

# S.B. NO. 984

JAN 26 2009

## A BILL FOR AN ACT

RELATING TO THE PASSENGER FACILITY CHARGE SPECIAL FUND.

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

1 SECTION 1. Section 261-5.5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "**§261-5.5 Passenger facility charge special fund.** (a)

4 There is established in the state treasury the passenger  
5 facility charge special fund, into which shall be deposited all  
6 proceeds from the passenger facility charge.

7 ~~[(b) Moneys in the passenger facility charge special fund  
8 shall be used for airport capital improvement program projects  
9 approved by the legislature.]~~

10 ~~(e)~~ (b) The director of transportation shall  
11 administer the passenger facility charge special fund.

12 (c) The passenger facility charge shall be a charge  
13 for the use and services of an undertaking for the purposes  
14 and within the meaning of Section 39-61(a)(1) and (a)(3).

15 (d) All moneys paid into the passenger facility  
16 charge special fund shall be appropriated, applied or  
17 expended by the department for airport capital improvement  
18 program projects approved by the legislature and as

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1 permitted under the Aviation Safety and Capacity Expansion  
2 Act of 1990, Pub. L. 101 508, Title IX, Subtitle B, §§9110  
3 and 9111, recodified as 49 U.S.C. §40117, as amended from  
4 time to time.

5 (e) Any resolution or certificate authorizing any  
6 issue of bonds relating to the use of passenger facility  
7 charge for an airport capital improvement program project  
8 approved by the legislature may establish other accounts  
9 within the passenger facility special fund and require the  
10 transfer of passenger facility charge into such accounts to  
11 pay debt service on said related bonds.


12 SECTION 2. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:

  
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BY REQUEST

**Report Title:**

Airport Passenger Facility Charge Special Fund

**Description:**

To provide the Airports Division, Department of Transportation with additional financing options utilizing its Passenger Facility Charge (PFC) revenues to construct airports capital improvement projects (CIP) and to provide the statutory framework to permit the execution of these financial options.

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JUSTIFICATION SHEET

DEPARTMENT: Transportation

TITLE: A BILL FOR AN ACT RELATING TO THE PASSENGER FACILITY CHARGE SPECIAL FUND.

PURPOSE: To provide the Airports Division, Department of Transportation (Department), with additional financing options utilizing its Passenger Facility revenues (PFR) for airport capital improvement program projects (the Airport Projects) at the state's airports; and to clarify the statutory framework to permit the execution of such financing flexibility.

MEANS: Amend section 261-5.5, Hawaii Revised Statutes.

JUSTIFICATION: The Department would like to have flexibility in its use of PFR to finance the Airport Projects, in order to use its PFR resources more efficiently and to better meet the needs of the State's Airports System. Currently, pursuant to section 261-5.5, PFR is used only to directly pay ("pay-as-you-go") the costs of the Airport Projects. This amendment would provide the State with the flexibility to finance the costs of the Airport Projects with the proceeds of bonds that would be completely or partially backed by the PFR, as well as with pay-as-you-go. The Department believes that using the PFR to offset the State's debt service requirements on the Airport Bonds or to reimburse the State in the future for current Airport Project expenditures - will allow the State to use its PFR resources most efficiently in meeting the financial needs of the Airport Projects.

In accordance with federal law, passenger facility fees (also commonly called passenger facility charges, each a "PFC")

are fees collected by the airlines per enplaned passenger on behalf of the Department to be used for specific projects related to preserving or enhancing airport capacity, safety or security, relieving aircraft noise, or enhancing airline competition. The Department collects PFCs on flights leaving from Honolulu International Airport, Lihue Airport, Kahului Airport, Kona International Airport at Keahole, and Hilo International Airport (collectively, the "Airports System"). Federal law prohibits charging PFCs on inter-island flights.

