



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

LATE TESTIMONY

ON THE FOLLOWING MEASURE:

S.B. NO. 2946, S.D. 2, RELATING TO TRANSPORTATION.

BEFORE THE:

HOUSE COMMITTEE ON TRANSPORTATION

DATE: March 14, 2012

TIME: 9:00 a.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): David M. Louie, Attorney General, or
Laura Y. Kim, Deputy Attorney General

Chair Souki and Members of the Committee:

The Department of the Attorney General appreciates the intent of the bill and provides the following comments.

(1) Amends section 251-2(a), Hawaii Revised Statutes (HRS), to extend the increase in rental motor vehicle surcharge tax to \$7.50 per day until June 30, 2015;

(2) Extends the repeal date of part II of Act 104, Session Laws of Hawaii 2011 (the Act), to June 30, 2015; and

(3) Authorizes the State of Hawaii Department of Transportation (DOT) to issue airport revenue bonds under chapter 39, HRS, in the amount not to exceed \$500,000,000 for airport capital improvement program projects, the principal and interest of which shall be paid by the revenues from airports and related facilities, aviation fuel taxes, and passenger facility charges under section 261-5.5, HRS, as determined by the DOT, provided that if the expenses of the issuance of such airport revenue bonds are not paid from the proceeds of such bonds, the DOT shall use the Airport Revenue Fund and the Passenger Facility Charge Special Fund as determined by the DOT; and grants the Governor discretion to use the Airport Revenue Fund and the Passenger Facility Charge Special Fund to finance airport capital improvement program projects where the method of financing is designated to be by airport revenue bond funds, provided that the Governor submits a report to the Legislature of all uses of this authority for the previous twelve-month period.

Part II of the Act, among other things, temporarily repealed section 261-7(h), HRS, which authorized the DOT to assess rental motor vehicle customer facility charges of \$4.50 per day beginning September 1, 2010, to pay for the airports' rental motor vehicle customer facility,

also referred to as the consolidated car rental facilities. The rental motor vehicle customer facility charges were to be deposited into the Rental Motor Vehicle Customer Facility Charge Special Fund established under section 261-5.6, HRS.

In addition, part II of the Act increased the rental motor vehicle surcharge tax under section 251-2(a), HRS, from \$2.00 to \$7.50 per day, and amended section 251-5, HRS, such that the equivalent of \$4.50 of the rental motor vehicle surcharge tax assessed pursuant to section 251-2(a), HRS, is deposited into the state general fund.

To the extent the bill proposes to use the Passenger Facility Charge Special Fund without approval of the Federal Aviation Administration (FAA) and to finance the rental motor vehicle customer facility at state airports, the bill violates the Passenger Facility Charge Program authorized under 49 United States Code (U.S.C.) section 40117(a) – (m). *See* section 261-5.5(d), HRS.

The DOT must receive *prior* FAA approval in order to impose a passenger facility fee to finance an “eligible airport-related project.” *See* 49 U.S.C. section 40117(b); 14 Code of Federal Regulations (C.F.R.) sections 158.5 and 158.15. The bill as drafted, however, appears to allow the DOT and the Governor to use the Passenger Facility Charge Special Fund without FAA approval. Furthermore, car rental and automobile parking facilities are not eligible for financing with passenger facility charges. *See* 14 C.F.R. section 15(b)(6). The bill as drafted appears to use the Passenger Facility Charge Special Fund to partly finance the rental motor vehicle car rental facility. *See* Senate Committee on Ways and Means, Standing Committee Report No. 2670, March 2, 2012.

DOT, the Department of Budget and Finance, Bond Counsel, and the Department of the Attorney General are working to draft amendments to address the above concerns. Those amendments are not yet complete, and the FAA has asked to review them as well. We respectfully request that the committee continue action on this bill to a later date to allow the departments to complete these amendments and subsequently provide them to the committee to help accomplish the purposes of this bill.

LATE TESTIMONY

avis budget group

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Representative Joseph Souki, Chair
House Committee on Transportation

March 14, 2012; 9:00 AM
Hawaii State Capitol; Conference Room 309

RE: SB 2946 SD2 – Relating to Transportation – In Opposition

Chair Souki, Vice Chair Ichiyama, and Members of the Committee:

My name is Martin Mylott, Hawaii Regional Manager for Avis Budget Group. We are in opposition to SB 2946 SD2, which extends the increase in the rental motor vehicle surcharge tax and the suspension of the rental motor vehicle customer facility charge (CFC) until June 30, 2015.

We are aware that last year's legislative action to suspend the collection of the customer facility charges (CFC) for one year, increase the rental car surcharge tax by \$4.50 and deposit said amount to the general fund, was to address the budget deficit facing the State. We request that consideration be given to extend the sunset date for Act 104 for only one year more as this should not be a continued practice to address the budget shortfall.

The industry and the Department of Transportation (DOT) agreed to the CFC financing concept to support the construction of consolidated rental car facilities. CFC funds are currently committed to completing design and preliminary projects.

Although DOT has stated it remains committed to construction of the consolidated facilities and is working on a plan of finance, we should not move forward on construction until there is an identified and secured source of repaying the debt. Therefore, the CFC needs to be reinstated.

Thank you for the opportunity to testify.

Martin Mylott
Regional Manager, Hawaii
Avis Budget Group, Inc.