

**Suggested Amendments to SB 2996, as heard on Jan. 31, 2018**

**(Two parts: from bond counsel, and from the AGs office)**

Comments and Suggested Revisions From Bond Counsel<sup>1</sup>

1. **Pages 13-14** – § -3(a)(16) codifies the Corporation's responsibility to assume certain DOT revenue and special facility revenue bonds, and certificates of participation, and their obligations, including the covenants, restrictions and other requirements that must be satisfied for the next twenty years. To assure that the obligations are satisfied, revise § -3(a)(16) and insert a new paragraph (17), to read as follows, and renumber the remaining paragraphs of § -3(a) accordingly:

(16) Shall assume from the department of transportation:

(A) That certain Certificate of the Director of Transportation Providing for the Issuance of State of Hawaii Airports System Revenue Bonds dated as of May 1, 1969 relating to certain revenue bonds and other obligations; that certain Indenture of Trust dated as of December 1, 2013 between the department of transportation and U.S. Bank National Association relating to certain certificates of participation; and that certain Indenture of Trust dated as of August 1, 2014 between the department of transportation and MUFG Union Bank, N.A. relating to certain customer facility charge revenue bonds, each as supplemented and amended to date; and

---

<sup>1</sup> Note, the underlining and strikethroughs identify additions and deletions; they are not Ramsayer markings.

(B) The bonds, notes and other obligations of the department of transportation outstanding under, as well as the covenants, restrictions and other requirements set forth in, such documents; ~~and~~

~~(C) Policies and procedures designed to ensure continuing compliance with the terms thereof for so long as they are applicable;~~

(17) Shall adopt policies and procedures designed to ensure continuing compliance with the terms of the documents referenced in paragraph (16) above for so long as the same shall remain applicable;

(18) Shall fix, impose prescribe, and collect rates, . . .

2. **Pages 16 and 19** – To avoid uncertainty as to whether the Corporation is authorized to enter into the kinds of financing agreements described in chapter 37D, Hawaii Revised Statutes, the exemptions from chapter 37D in § -3(b) at page 16, line 16, and § -11 at page 19, line 14, should be deleted, or the definition of "agency" amended to specify that "the Corporation shall not be governed by this chapter for any financing agreement unless it elects to be." Otherwise, rules of construction could be applied to preclude the Corporation from entering into financing agreements permitted under chapter 37D altogether.

3. **Page 42** – If the proposed amendment to section 261-7(e) , HRS, in section 12 of the bill were effective immediately or as of the Transfer Completion Date, it would likely raise impairment of contract claims against the State under the federal and state constitutions. Currently, the May 1, 1969 Certificate authorizing the issuance of State of Hawaii Airports System Revenue Bonds defines "revenues" as including "all income, revenues and moneys derived from the rates, rentals, fees and charges fixed, imposed and collected by the [DOT] pursuant to . . . [Section 261-7]." As such, any change to section 261-7, particularly repeal of its residual methodology provision (which

effectively requires the airlines to “backstop” shortfalls in “revenue”) proposed here, could be deemed to impair the rights of the bondholders under the Certificate. For this reason, as well as because the obligations attendant to the bonds may not be satisfied and discharged for several decades, a special effective date provision for revising section 261-7(e) should be included in section 12, rather than section 27 of the bill, in the form included below. To maximize awareness of the necessity to postpone revisions to section 261-7 until the Corporation's obligations under the Certificate are satisfied and discharged, directions to the Revisor of Statutes to publish section 12's effective date provision in the Hawaii Revised Statutes should also be included in the bill.

