

NEIL ABERCROMBIE
GOVERNOR



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IN REPLY REFER TO:

February 23, 2012

S.B. 2960, S.D. 1
RELATING TO AERONAUTICS

SENATE COMMITTEE ON TRANSPORTATION & INTERNATIONAL AFFAIRS

The Department of Transportation opposes this bill. The Federal Aviation Administration has informed the Department that the bill is discriminatory and thus a violation of the grant agreements between the federal government and the State of Hawaii.

Thank you for the opportunity to provide testimony.





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

ON THE FOLLOWING MEASURE:

S.B. NO. 2960 S.D.1, RELATING TO AERONAUTICS.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Thursday, February 23, 2012 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): WRITTEN COMMENTS ONLY. For more information , call
Laura Y. Kim, Deputy Attorney General at 587-2992.

Chair Ige and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill in trying to provide greater access to interisland travel, but must oppose it as drafted because we have been informed by the Federal Aviation Administration (FAA) that it violates the State's obligations under federal grant programs for airport development. In addition, the bill as drafted is vaguely worded.

This bill would amend section 261-7(e), Hawaii Revised Statutes (HRS), to prohibit the State from assessing landing fees “upon air carriers that provide interisland service, except for air carriers providing service between the most populous island in the State and any other island of the State.”

As written, the bill waives landing fees for air carriers that only provide neighbor island air transportation services. However, we believe the Legislature intended the bill to waive landing fees for any air carrier when providing services between neighbor islands, even if the air carrier also flies routes between Oahu and a neighbor island. As such, the testimony provided herein assumes this is the intent of the bill.

The Airports District Office (ADO) of the FAA has reviewed the bill and advised that it violates the State’s grant assurances because the bill requires signatory air carriers that do not provide air transportation services between neighbor islands, and thus are not entitled to the waiver, to subsidize those air carriers entitled to the landing fee exemption.

The State receives federal financial assistance under various grant programs administered by the FAA for airport development and planning projects. Pursuant to the Airport and Airway Improvement Act of 1982, specifically the provisions requiring project grant assurances codified

in 49 United States Code §47107 (a)-(m), as a condition of receiving airport federal funds, recipients are obligated to comply with certain contractual obligations or assurances.

Grant Assurance number 22, *Economic Nondiscrimination*, requires the State to impose nondiscriminatory and substantially comparable rates, fees, rentals, and charges on all air carriers that assume similar obligations, use similar facilities, and make similar use of the airport. Furthermore, the State must make the airport available to air carriers on terms that are fair, reasonable, and without *unjust* discrimination to all types, kinds, and classes of aeronautical activities.

Grant Assurance number 24, *Fee and Rental Structure*, requires the State to maintain a fee and rental structure that makes the airport as financially self-sustaining as possible under the particular circumstances at the airport, taking into account such factors as the volume of traffic and economy of collection.

Section 261-7(e), HRS, directs the Director of Transportation to establish rates, rentals, fees, and charges under a residual methodology so that the statewide system of airports is self-sustaining. Under a residual methodology, the State enters into written agreements with air carriers (referred to as “signatory” air carriers) wherein the State applies excess nonaeronautical revenue to the airport costs to reduce signatory fees. In exchange, the signatory air carriers agree to keep the airports financially self-sustaining by making up any deficit – the residual cost – remaining after the costs identified for all airport users have been offset by nonaeronautical revenue.

In the event of a deficit in airport revenue, the bill would require signatory air carriers to pay higher fees to keep the airport system self-sustaining. The signatory air carriers predominantly fly between Hawaii airports and destinations outside the State. These signatories would not be entitled to the landing fee waiver. The bill would create a situation that, in the event of a revenue deficit, forces the signatory air carriers to subsidize air carriers flying neighbor island routes.

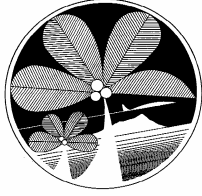
In addition, Hawaiian Airlines has announced plans to make Kahului Airport its second hub airport and fly directly from Kahului to other neighbor island airports. Under this bill, those flights would be exempt from landing fees. When Hawaiian Airlines establishes its hub at

Kahului, the bill would further require the signatory air carriers to subsidize the flights between neighbor islands flown by competing signatory air carriers.

According to information we have received from the FAA, this bill violates Grant Assurance numbers 22 and 24. The bill unjustly discriminates against signatory air carriers that do not provide neighbor island services by requiring the signatories to subsidize non-signatory air carriers and other competing signatory carriers that are entitled to waivers of landing fees. Furthermore, the bill jeopardizes the airport system's ability to remain financially self-sustaining as the bill prohibits the State from collecting landing fees from all landings between neighbor island airports, and creates an incentive for signatory air carriers to become non-signatories depending on the revenue impact of the bill.

We respectfully ask the Committee to hold this bill.

AIRLINES COMMITTEE OF HAWAII



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February 23, 2012

Honorable David Ige, Chair
Honorable Michelle Kidani, Vice Chair
Senate Committee on Ways and Means
Hawaii State Capitol, Honolulu, HI 96813

Re: SB 2960 SD1 – Relating to Aeronautics
Hawaii State Capitol, Room 211 – 9:00 a.m.

Aloha Chair Ige, Vice Chair Kidani and Members of the Committee:

The Airlines Committee of Hawaii* (ACH), which is made up of 20 signatory air carriers that underwrite the State Airport System understands the intent of this bill is to address service to the rural communities.

However, we want to raise concerns that by waiving fees at one or several state airports, you will be essentially shifting the burden of the costs. Because any offset of landing fees and other user costs may be passed along to signatory air carriers, this bill has the potential to make it increasingly difficult for airlines to operate. Thus, there is no additional cushion for the ACH to subsidize other airport tenants while maintaining its support for an operations and capital improvement program in Hawaii.

Therefore, we respectfully ask your consideration of the potential impacts this bill may have upon the airport system.

As always, we appreciate the opportunity to provide input and we stand ready to assist the state on airport-related matters.

Sincerely,

Blaine Miyasato
ACH Co-chair

Matthew Shelby
ACH Co-chair

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