The use of PFR in the State is governed by section 261-5.5. Presently, section 261-5.5 permits PFR to be used only to directly pay the costs of the Airport Projects approved by the legislature. As presently constructed, the statute is unclear regarding the use of PFR in indirect financing structures; in fact, section 261-5.5 may prohibit the Department from using PFR in ways that would otherwise 1) give the Department more flexibility in financing the Airport Projects and efficiently meeting the air transportation needs of the State, 2) instill confidence in the bond market regarding the investment quality of the Airport Bonds, 3) be accepted by the bond market as an effective way of reducing debt service, and 4) be permissible under federal laws governing the use of PFR.

To achieve this financial flexibility and efficient use of PFR, the Certificate issuing the Airport Bonds will be amended appropriately to allow the State to apply, in accordance with applicable federal law, PFR towards certain covenants contained in the Certificate relating to the discharge of debt service requirements. In addition to the amendment to the Certificate, the Department believes that an amendment to section 261-5.5 would be prudent to clarify that the State may use PFR as contemplated,

to provide the State with adequate access to the bond market, and to ensure acceptance by the bond market of the amended Certificate terms.

The Bill amends section 261-5.5 to clarify the flexibility that the State has, as permitted by federal law, regarding its use of PFR. In short, the amended section 261-5.5 clarifies that PFR can be used for any purpose permitted by federal law relating to the Airport Projects approved by the legislature. Perhaps most relevant to potential bondholders, the amendment allows the use of PFR to offset debt service on the Airport Bonds, which would provide the State an added financial benefit. Separate accounts will be created within the passenger facility charge special fund in order to comply with the Aviation Safety and Capacity Expansion Act of 1990, and the regulations thereunder, which requires the separation of monies to allow for auditing by the Secretary of Transportation of the State's use of the PFR. Separate accounts will also facilitate the use of PFR to pay debt service on the Bonds and fulfill the State's covenants with respect to those Bonds.

Impact on the public: When revenue bonds are issued, binding provisions (such as contracts) are necessary to secure the best ratings and interest rates on the bond market. Consequently, the market must be ensured that the PFR may be allocated as contemplated by the Department to discharge its debt service. Because current section 261-5.5 is ambiguous as to whether PFR may be used to discharge debt service, an amendment of the section will act on the bond market as legislative approval of such use of the PFR and give confidence to the bond market that such use of the PFR is, in fact, permissible under Hawaii law. In addition, the market must also be ensured that the Certificate amendments covenanting

that PFR will be used to discharge debt service, as permitted under an amended section 261-5.5, will bind and be enforceable against the State like any other contractual provision. The Department has asked its outside counsel, Katten Muchin Rosenman LLP ("Bond Counsel"), to review the enforceability of a Certificate amendment covenanting such use of PFR by the State. After review of the proposed amendments to the Certificate and to section 261-5.5, Bond Counsel has expressed its confidence that the amendments to the Certificate, as permitted by 261-5.5, will be acceptable on the bond market as a binding provision.

Impact on the department and other agencies:

The proposed amendment to section 261-5.5 clarifies that the State's PFR may be used in ways that have been accepted by the bond market and are permissible under federal laws governing PFCs and PFR. The legislative clarification will allow the State and the Department to leverage its PFR to meet the pressing demands for airport improvements across the State, while providing additional flexibility in managing the debt service obligations of the Airports System. The flexibility expressly afforded by amended 261-5.5 will also benefit the people of Hawaii by allowing the State's substantial PFR to be used more efficiently to complete the Airport Projects and to support the State's tourism industry. Additionally, potential bondholders will have confidence that the State will be able to meet its debt service requirements and that the State's obligations to use its PFR will be enforceable. The amendment provides a sense of a legislative commitment to the discharge of the State's debt service, which will maximize the State's access to the bond market to fund the efficient and successful completion of the Airport Projects.

GENERAL FUND:

None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: TRN-195

OTHER AFFECTED  
AGENCIES: Department of Budget and Finance.

EFFECTIVE DATE: July 1, 2009