SECTION 12. Effective upon the satisfaction and discharge of that certain Certificate of the Director of Transportation Providing for the Issuance of State of Hawaii Airports System Revenue Bonds dated as of May 1, 1969, that certain Indenture of Trust dated as of December 1, 2013 between the department of transportation and U.S. Bank National Association and all obligations issued and outstanding under that Certificate and that Indenture, section 261-7, Hawaii Revised Statutes, shall be amended by amending subsection (e) to read as follows:

4. **Page 42** – To reassure bondholders that their investments will not be impaired by passage of this bill, add an affirmative statement in the form of the paragraph below, to section 15 at page 15, line 16, that the Corporation will assume the May 1, 1969 Certificate, and the December 1, 2013 and August 1, 2014 Indentures of Trust from to DOT on the Transfer Completion Date:

On the transfer completion date, the airports corporation shall assume from the department of transportation (A)(i) that certain Certificate of the Director of Transportation Providing for the Issuance of State of Hawaii Airports System Revenue Bonds dated as of May 1, 1969 relating to certain revenue bonds and other obligations; (ii) that certain Indenture of Trust dated as of December 1, 2013 between the department of transportation and U.S. Bank National Association relating to

certain certificates of participation; and (iii) that certain Indenture of Trust dated as of August 1, 2014 between the department of transportation and MUFG Union Bank, N.A. relating to certain customer facility charge revenue bonds, each as supplemented and amended to date; and (B) the bonds, notes and other obligations of the department of transportation outstanding under, as well as the covenants, restrictions and other requirements set forth in, such documents.

**5. Pages 55 - 56** --To ensure that each obligation under the May 1, 1969 Certificate, and the December 1, 2013 and August 1, 2014 Indentures of Trust remain enforceable against the DOT until each is assigned to the Corporation, and that the Corporation has not assumed DOT's obligation before the Corporation has assumed the operations and assets necessary to satisfy them, revise section 18 of the bill at page 55, line 11 to read:

Statutes, until such time as such obligations, including any accounts payable, accrued paid time off, debt, capital leases, and other obligations incurred before the transfer completion date, have been assumed by the Hawaii airports corporation, which shall not occur prior to the transfer completion date  
~~including any accounts payable, accrued paid time off, debt, capital leases, and other obligations incurred before the transfer completion date.~~

Section 18 of the bill at page 56, line 7 should also be revised to read:

notes, or other obligations. ~~After~~ On the transfer completion

Comments and Suggested Revisions From the Department of the Attorney General

1. **Page 21** - If the Committee agrees that the Legislature should be statutorily required to appropriate one lump sum for the Corporation's operating and capital improvement budgets, § -12(f) at page 21, line 3, should be revised to read as follows in recognition of the fact that in any one fiscal year, the Corporation's operating and capital improvement appropriations may each be made from multiple means or sources of funding:

(f) The legislature shall appropriate one lump sum for each means or source of funding for the corporation's operating budget and ~~one lump sum~~ for the corporation's capital improvement budget.

2. **Page 21** - If the intent of this measure is to allow the Corporation to deposit moneys from each of the its special funds outside the State Treasury, to provide the Corporation with the benefit of the Director of Finance's experience and input before the it selects a depository for its three funds, § -14(b) at page 21, line 18 should be revised to reference all three of the special funds, as follows,:

(b) Moneys in the airport revenue fund, the passenger facility charge special fund, and the rental motor vehicle customer facility charge special fund may be deposited in depositories other than the state treasury; provided . . . .

3. **Page 22** – Recognizing that the Legislature could be requested to authorize the Corporation to issue revenue bonds, refunding revenue bonds, and special facility revenue bonds payable out of revenues deposited in three different special funds, § -16 at page 22, line 10 should be revised to read as follows:

"§ -16 **Issuance of bonds.** On an annual basis, and upon request of the corporation, the legislature shall authorize ~~for the issuance by the corporation of~~ one lump sum for each means or source of funds for each of the following types of bonds: revenue bonds, refunding revenue bonds, and special facility revenue bonds of the State the corporation issues."

Bond counsel has also advised that existing bond documents for General Airport Revenue Bonds and Customer facility Charge Revenue Bonds, impose "separateness" requirements.

