

SENATE BILL NO. 363—SENATORS GOICOECHEA, SETTELMAYER;
GANSERT, GUSTAVSON, HARDY AND KIECKHEFER

MARCH 20, 2017

JOINT SPONSORS: ASSEMBLYMEN ELLISON; AND KRAMER

Referred to Committee on Revenue and
Economic Development

SUMMARY—Makes various changes relating to regional
commercial air service in this State. (BDR 18-92)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Contains Appropriation not included
in Executive Budget.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to economic development; creating the Nevada
Air Service Development Commission; setting forth
duties of the Commission; creating the Nevada Air
Service Development Fund; providing for the
management of the Fund; requiring the Commission to
develop a program to provide grants of money from the
Fund to certain air carriers; establishing criteria for
awarding grants of money from the Fund to certain air
carriers; making an appropriation; and providing other
matters properly relating thereto.

Legislative Counsel's Digest:

1 The Nevada Constitution contains a provision commonly known as a “gift
2 clause” that restricts the State, under certain circumstances, from donating or
3 loaning the State’s money or credit to any company, association or corporation,
4 except corporations formed for an educational or charitable purpose. (Nev. Const.
5 Art. 8, § 9) The State loans its credit in violation of this constitutional provision
6 only when the State acts as a surety or guarantor for the debts of a company,
7 corporation or association. (*Employers Ins. Co. of Nev. v. State Bd. of Exam’rs*, 117
8 Nev. 249, 258 (2001)) The State does not donate, loan or “gift” its money in
9 violation of this constitutional provision when the State dispenses state funds for a
10 public purpose and the State receives a valuable benefit or fair consideration in
11 exchange for the dispensation of the state funds. (*Lawrence v. Clark County*, 127



* S B 3 6 3 *

Nev. 390, 405 (2011)) In most cases, a court generally will give great weight and due deference to the Legislature's finding that a particular dispensation of state funds serves a public purpose and that the State receives a valuable benefit or fair consideration in exchange for the dispensation. (*McLaughlin v. Hous. Auth. of Las Vegas*, 68 Nev. 84, 93 (1951); *Lawrence v. Clark County*, 127 Nev. 390, 399 (2011); see also *Washoe County Water Conserv. Dist. v. Beemer*, 56 Nev. 104, 115 (1935); *Cable v. Beemer*, 64 Nev. 77, 82-85 (1947); *State ex rel. Brennan v. Bowman*, 89 Nev. 330, 332-33 (1973))

Sections 10 and 11 of this bill create the Nevada Air Service Development Commission and set forth duties of the Commission. **Section 10** creates the Commission and provides that the Commission consists of the Executive Director of the Office of Economic Development and the members of the Commission on Tourism of the Department of Tourism and Cultural Affairs. **Section 10** also establishes the requirements that govern the meetings of the Commission. **Section 11** provides that the Commission shall administer the Nevada Air Service Development Fund, which is created in **section 12** of this bill. **Section 12** also provides that the Fund may accept monetary gifts, grants and donations from any source for deposit in the Fund. **Section 12** further provides for the management of the money in the Fund and authorizes the Commission to award grants of money from the Fund to air carriers pursuant to **section 13** of this bill.

Section 13 requires the Commission to establish a program for the award of grants of money from the Fund to air carriers who will serve, or enhance service to, small airports or nonhub airports in this State for the purpose of recruiting, retaining, stabilizing and expanding regional air service in this State.

Section 14 of this bill establishes criteria for awarding grants of money from the Fund to certain air carriers. **Section 14** provides that a grant of money from the Fund must be used to pay the costs associated with an agreement entered into between the Commission and an air carrier for the air carrier to commence or continue air service to the airport in exchange for a guarantee of receiving certain revenue or subsidies from the Commission. **Section 14** further provides that: (1) a grant of money from the Commission must pay 80 percent of the cost of the guarantee; and (2) a local air service development entity, an airport receiving service or increased service or the governing body of the local government having jurisdiction over such an airport must pay 20 percent of the cost of such a guarantee in the form of in-kind contributions.

Section 15 of this bill makes an appropriation to the Nevada Air Service Development Fund.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. 1. The Legislature hereby finds and declares that:

(a) Section 9 of Article 8 of the Nevada Constitution contains a provision commonly known as a "gift clause" which restricts the State under certain circumstances from donating or loaning the State's money or credit to any company, association or corporation, except corporations formed for educational or charitable purposes.

(b) In *Employers Insurance Company of Nevada v. State Board of Examiners*, 117 Nev. 249, 258 (2001), the Nevada Supreme Court held that the State loans its credit in violation of Section 9 of Article 8 of the Nevada Constitution only when the State acts as a



1 surety or guarantor for the debts of a company, corporation or
2 association.

