SB 2979

RELATING TO TRANSPORTATION.

Requires the department of transportation
to reduce terminal rental rates for turbo propeller air carriers.

NEIL ABERCROMBIE
GOVERNOR

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IN REPLY REFER TO:

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

February 8, 2012

SB 2979
RELATING TO TRANSPORTATION

SENATE COMMITTEE ON TRANSPORTATION & INTERNATIONAL AFFAIRS

The Department of Transportation opposes this bill. By setting an arbitrary rental rate for airport facilities, the bill conflicts with Section 171-17 of the Hawaii Revised Statutes which requires that rental rates for state land be determined by appraisal. The existing schedule of rate and charges for airports property and facilities was established following such an appraisal. The Department of Transportation is planning to conduct a statewide appraisal later this year to establish a new set of rental rates for land and facilities at each of the airports.

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. 2979, RELATING TO TRANSPORTATION.

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 section 261-7, Hawaii Revised Statutes (HRS), to require the Department of Transportation to reduce terminal rental rates for air carriers that provide commercial services between the islands of the State using "turbo propeller airplanes." The purpose of the bill 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.

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 §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 turbo propeller airplanes. However, under the proposed bill, these air carriers would have to pay a higher terminal rental rate. There is no reasonable justification for discriminating against air carriers who provide similar services to neighbor islands but operate non-turbo propeller airplanes. 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 Offices (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 reducing terminal rental rates for air carriers that operate turbo propeller airplanes unreasonably excludes air carriers that do not operate the type of aircraft identified for the reduction in rental rates.

We respectfully ask the Committee to hold this bill.

HAWAIIAN AIRLINES.

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.

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AIRLINES COMMITTEE OF HAWAII

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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.*