**4. Pages 41- 42, 46-47, and 47-48** – Because the Corporation, its board of directors or chief operating officer, or employees will not be able to perform the functions and responsibilities of the DOT, its Director, and its Airports Division personnel prescribed in chapters 261, 261D and 262, HRS, until the Transfer Completion Date, sections 11 and 13 of the bill from page 41, line 16 through page 42, line 6, and page 46, line 20 through page 47, line 11 should be deleted, and provisions of section 14 on pages 47-48 should be the sole means necessary and used to conform the wording of chapters 261, 261D and 262 to reflect the transfer and assumption of the duties and responsibilities of the DOT and its Director under those statutes to and by the Corporation, and its board of directors and chief operating officer. To make its provisions clearer, section 14 at page 47, line 14 should be revised to read as follows:

Section 14. On and after the transfer completion date established by the Hawaii airports corporation in section 16(b) of this Act ~~and thereafter~~, and until the revisor of statutes makes the amendments to chapters 261, 261D, and 262, Hawaii Revised Statutes, described in this section, every reference to the department of

and the following should be added to the end of section 14 at line 6 on page 48: Statutes, and shall delete the definition of "director" in section 261-1.

**5. Page 49** – The last sentence of the first paragraph of section 16 at page 49, line 11 is not necessary, and should be deleted. An almost identically worded sentence is included as the second sentence of section 20 at page 58, line 4. It provides: "All employees who occupy civil service positions and whose functions are transferred to the Hawaii airports corporation by this Act shall retain their civil service status, whether permanent or temporary." The third sentence of that paragraph lists the rights and benefits these civil service employees will be entitled to when they are transferred to the Corporation with their functions.

HEARING BEFORE THE SENATE COMMITTEE ON TRANSPORTATION AND ENERGY  
January 31, 2018  
1:15 p.m.

Senate Bill 2996  
Relating To An Airports Corporation

Painting Industry of Hawaii Labor Management Cooperation Trust Fund  
Hawaii Tapers Market Recovery Trust Fund  
Hawaii Glaziers, Architectural Metal Glassworkers Local Union 1889  
AFL-CIO Stabilization Trust Fund  
Carpet, Linoleum and Soft Tile Local Union 1926 Market Recovery Trust Fund

Chair Inouye and Members of the Committee:

Thank you for this opportunity to submit testimony on behalf of the Painting Industry of Hawaii Labor Management Cooperation Trust Fund, Hawaii Tapers Market Recovery Trust Fund, Hawaii Glaziers, Architectural Metal Glassworkers Local Union 1889 AFL-CIO Stabilization Trust Fund, and Carpet, Linoleum and Soft Tile Local Union 1926 Market Recovery Trust Fund **commenting** on Senate Bill 2996.

This measure creates a new airport corporation that will be responsible, among other things, for procuring construction work at the state's airports. The proposed corporation will, with certain exceptions, be exempt from the state procurement code.

While we understand and appreciate the desire to improve Hawaii's airports, this exemption concerns us greatly because subcontractors may lose protections currently afforded to them by the procurement code, Chapter 103D, Hawaii Revised Statutes. One prominent example is the requirement that all subcontractors be listed on bids submitted on a construction project, which protects subcontractors from the undesirable and harmful practice of bid shopping. A task force convened pursuant to Senate Concurrent Resolution 92, S.D.2 (2013) studied the issue of bid protests related to subcontractor listing and found that the subcontractor listing requirement did not result in significant delays or increased costs. The Task Force rejected calls for the repeal or amendment of the procurement code's subcontractor listing provisions and recommended no changes be made to that statute. In light of the task force's report, there is no good reason why an airport corporation should be exempt from the procurement code's subcontractor listing requirements.

While the current language in the bill could be construed to require the corporation's adherence to the procurement code's subcontractor listing requirements, we are concerned that the language may not be specific enough. We would therefore recommend and request that the Committee amend the measure by adding more specific language clarifying that the corporation will not be exempt from the procurement code's subcontractor listing requirements.

Thank you again for this opportunity to share our comments and concerns on this measure.

**Wednesday, January 31, 2018, 1:15pm**

State Capitol, Conference Room 225

Senate Committee on Transportation and Energy

To: Senator Kaiali'i Kahele, Chair  
Senator Michelle N. Kidani, Vice Chair

From: Ray Vara  
President & CEO

**Re: Testimony in Support of SB 2996 Relating to Airports Corporation**

---

I am Ray Vara, President and CEO of Hawai'i Pacific Health. Hawai'i Pacific Health is a not-for-profit health care system comprised of Kapi'olani, Pali Momi, Straub and Wilcox with 70 locations statewide serving Hawai'i and the Pacific Region.

