquisitions (including real property and interests therein), constructions, additions, expansions, improvements, renewals, replacements, reconstruction, engineering, investigation, and planning for the statewide system of airports, all or any of which in the judgment of the department are necessary to the performance of its duties or functions. The department shall generate sufficient revenues

from its airport properties to meet all of the expenditures of the statewide system of airports and to comply with section 39-61; provided that as long as sufficient revenues are generated to meet such expenditures, the director of transportation may, in the director's discretion, grant a rebate of the aviation fuel taxes paid into the airport revenue fund during a fiscal year pursuant to sections 243-4(a)(2) and 248-8 to any person who has paid airport use charges or landing fees during such fiscal year. Such rebate may be granted during the next succeeding fiscal year but shall not exceed one-half cent per gallon per person, and shall be computed on the total number of gallons for which the tax was paid by such person, for such fiscal year."

SECTION 6. Section 261-7, Hawaii Revised Statutes, is amended to read as follows:

**"§261-7 Operation and use privileges.** (a) In operating an airport or air navigation facility owned or controlled by the department of transportation, or in which it has a right or interest, the department may enter into contracts, leases, licenses, and other arrangements with any person:

- (1) Granting the privilege of using or improving the airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes;

- (2) Conferring the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility;
- (3) Making available services, facilities, goods, commodities, or other things to be furnished by the department or its agents at the airport or air navigation facility; or
- (4) Granting the use and occupancy on a temporary basis by license or otherwise any portion of the land under its jurisdiction which for the time being may not be required by the department so that it may put the area to economic use and thereby derive revenue therefrom.

All the arrangements shall contain a clause that the land may be repossessed by the department when needed for aeronautics purposes upon giving the tenant temporarily occupying the same not less than thirty days' notice in writing of intention to repossess.

(b) Except as otherwise provided in this section, in each case mentioned in subsection (a)(1), (2), (3), and (4), the department may establish the terms and conditions of the contract, lease, license, or other arrangement, and may fix the charges, rentals, or fees for the privileges, services, or things granted, conferred, or made available, for the purpose of meeting the expenditures of the statewide system of airports set forth in section 261-5(a), which includes expenditures for

capital improvement projects approved by the legislature. Such charges shall be reasonable and uniform for the same class of privilege, service, or thing.

(c) The department shall enter into a contract with no more than one person ("contractor") for the sale and delivery of in-bond merchandise at Honolulu International Airport, in the manner provided by law. The contract shall confer the right to operate and maintain commercial facilities within the airport for the sale of in-bond merchandise and the right to deliver to the airport in-bond merchandise for sale to departing foreign-bound passengers.

The department shall grant the contract pursuant to the laws of this State and may take into consideration:

- (1) The payment to be made on in-bond merchandise sold at Honolulu International Airport and on in-bond merchandise displayed or sold elsewhere in the [~~State~~] state and delivered to the airport;
- (2) The ability of the applicant to comply with all federal and state rules and regulations concerning the sale and delivery of in-bond merchandise; and
- (3) The reputation, experience, and financial capability of the applicant.

The department shall actively supervise the operation of the contractor to [~~insure~~] ensure its effectiveness. The department shall develop and implement such guidelines as it may

find necessary and proper to actively supervise the operations of the contractor, and shall include guidelines relating to the department's review of the reasonableness of contractor's price schedules, quality of merchandise, merchandise assortment, operations, and service to customers.

Apart from the contract described in this subsection, the department shall confer no right upon nor suffer nor allow any person to offer to sell, sell, or deliver in-bond merchandise at Honolulu International Airport; provided that this section shall not prohibit the delivery of in-bond merchandise as cargo to the Honolulu International Airport.

(d) The department, by contract, lease, or other arrangement, upon a consideration fixed by it, may grant to any qualified person the privilege of operating, as agent of the State or otherwise, any airport owned or controlled by the department; provided that no such person shall be granted any authority to operate the airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the department might not have undertaken under subsection (a).

(e) The department may fix and regulate, from time to time, reasonable landing fees for aircraft, including the imposition of landing surcharges or differential landing fees, and other reasonable charges for the use and enjoyment of the airports and the services and facilities furnished by the

department in connection therewith, including the establishment of a statewide system of airports landing fees, a statewide system of airports support charges, and joint use charges for the use of space shared by users, which fees and charges may vary among different classes of users such as foreign carriers, domestic carriers, inter-island carriers, air taxi operators, helicopters, and such other classes as may be determined by the director, for the purpose of meeting the expenditures of the statewide system of airports set forth in section 261-5(a), which includes expenditures for capital improvement projects approved by the legislature.

In setting airports rates and charges, including landing fees, the director may enter into contracts, leases, licenses, and other agreements with aeronautical users of the statewide system of airports containing such terms, conditions, and provisions as the director deems advisable.

If the director has not entered into contracts, leases, licenses, and other agreements with any or fewer than all of the aeronautical users of the statewide system of airports prior to the expiration of an existing contract, lease, license, or agreement, the director shall set and impose rates, rentals, fees, and charges pursuant to this subsection without regard to the requirements of chapter 91; provided that a public informational hearing shall be held on the rates, rentals, fees, and charges.

The director shall develop rates, rentals, fees, and charges in accordance with a residual methodology so that the statewide system of airports shall be, and always remain, self-sustaining. The rates, rentals, fees, and charges shall be set at such levels as to produce revenues which, together with aviation fuel taxes, shall be at least sufficient to meet the expenditures of the statewide system of airports set forth in section 261-5(a), including expenditures for capital improvement projects approved by the legislature, and to comply with covenants and agreements with holders of airport revenue bonds.