3 (c) In *Lawrence v. Clark County*, 127 Nev. 390, 405 (2011), the
4 Nevada Supreme Court held that the State does not donate, loan or
5 “gift” its money in violation of Section 9 of Article 8 of the Nevada
6 Constitution when the State dispenses state funds for a public
7 purpose and the State receives a valuable benefit or fair
8 consideration in exchange for the dispensation of the state funds.

9 (d) In *McLaughlin v. Housing Authority of the City of Las*
10 *Vegas*, 68 Nev. 84, 93 (1951), and *Lawrence v. Clark County*, 127
11 Nev. 390, 399 (2011), the Nevada Supreme Court held that when
12 the Legislature authorizes a state agency to dispense state funds:

13 (1) The courts will carefully examine whether the Legislature
14 made an informed and appropriate finding that dispensation of the
15 state funds serves a public purpose and the State receives a valuable
16 benefit or fair consideration in exchange for the dispensation;

17 (2) The courts will give great weight and due deference to
18 the Legislature’s finding, and the courts will uphold the
19 Legislature’s finding unless it clearly appears to be erroneous and
20 without reasonable foundation; and

21 (3) The courts will closely examine whether the dispensing
22 state agency reviews all facts, figures and necessary information
23 when making the dispensation, and when the state agency has done
24 so, it will not be second-guessed by the courts.

25 2. The Legislature hereby further finds and declares that:

26 (a) The state program developed and carried into effect pursuant
27 to this act will not result in the State acting as a surety or guarantor
28 of the debts of an air carrier receiving a grant of money.

29 (b) The purpose of this act is to develop and carry into effect a
30 state program to encourage air carriers to resume, retain or enhance
31 the provision of commercial air service to and from small hub
32 airports and nonhub airports that serve rural communities in this
33 State.

34 (c) The provisions of this act are intended to serve an important
35 public purpose and ensure that the State receives valuable benefits
36 and fair consideration in exchange for each grant of money from the
37 program because:

38 (1) The program requires the dispensing state agency to
39 review all facts, figures and necessary information when making
40 each grant of money from the program to determine whether the
41 grant will provide economic benefit to the State;

42 (2) The provision of air transportation service to and from
43 small hub airports and nonhub airports enables the citizens and
44 businesses of this State to travel more efficiently, and at lower cost,
45 to and from the rural communities in this State; and



(3) The dispensing state agency may not make a grant of money from the program unless the agency receives a commitment from the air carrier receiving the grant to commence or continue air service to a designated small hub airport or nonhub airport.

Sec. 2. Chapter 231 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 14, inclusive, of this act.

Sec. 3. *As used in sections 3 to 14, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4 to 9, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 4. *"Air carrier" means a person who provides commercial air transportation to passengers.*

Sec. 5. *"Commission" means the Nevada Air Service Development Commission created by section 10 of this act.*

Sec. 6. *"Fund" means the Nevada Air Service Development Fund created by section 12 of this act.*

Sec. 7. *"Local air service development entity" means:*

1. A regional development authority;

2. An organization formed to encourage increased air service for small communities in this State; or

3. Any other person who receives the benefit of increased air service for small communities in this State.

Sec. 8. *"Nonhub airport" has the meaning ascribed to it in 49 U.S.C. § 47102.*

Sec. 9. *"Small hub airport" has the meaning ascribed to it in 49 U.S.C. § 47102.*

Sec. 10. *1. There is hereby created the Nevada Air Service Development Commission, consisting of:*

(a) The Executive Director; and

(b) The members of the Commission on Tourism appointed pursuant to NRS 231.170.

2. At the first meeting of each fiscal year, the Commission shall elect from among its members a Chair, a Vice Chair and a Secretary.

3. The Commission shall meet at least once each calendar quarter and at other times at the call of the Chair or a majority of its members.

4. A majority of the members of the Commission constitutes a quorum for the transaction of all business.

Sec. 11. *The Commission shall:*

1. Administer the Fund; and

2. Adopt any regulations necessary or convenient to carry out the provisions of sections 3 to 14, inclusive, of this act.