I write in support of SB 2996 relating to the establishment of an airport corporation. The purpose of SB 2996 is to establish the Hawaii airports corporation, which shall assume all of the authority, powers, functions, duties and responsibilities of the Department of Transportation related to aeronautics and airports, including responsibility for the development, management, operation and maintenance of the State's airports.

A highly functioning and well-designed airport is critical to our State's economic future and ultimately the quality of life of all Hawai'i's residents. Hawai'i is blessed to be a destination of choice for millions of visitors every year, which supports our island's economic base and provides an opportunity to introduce the aloha spirit to millions across the world. The importance of the visitor industry and the benefits it provides to our community is something we do not take for granted.

At Hawai'i Pacific Health, we recognize the close interrelations between the income security of our patients and their health and well-being. As a non-profit health care delivery system we are therefore also invested in assuring that Hawai'i sustains its economic viability as it income security is a key component supporting the general health of our communities.

Our airports are the gateway to the visitor experience in Hawai'i and leave an enduring first and last impression for all of our visitors. Given their importance to the total visitor experience, our airports need an operational structure to best enable their ability to enhance the visitor experience.



Despite our State's tourism infrastructure being a model in many areas, Hawaii still remains one of only three states with an airport operated by the State. Other states operate under authorities or corporations, or a combination thereby allowing their airports to adapt to the demands of a highly dynamic visitor industry. Given the complexity and market sensitivity in the tourism industry, it is important that our airports also be given the operational flexibility to reach their fullest potential.

The creation of an airport corporation - led by a board with the requisite professional expertise – will ensure that the airport will be provided with the operational flexibility and structure it needs to meet the demands of today and the future. I encourage your favorable consideration of SB 2996. Thank you for the opportunity to testify.



**Testimony of Sweetie Nelson, Director of Destination Marketing,  
Ko Olina Resort Operators Association  
Before the Committee on Transportation and Energy  
Wednesday, January 31, 2018, 1:15 pm, Conference Room 225  
Senate Bill No. 2996, Relating To An Airport Corporation**

**Chair Aquino, Vice Chair Espero and Members of the Committee:**

My name is Sweetie Nelson. I am director of destination marketing for the Ko Olina Resort Operators Association, representing the hotels, resorts, and commercial businesses at Ko Olina Resort.

We **strongly support SB 2996**, which will allow for improved management and operations of the 15 airports throughout these islands, now administered by the state Department of Transportation, Airports Division. The proposed legislation would enable our airports to be run like true self-sustaining businesses and facilitate the completion of long overdue airport improvements.

Every year we hear numerous complaints about the condition of our airports from both visitors and Hawaii residents. For visitors, Hawaii's airports are the first impression and last memory of our islands. I don't believe they represent Hawaii, its culture and people in a manner we can be proud of.

Development of the Atlantis Resort will soon begin at Ko Olina with additional hotel brands, some of which may be new to the Hawaii market, to follow. Attracting new, affluent travel audiences will be essential to growing our visitor industry. These developments and other top-tier properties on other islands will bring tremendous economic benefits to our state, but only if the visitors to these destinations experience a consistent level of quality at every stage of their journey, including their points of arrival and departure.

Hawaii, as a world-class destination, deserves world-class airports. Today, our state's airports are jeopardizing Hawaii's status as a top global vacation destination.

The proposed Airport Corporation will be able to operate like a business, implement best practices that have shown impressive results at other airports and deliver a welcoming experience commensurate with the quality of our state's hospitality infrastructure and tourism product, reflecting the distinct culture and values that make our island home special.

The Airport Corporation will also provide increased transparency and involve the community more extensively in decision-making.

Under the model outlined in this measure, the airlines and concessionaires who benefit from the airports, along with existing passenger facility charges already included with every airfare, will pay for the much-needed improvements to our airports. In short, there will be no expense to local taxpayers.

I urge you to pass this bill to create the world-class airports Hawaii deserves.

Thank you for the opportunity to testify on this important legislation.



