



TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023

ON THE FOLLOWING MEASURE:

S.B. NO. 784, S.D. 1, RELATING TO AIRLINES.

BEFORE THE:

HOUSE COMMITTEE ON TRANSPORTATION

DATE: Tuesday, March 14, 2023

TIME: 10:00 a.m.

LOCATION: State Capitol, Room 312

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Marjorie Lau, Deputy Attorney General

Chair Todd and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

The purpose of the bill is to require the Department of Transportation to establish a one-year pilot program to provide subsidies to airlines operating out of Molokai Airport. Section 1 of the bill provides that a subsidy can help the airlines offset the cost of passenger tickets while encouraging other airlines to also provide service at Molokai Airport.

In our previous testimony to the Senate Committee on Ways and Means, we have expressed two concerns with the bill in relation to article VII, section 4, of the Hawai'i Constitution, which provides:

No tax shall be levied or appropriation of public money or property made, nor shall the public credit be used, directly or indirectly, except for a public purpose. No grant shall be made in violation of Section 4 of Article I of this constitution. *No grant of public money or property shall be made except pursuant to standards provided by law.* (Emphasis added.)

Regarding the constitutional requirement of a public purpose, "determining what constitutes a public purpose is generally a question for the legislature to decide." *State v. Anderson*, 56 Haw. 566, 574, 545 P.2d 1175, 1180-1181 (1976). However, we recommend that the bill include a more definitive finding that the subsidies are for a public purpose. For example, the Committee may wish to consider an explicit finding

such as: "The legislature finds that alleviating costs of air travel, primarily for small communities reliant on air travel for essential services and other needs, is a public purpose; and encouraging additional airlines to provide reliable airline services to and from Molokai to assist the residents who need to travel for essential reasons is a public purpose."

Regarding the constitutional requirement of "standards provided by law," this bill does not include standards by which the Department of Transportation is to subsidize airlines that operate out of Molokai airport. To resolve this constitutional infirmity, the bill should be amended to include the standards and qualifications for making the subsidies in statute (perhaps in chapter 261, Hawaii Revised Statutes), as has been enacted for other administrative grant programs. Examples of such statutory standards and qualifications can be found in part II of chapter 9 and sections 10-17, 210D-11, and 383-128, Hawaii Revised Statutes. We have attached draft standards to this testimony as a sample.

The Department also notes that section 2 of the bill, on page 1, lines 14-17, provides that the airline subsidy pilot program will be for one year. However, the appropriation in section 3 of the bill suggests that the program is for two years. To address this inconsistency, we recommend either making the pilot program for two years at page 1, line 15, or revising the appropriation in section 3, at page 2, lines 6-12, to reflect a one-year appropriation, as follows:

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ _____ or so much thereof as may be necessary for fiscal year 2023-2024 [~~and the same sum or so much thereof as may be necessary for fiscal year 2024-2025~~] for the purposes of this Act, including the costs of administering the airline subsidy pilot program.

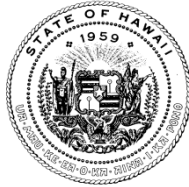
The ~~sums~~ sum appropriated shall be expended by the department of transportation for the purposes of this Act.

Thank you for the opportunity to testify.

POSSIBLE STANDARDS FOR THE GRANTS IN THIS BILL

- (1) Any grant shall be used exclusively for the purposes of this program.
- (2) The applicant shall indicate capability to properly use the grant for the purpose of the grant program.
- (3) The applicant shall comply with all applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, sexual orientation, disability, or any other characteristic protected under applicable federal or state law.
- (4) The grant shall not be used for purposes of entertainment or perquisites.
- (5) The applicant shall comply with other requirements as the department of transportation may prescribe.
- (6) All activities undertaken with funds received shall comply with all applicable federal, state, and county statutes and ordinances.
- (7) The applicant shall indemnify and save harmless the State of Hawai'i and its officers, agents, and employees from and against any and all claims arising out of or resulting from activities carried out or projects undertaken with funds provided hereunder, and procure sufficient insurance to provide this indemnification if requested to do so by the department.
- (8) The applicant shall agree to make available to the department all records the applicant may have relating to the grant, to allow state agencies to monitor the applicant's compliance with this section.

