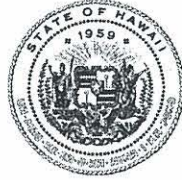


SB 2960

RELATING TO AERONAUTICS.

Beginning , 2012, prohibits the department of transportation from assessing landing fees upon air carriers operating turboprop engine air craft that provide interisland service, except between the most populous island in the State and any other island in the State.

NEIL ABERCROMBIE
GOVERNOR



GLENN M. OKIMOTO
INTERIM DIRECTOR

Deputy Directors
JADE T BUTAY
FORD N. FUCHIGAMI
RANDY GRUNE
JADINE URASAKI

IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 8, 2012

**SB 2960
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, RELATING TO AERONAUTICS.

BEFORE THE:
SENATE COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS

DATE: Wednesday, February 8, 2012 **TIME:** 1:15 p.m.

LOCATION: State Capitol, Room 224

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

Chair English 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.

This bill would amend second 261-7(e), Hawaii Revised Statutes (HRS), such that the State may no longer assess landing fees "upon air carriers operating *turboprop* engine aircraft that provide interisland service, except for service between the most populous island in the State and any other island of the State."

The apparent reason for exempting fees for turboprop engine aircraft landings on neighbor islands (exemption does not apply to services between Oahu and other islands) is to lessen the financial burden on air carriers servicing vital rural airports, thereby mitigating the chance of a discontinuance or reduction of flights to rural airports. *See* S.B. No. 2979.

The bill appears contrary to the State's obligations under federal grant programs for airport development.

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 ("AAIA"), 49 United States Code ("U.S.C.") §§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.

Here, other air carriers provide services to neighbor islands using aircraft other than turboprop engine aircraft. However, under the proposed bill, these air carriers would still have to pay landing fees. There is no reasonable justification for discriminating against air carriers who are providing similar services and making similar use of the rural airports. The bill therefore appears to conflict with the State's assurance to the federal government that it will charge comparable rates to similarly situated air carriers and will make the airport available without unjust discrimination.

Furthermore, the Airports District Office (ADO) of the FAA has reviewed the bill and advised that the bill violates Grant Assurance number 22 because it unjustly discriminates against aeronautical users. The ADO relayed that exempting certain aircraft types from landing fees unreasonably excludes air carriers that do not operate the type of aircraft identified for the exemption.

We respectfully ask the Committee to hold this bill.



TESTIMONY OF ANN BOTTICELLI ON BEHALF OF HAWAIIAN AIRLINES

S.B. 2960, RELATING TO AERONAUTICS; S.B. 2977, RELATING TO TAXATION; S.B. 2978, RELATING TO TAXATION; S.B. 2979
RELATING TO TRANSPORTATION

Wednesday, Feb. 8, 2012

Aloha, Chairman English, Vice Chairman Espero and members of the Senate Committee on Transportation and International Affairs,

Mahalo for the opportunity to provide testimony on four measures which seek to provide tax credits or waivers or reductions in landing fees and airport terminal rent to interisland carriers which operate turboprop engine aircraft. It appears that the measures aim to encourage reliable air transportation service to rural areas with small populations, a goal we fully support. It may be appropriate for the state Legislature to provide a subsidy to allow reliable air transportation to and from isolated areas with very small populations, such as Hana and Kalaupapa. However, we believe that any subsidies should be tied to the operation of specific routes, rather than to carriers with a certain type of aircraft.

We are concerned that the measures as written allow the proposed subsidies to be very broadly applied. As written, the bills allow any carrier with "one or more" turboprop aircraft to obtain tax credits or rent and landing fee waivers or reductions on their entire commercial fleet including non-turboprop aircraft flying routes other than the targeted rural markets. As you know, the state airport operations are funded entirely by the landing fees and rents paid by all of its user airlines. Therefore, if broad landing fee waivers are granted, as allowed in these measures, the costs of these waivers would shift to other airlines, creating a situation where one private business (and its customers) -- is subsidizing the activities of another business. In the case of tax credits, state taxpayers would be subsidizing these operations.

Again, encouraging more air transportation to rural and isolated communities is a laudable goal that we support. If the state Legislature determines that subsidies are required, they are best implemented by route, rather than by type of aircraft and in a manner that does not transfer the cost of the subsidy to other users of the state airport system.

Thank you for the opportunity to testify.

AIRLINES COMMITTEE OF HAWAII



Honolulu International Airport
300 Rodgers Blvd., #62
Honolulu, Hawaii 96819-1832
Phone (808) 838-0011
Fax (808) 838-0231

LATE

February 8, 2012

Honorable J. Kalani English, Chair
Senate Committee on Transportation and International Affairs
Hawaii State Capitol
Honolulu, HI 96813

Re: **SB 2960 – Relating to Aeronautics**
SB 2979 – Relating to Transportation
Hawaii State Capitol, Room 224 – 1:15 p.m.

Aloha Chair English, Vice Chair Espero, 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 these bills is to address service to the rural communities.

However, the ACH must respectfully oppose these bills due to Federal Aviation Administration (FAA) concerns, which, as these bills are currently written, may be in violation of FAA grant assurances.

By accepting federal grants, the State and the Department of Transportation – Airports Division (DOT-A) agree to abide by certain binding contractual obligations.

Violating any of the grant assurances is like violating terms of a contract. It can result in losing the privilege to receive grants in the future and can also lead to lawsuits and civil penalties. Additionally, Congress allows the Secretary of Transportation to withhold transportation funds from any local government that violates the airport revenue retention restrictions.

For further clarification on this matter, we defer to the DOT-A and the FAA.

As always, we appreciate the opportunity to provide input on this matter.

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.*