**MAUI**  
CHAMBER OF COMMERCE  
VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON TRANSPORTATION & ENERGY  
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 225  
WEDNESDAY, JANUARY 31, 2018 AT 1:15 P.M.**

To The Honorable Lorraine R. Inouye, Chair;  
The Honorable Will Espero, Vice Chair; and  
Members of the Transportation & Energy Committee

**TESTIMONY IN SUPPORT OF SB2996 RELATING TO AN AIRPORTS CORPORATION**

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce, serving in this role for over a decade. Thank you for the opportunity to testify.

We are in strong support of SB2996, which authorizes the establishment of the Hawaii Airports Corporation. 98% of visitors arrive via the airport system and two critical airports – Honolulu (HNL) and Kahului (OGG) – were named among the Top 10 Worst Airports in America. Our airports are our visitors first and last impression and they must reflect our brand, deliver quality experiences and promote Hawaii, not hold us back. Tourism supports 175,000 jobs in the state and it is critical that we support this industry. We believe the establishment of the Hawaii Airports Corporation will be extremely beneficial as it will help to make improvements quickly and efficiently and increase transparency and accountability. The establishment of the Hawaii Airports Corporation will also mean that airport updates will have no expense to local tax payers with no public dollars used and employees will all be transferred without loss of salary, seniority and benefits. We ask that you please pass this measure so that our airports can get the modifications they so desperately need to support our visitor industry

Mahalo for your consideration of our testimony and we hope you will support this bill.

Sincerely,

Pamela Tumpap  
President



**TESTIMONY OF TINA YAMAKI  
PRESIDENT  
RETAIL MERCHANTS OF HAWAII  
January 31, 2018**

**Re: SB 2996 RETALING TO AN AIRPORTS CORPORATION**

Good afternoon Chairperson Inouye and Senate Committee on Agriculture & Environment. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii (RMH) is a statewide not-for-profit trade organization committed to supporting the retail industry and business in general in Hawaii. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

The Retail Merchants of Hawaii SUPPORTS SB 2996 Relating to An Airports Corporation. For many years na kama`aina have to utilize airport facilities throughout the state that are in much need of critical improvements and renovations as they travel to and from the islands.

We are also very much aware that Hawaii is very dependent on visitors from around the world coming to our great state for business or vacation. The airport is the first and last impression people have of our islands and should be an extension of the guest experience in Hawai'i that reflects our distinct island culture and values.

Hawaii is in need of airport improvements and modernization that can be done quickly and effectively as well as having a long term vision for airport development and guest experiences. We feel that an Airport Corporation will be more effective and faster progress on the improvements that are much needed at all 15 of our statewide airports than the current system in place. Many of us have seen firsthand when we travel how far behind Hawai'i's airports are falling in the modernization curve. Currently improvements become bogged down in red tape and delays embedded in the government system.

In addition, because Hawai'i airports operate around the clock there should be an independent board of directors and CEO in place who will do the same in order to provide year round oversight. Most importantly, these much-needed improvements are paid for by the airlines and concessionaires that use the airports, which means there will be no expense to local taxpayers with no public tax dollars used.

We need our airports to run more like a business in order to make the necessary improvements on time and on budget.

Again mahalo for this opportunity to testify.

**SB-2996**

Submitted on: 1/31/2018 11:08:11 AM

Testimony for TRE on 1/31/2018 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
kateyao		Support	No

Comments:

As you know the state took so much money from tax payers (us), but they did nothing for our airport, the corruption is on another level, so we need do it our own. I hate to say, but most our state leaders are just money suckers without doing real things to benefit our society. If you ever fly international, you will see leaking water ceiling, old broken floors, broken windows in our airport, how shame and embarrassed is it? I have no confidence for our state current leaders now, so much disappoints through so many years. They don't give enough funding for the public school, build the rail without a budget, I pay \$400 for car registration every year (compare with mainland this number is huge), but look around our uneven road that we drive every day, after that intense false alarm,they didn't offer any solid fix resolution, they are lame!

We will make our airport nice and efficient! I love Hawaii, just try to do the right thing for our next generation and us.

Mahalo