1 **Sec. 12. 1. There is hereby created as a special revenue**
2 ***fund in the State Treasury the Nevada Air Service Development***
3 ***Fund.***

4 **2. The Commission may accept gifts, grants and donations**
5 ***from any source for deposit in the Fund.***

6 **3. The money in the Fund must be invested as other state**
7 ***funds are invested. All interest earned on the deposit or investment***
8 ***of the money in the Fund, after deducting any applicable charges,***
9 ***must be credited to the Fund. Claims against the Fund must be***
10 ***paid as other claims against the State are paid.***

11 **4. The Commission may make grants of money from the**
12 ***Fund to air carriers that satisfy the criteria set forth in section 13***
13 ***of this act.***

14 **Sec. 13. 1. The Commission shall develop a program to**
15 ***provide grants of money from the Fund to an air carrier that will***
16 ***service or provide enhanced air service to a commercial service***
17 ***airport that is:***

18 **(a) A small hub airport or nonhub airport; and**

19 **(b) Certified by the Federal Aviation Administration of the**
20 ***United States Department of Transportation pursuant to 14 C.F.R.***
21 ***Part 139.***

22 **2. An application for a grant of money from the Fund must**
23 ***be in the form prescribed by the Commission and must include,***
24 ***without limitation:***

25 **(a) A statement designating the small hub airport or nonhub**
26 ***airport for which the air carrier will commence or continue air***
27 ***service if the grant is awarded;***

28 **(b) Commitments from the air carrier that if the Commission**
29 ***awards the grant to the air carrier, the air carrier will enter into a***
30 ***written agreement with the Commission that provides for the air***
31 ***carrier to commence or continue air service to the airport***
32 ***designated in the application in exchange for receiving from the***
33 ***Commission one of the guarantees set forth in subsection 2 of***
34 ***section 14 of this act; and***

35 **(c) The amount of the in-kind contribution from a local air**
36 ***service development entity, the airport designated in the***
37 ***application or the governing body of the local government that has***
38 ***jurisdiction over the airport pursuant to subsection 3 of section 14***
39 ***of this act and the method in which the contribution will be***
40 ***provided.***

41 **Sec. 14. 1. The Commission may make a grant of money**
42 ***from the Fund if the Commission finds that the grant will:***

43 **(a) Enable an air carrier to commence or continue air service**
44 ***to a small hub airport or nonhub airport; and***

45 **(b) Provide economic benefit to this State.**



2. *The Commission may make a grant of money from the Fund only to:*

(a) *Guarantee that an air carrier will receive an agreed amount of revenue per flight that the air carrier operates in to or out of the airport designated in the application pursuant to paragraph (a) of subsection 2 of section 13 of this act;*

(b) *Guarantee that the air carrier will charge a reduced or subsidized price to customers who use the air carrier to travel to or from the airport designated in the application pursuant to paragraph (a) of subsection 2 of section 13 of this act; or*

(c) *Guarantee a profit goal for the air carrier that is established by agreement between the air carrier and the Commission.*

3. *A grant of money awarded from the Fund must pay 80 percent of the cost of a guarantee described in subsection 2. The remaining 20 percent of the cost of the guarantee must be paid by:*

(a) *A local air service development entity;*

(b) *The airport designated in the application pursuant to paragraph (a) of subsection 2 of section 13 of this act; or*

(c) *The governing body of the local government that has jurisdiction over the airport.*

4. *The contribution to the cost of the guarantee pursuant to subsection 3 from the local air service development entity, airport or governing body, as applicable:*

(a) *Must not violate federal law or any regulations or guidelines adopted by the Federal Aviation Administration of the United States Department of Transportation; and*

(b) *Must be in the form of an in-kind contribution, which may include, without limitation:*

(I) *A waiver or reduction in favor of the air carrier:*

(I) *Of rent for the use of the terminal;*

(II) *For landing fees; or*

(III) *For other airport charges or taxes; or*

(2) *Marketing and advertising services provided by the local air service development entity, airport or local government to the air carrier.*

Sec. 15. 1. There is hereby appropriated from the State General Fund to the Nevada Air Service Development Commission created by section 10 of this act the following sums for deposit in the Nevada Air Service Development Fund created by section 12 of this act:

For the Fiscal Year 2017-2018.....\$1,000,000

For the Fiscal Year 2018-2019.....\$1,000,000

2. Any balance of the sums appropriated by subsection 1 remaining at the end of the respective fiscal years must not be



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1 committed for expenditure after June 30 of the respective fiscal
2 years by the entity to which the appropriation is made or any entity
3 to which money from the appropriation is granted or otherwise
4 transferred in any manner, and any portion of the appropriated
5 money remaining must not be spent for any purpose after
6 September 21, 2018, and September 20, 2019, respectively, by
7 either the entity to which the money was appropriated or the entity
8 to which the money was subsequently granted or transferred, and
9 must be reverted to the State General Fund on or before
10 September 21, 2018, and September 20, 2019, respectively.

11 **Sec. 16.** This act becomes effective upon passage and
12 approval.