The director may develop and formulate methodology in setting the various rates, rentals, fees, and charges imposed and may determine usage of space, estimate landed weights, and apply such portion of nonaeronautical revenue deemed appropriate in determining the rates, rentals, fees, and charges applicable to aeronautical users of the statewide system of airports.

The rates, rentals, fees, and charges determined by the director in the manner set forth in this subsection shall be those charges payable by the aeronautical users for the periods immediately following the date of expiration of the existing contract, lease, license, or agreement. If fees are established pursuant to this section, the department shall prepare a detailed report on the circumstances and rates and charges that have been established, and shall submit the report to the



legislature no later than twenty days prior to the convening of the next regular session.

If a schedule of rates, rentals, fees, and charges developed by the director in accordance with this section is projected by the department to produce revenues which, together with aviation fuel taxes, will be in excess of the amount required to meet the expenditures of the statewide system of airports set forth in section 261-5(a), including expenditures for capital improvement projects approved by the legislature, and to comply with covenants and agreements with holders of airport revenue bonds, the department shall submit the schedule of rates, rentals, fees, and charges to the legislature prior to the convening of the next regular session of the legislature. Within forty-five days after the convening of the regular session, the legislature may disapprove any schedule of rates, rentals, fees, and charges required to be submitted to it by this section by concurrent resolution. If no action is taken by the legislature within the forty-five-day period the schedule of rates, rentals, fees, and charges shall be deemed approved. If the legislature disapproves the schedule within the forty-five-day period, the director shall develop a new schedule of rates, rentals, fees, and charges in accordance with this section within seventy-five days of the disapproval. Pending the development of a new schedule of rates, rentals, fees, and

charges, the schedule submitted to the legislature shall remain in force and effect.

Notwithstanding any other provision of law to the contrary, the department may waive landing fees and other aircraft charges established under this section at any airport owned or controlled by the State whenever:

- (1) The governor declares a state of emergency; and
- (2) The department determines that the waiver of landing fees and other charges for the aircraft is consistent with assisting in the delivery of humanitarian relief to disaster-stricken areas of the [~~State.~~] state.

(f) To enforce the payment of any charges for repairs or improvements to, or storage or care of any personal property made or furnished by the department or its agent in connection with the operation of an airport or air navigation facility owned or operated by the department, the department shall have liens on the property, which shall be enforceable by it as provided by sections 507-18 to 507-22.

(g) The department from time to time may establish developmental rates for buildings and land areas used exclusively for general aviation activities at rates not less than fifty per cent of the fair market rentals of the buildings and land areas and may restrict the extent of buildings and land areas to be [~~utilized.~~] used.

(h) The department may establish car rental customer facility charges by rule."

SECTION 7. Section 437D-8.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Notwithstanding any law to the contrary, a lessor may visibly pass on to a lessee:

- (1) The general excise tax attributable to the transaction;
- (2) The vehicle license and registration fee and weight taxes, prorated at 1/365th of the annual vehicle license and registration fee and weight taxes actually paid on the particular vehicle being rented for each full or partial [~~twenty-four hour~~] twenty-four-hour rental day that the vehicle is rented; provided the total of all vehicle license and registration fees charged to all lessees shall not exceed the annual vehicle license and registration fee actually paid for the particular vehicle rented;
- (3) The rental motor vehicle surcharge tax as provided in section 251-2 attributable to the transaction;
- (4) The county surcharge on state tax under section 46-16.8; provided that the lessor itemizes the tax for the lessee; and
- (5) The rents or fees paid to the department of transportation under concession contracts[7]

negotiated pursuant to chapter 102, [~~0~~] service permits[~~7~~] granted pursuant to title 19, Hawaii administrative rules, or car rental customer facility charges established pursuant to 261-7; provided that:

- (A) The rents or fees are limited to amounts that can be attributed to the proceeds of the particular transaction;
- (B) The rents or fees shall not exceed the lessor's net payments to the department of transportation made under concession contract or service permit;
- (C) The lessor submits to the department of transportation and the department of commerce and consumer affairs a statement, verified by a certified public accountant as correct, that reports the amounts of the rents or fees paid to the department of transportation pursuant to the applicable concession contract or service permit:
  - (i) For all airport locations; and
  - (ii) For each airport location;
- (D) The lessor submits to the department of transportation and the department of commerce and consumer affairs a statement, verified by a certified public accountant as correct, that reports the amounts charged to lessees:
  - (i) For all airport locations;

- (ii) For each airport location; and
  - (iii) For each lessee;
- (E) The lessor includes in these reports the methodology used to determine the amount of fees charged to each lessee; and
- (F) The lessor submits the above information to the department of transportation and the department of commerce and consumer affairs within three months of the end of the preceding annual accounting period or contract year as determined by the applicable concession agreement or service permit.

The respective departments, in their sole discretion, may extend the time to submit the statement required in this subsection. If the director determines that an examination of the lessor's information is inappropriate under this subsection and the lessor fails to correct the matter within ninety days, the director may conduct an examination and charge a lessor an examination fee based upon the cost per hour per examiner for evaluating, investigating, and verifying compliance with this subsection, as well as additional amounts for travel, per diem, mileage, and other reasonable expenses incurred

in connection with the examination, which shall relate solely to the requirements of this subsection, and which shall be billed by the departments as soon as feasible after the close of the examination. The cost per hour shall be \$40 or as may be established by rules adopted by the director. The lessor shall pay the amounts billed within thirty days following the billing. All moneys collected by the director shall be credited to the compliance resolution fund."

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2008.

INTRODUCED BY: \_\_\_\_\_