JOSH GREEN, M.D.
GOVERNOR



TESTIMONY BY:
EDWIN H. SNIFFEN
DIRECTOR

Deputy Directors
DREANALEE K. KALILI
TAMMY L. LEE
ROBIN K. SHISHIDO
JAMES KUNANE TOKIOKA

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

March 14, 2023
10:00 A.M.
State Capitol, Teleconference

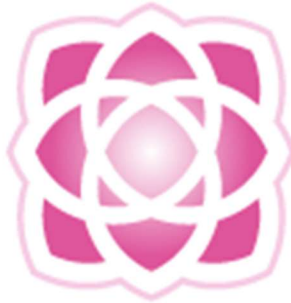
S.B. 784 SD1
RELATING TO AIRLINES

House Committee on Transportation

The Department of Transportation (DOT) **supports** this bill which establishes a one-year pilot program to provide subsidies to airlines operating out of Molokai Airport and Lanai Airport.

It is our understanding that the needs of the communities on Molokai and Lanai are not being met by the one operating air carrier. This one-year pilot program will encourage increased air carrier operations out of Molokai and Lanai.

Thank you for the opportunity to provide testimony.



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

LATE

HEARING BEFORE THE HOUSE COMMITTEE ON
TRANSPORTATION
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 312
TUESDAY, MARCH 14, 2023 AT 10:00 A.M.

To The Honorable Chris Todd, Chair
The Honorable Darius K. Kila, Vice Chair
Members of the committee on Transportation

SUPPORT FOR SB784 SD1 RELATING TO AIRLINES

The Maui Chamber of Commerce **strongly supports SB784 SD1** which requires the Department of Transportation to establish and implement a one-year Airline Subsidy Pilot Program at Moloka'i Airport to assist airlines in offsetting the costs of operation.

The Chamber notes that since January 2021, only one passenger airline has provided service to the general public out of Moloka'i Airport. While the airline has done its best to accommodate the needs of passengers, including additional routes, flight times, and ordering larger planes, the cost of plane tickets remains prohibitive to many Moloka'i residents who need to travel for essential reasons, including work, medical appointments, and family. To alleviate cost burdens for passengers reliant on air travel to and from Moloka'i, implementing a one-year Airline Subsidy Pilot Program may provide incentives for airlines to service Moloka'i.

We would also note that there is no mention of the Lana'i airport in this measure. While we appreciate the effort and attention on the Moloka'i airport, we feel that the same consideration should be made for Lana'i airport since the residents of Lana'i face very similar issues getting off the island for essential services.

For these reasons we **strongly support SB784 SD1** and would appreciate consideration for adding Lana'i airport in the program.

Sincerely,

Pamela Tumpap
President

SB-784-SD-1

Submitted on: 3/12/2023 8:28:22 AM

Testimony for TRN on 3/14/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Leimomi Khan	Individual	Support	Written Testimony Only

Comments:

Continue to support.

SB-784-SD-1

Submitted on: 3/13/2023 6:12:19 PM

Testimony for TRN on 3/14/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Rosie F Davis	Individual	Support	Written Testimony Only

Comments:

Aloha,

I support SB784

Mahalo nui

SB-784-SD-1

Submitted on: 3/13/2023 10:12:22 PM

Testimony for TRN on 3/14/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Jill Coombs	Individual	Support	Written Testimony Only

Comments:

Travel to and from Molokai has become extremely expensive, unreliable and difficult in the past few years since the closure of the ferry and several airlines, the latest of which being Makani Kai and Hawaiian. I support this bill but respectfully ask that if at all possible, residency of Molokai be taken into consideration or travel to provide necessary services not currently available on island as a priority for flight schedules and prices. It is hard enough knowing that as residents we mainly travel for medical or other necessary travel. I would hate to see the subsidy either absorbed in airline profits (and cost savings not passed on to the passengers) or for this subsidy to be overtaken by people on vacation or "fun" trips while residents and care providers are breaking the bank just trying to obtain/provide necessary services, go on a school or sports trip or visit family.

SB-784-SD-1

Submitted on: 3/14/2023 9:35:16 AM

Testimony for TRN on 3/14/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Faith Tuipulotu	Individual	Support	Written Testimony Only

Comments:

Aloha,

I am in strong support of SB784. Our island residents are in dire need of help.

Thank you, Faith Tuipulotu