

SB 451

Measure Title: RELATING TO THE PUBLIC UTILITIES COMMISSION.
Report Title: Public Utilities Commission; Air Carriers
Description: Repeals exclusion of owners or operators of aerial transportation enterprises from the definition of a public utility.
Companion:
Package: None
Current Referral: CPN, WAM
Introducer(s): SOLOMON, Dela Cruz, English, Kahele, Shimabukuro

<u>Sort by</u> <u>Date</u>		Status Text
1/18/2013	S	Introduced.
1/22/2013	S	Passed First Reading.
1/22/2013	S	Referred to CPN, WAM.
1/31/2013	S	The committee(s) on CPN added the measure to the public hearing scheduled on 02-08-13 9:00AM in conference



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
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DIRECTOR

JO ANN UCHIDA TAKEUCHI
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TO THE SENATE COMMITTEE
ON COMMERCE AND CONSUMER PROTECTION

THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013

FRIDAY, FEBRUARY 8, 2013
9:00 A.M.

TESTIMONY OF JEFFREY T. ONO, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS, TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE

SENATE BILL NO. 451 - RELATING TO THE PUBLIC UTILITIES COMMISSION.

DESCRIPTION:

This measure proposes to amend Section 269-1, Hawaii Revised Statutes ("HRS"), to repeal the exemption pertaining to an owner or operator of an aerial transportation enterprise from the definition of "public utility" under HRS § 269-1.

POSITION:

The Division of Consumer Advocacy offers the following comments with respect to the measure.

COMMENTS:

49 U.S.C. § 41713(b), relating to the Federal government's oversight of the United States airline industry, states, in relevant part, as follows:

- (1) Except as provided in this subsection [(49 U.S.C. § 41713(b))], a **State**, political subdivision of a State, or political authority of at least 2 States **may not enact or enforce** a law, regulation, or other provision having the force or effect of law related to a price, route, or service of an air carrier that may provide air transportation under [subpart ii, Title 49, Subtitle VII, Part A, of the United States Code].
- (2) Paragraphs (1) and (4) of this subsection do not apply to air transportation provided **entirely in Alaska** unless the transportation is air transportation (except charter air transportation) provided under a certificate issued under section 41102 of [Title 49 of the United States Code]. (Emphases added.)

Although S.B. No. 451 amends HRS § 269-1 in such a manner that allows the State of Hawaii Public Utilities Commission ("PUC") to potentially have oversight over an owner or operator of an aerial transportation enterprise under HRS § 269-6, pertaining to the PUC's general supervision over all public utilities in this state, 49 U.S.C. § 41713(b) appears to prevent a state government from enacting or enforcing any law, regulation, or other provision that would affect the price, route, or service provided by an air carrier regulated by the Federal government under the United States Code and its effectuating federal regulations. In this way, the preemption authority of the Federal government conveyed in 49 U.S.C. § 41713 appears to make the amendment contemplated by S.B. No. 451 of no legal or regulatory effect as it relates to the regulation and oversight of an owner or operator of an aerial transportation enterprise providing air transportation within the State. Pursuant to 49 U.S.C. § 41713(b)(2), it appears that only air transportation within the State of Alaska is exempted from the preemptive authority set forth in 49 U.S.C. § 41713(b).

Thank you for this opportunity to testify.

TESTIMONY OF HERMINA MORITA
CHAIR, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
SENATE COMMITTEE ON
COMMERCE & CONSUMER PROTECTION

FEBRUARY 8, 2013
9:00 a.m.

MEASURE: S.B. No. 451
TITLE: Relating to the Public Utilities Commission

Chair Baker and Members of the Committee:

DESCRIPTION:

This measure proposes to remove owners and operators of aerial transportation enterprises from the list of exemptions for the definition of a "public utility" under Section 269-1, Hawaii Revised Statutes ("HRS").

POSITION:

The Commission believes federal laws would prevent the State from regulating "aerial transportation" and would like to offer the following comments for the Committee's consideration.

COMMENTS:

Without a purpose clause and definition for "aerial transportation" it is difficult to ascertain the intent of the Legislature. However, the Commission believes federal laws would prevent the State from regulating the air transportation industry.

With regard to the structure of the bill, the Commission is concerned that S.B. No. 451 does not provide a justification for the regulation of aerial transportation. Nor does this bill give guidance on what should be regulated as aerial transportation, which could include a range of businesses like inter-island airline travel, inter-island air cargo, or flight tours. Other regulated transportation sectors have a specific chapter providing statutory guidance for the regulation of motor carriers (HRS Chapter 271) and water carriers (HRS Chapter 271G). Such a section would have to be developed for aerial transportation.

Thank you for the opportunity to testify on this measure.