

Amendment No. 264

Senate Amendment to Senate Bill No. 125	(BDR 18-610)
Proposed by: Senate Committee on Revenue and Economic Development	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

Adoption of this amendment will MAINTAIN the unfunded mandate not requested by the affected local government to S.B. 125 (§ 10).

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red-strikethrough~~ is deleted language in the original bill; (4) ~~purple double-strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

BJF/BJE



Date: 4/19/2015

S.B. No. 125—Makes various changes related to recruiting, retaining, stabilizing and expanding regional commercial air service in this State.
(BDR 18-610)



SENATE BILL NO. 125—SENATOR GOICOECHEA

FEBRUARY 9, 2015

JOINT SPONSOR: ASSEMBLYMAN ELLISON

Referred to Committee on Revenue and
Economic Development

SUMMARY—Makes various changes related to recruiting, retaining, stabilizing and expanding regional commercial air service in this State. (BDR 18-610)

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

CONTAINS UNFUNDED MANDATE (§ 10)
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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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 the duties of the Commission; creating the Nevada Air Service Development Fund; requiring the Commission to administer the Fund; establishing the criteria for awarding grants to certain ~~airports~~ air carriers from the Fund; making an appropriation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

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. (Nev. Const. Art. 8, § 9) The State does not donate, loan or “gift” its money in violation of this constitutional provision when the State dispenses state funds for a public purpose and the State receives a valuable benefit or fair consideration in exchange for the dispensation of such funds. (*Lawrence v. Clark County*, 127 Nev. Adv. Op. 32, 254 P.3d 606, 616 (2011)) In most cases, the courts 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 the State receives a valuable benefit or fair consideration in exchange for the dispensation. (*Washoe County Water Conserv. Dist. v. Beemer*, 56 Nev. 104, 115 (1935); *Cable v. Beemer*, 64 Nev. 77, 82-85 (1947); *McLaughlin v. Hous. Auth. of Las Vegas*, 68 Nev. 84, 93 (1951); *State ex rel. Brennan v. Bowman*, 89 Nev. 330, 332-33 (1973); *Lawrence v. Clark County*, 127 Nev. Adv. Op. 32, 254 P.3d 606, 612 (2011))

Sections 2-10 of this bill create the: (1) Nevada Air Service Development Commission, which consists of the Executive Director of the Office of Economic Development within the Office of the Governor and the members of the Commission on Tourism of the Department of Tourism and Cultural Affairs; and (2) Nevada Air Service Development Fund. The Commission will administer the Fund and award grants to the operators of air carriers who will serve, or enhance service to, small airports in this State for the purpose of recruiting, retaining, stabilizing and expanding regional air service in this State. Airports that receive grants from the Fund must use the grants **be used** to pay the costs associated with an agreement entered into between the airport **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 airport operator or the local government that has jurisdiction over the airport **Commission**. **Section 10** of this bill requires **provides** that: **(1) a grant from the Commission must pay 80 percent of the cost of the guarantee; and (2) a local air service development entity,** an airport (which receives such a grant) 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. but does not indicate how such costs will be apportioned. Therefore, the governing body of such a local government could be required to pay for up to 20 percent of the cost of a guarantee even if the governing body did not consent to the application for or the acceptance of a grant. **in the form of in-kind contributions.**

Section 11 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 surety or guarantor for the debts of a company, corporation or association.

(c) In Lawrence v. Clark County, 127 Nev. Adv. Op. 32, 254 P.3d 606, 616 (2011), the Nevada Supreme Court held that the State does not donate, loan or “gift” its money in violation of Section 9 of Article 8 of the Nevada Constitution when the State dispenses state funds for a public purpose and the State receives a valuable benefit or fair consideration in exchange for the dispensation of the state funds.

(d) In McLaughlin v. Housing Authority of the City of Las Vegas, 68 Nev. 84, 93 (1951), and Lawrence v. Clark County, 127 Nev. Adv. Op. 32, 254 P.3d 606, 616 (2011), the Nevada Supreme Court held that when the Legislature authorizes a state agency to dispense state funds:

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

(2) The courts will give great weight and due deference to the Legislature’s finding, and the courts will uphold the Legislature’s finding

unless it clearly appears to be erroneous and without reasonable foundation; and

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

2. The Legislature further finds and declares that:

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

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

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

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

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

(3) The dispensing state agency may not make a grant 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.

~~Section 1.1~~ *Sec. 1.5. Chapter 231 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this act.*

Sec. 2. As used in sections 2 to 10, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 ~~4 and 5~~ to 5.7, inclusive, of this act have the meanings ascribed to them in those sections.

Sec. 3. "Air carrier" means a person who provides commercial air transportation to passengers.

Sec. 4. "Commission" means the Nevada Air Service Development Commission created by section 6 of this act.

Sec. 5. "Fund" means the Nevada Air Service Development Fund created by section 8 of this act.

Sec. 5.3. 1. "Local air service development entity" means a regional development authority, an organization formed to encourage increased air service for small communities in this State or any other person who receives the benefit of increased air service for small communities in this State.

2. As used in this section, "regional development authority" has the meaning ascribed to it in NRS 231.009.

Sec. 5.5. "Nonhub airport" has the meaning ascribed to it in 49 U.S.C. § 47102.

Sec. 5.7. "Small hub airport" has the meaning ascribed to it in 49 U.S.C. § 47102.

Sec. 6. 1. There is hereby created the Nevada Air Service Development Commission, consisting of:

(a) The Executive Director of the Office of Economic Development; 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 on 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. 7. *The Commission shall:*

1. *Administer the Fund; and*

2. *Adopt any regulations necessary or convenient to carry out the provisions of sections 2 to 10, inclusive, of this act.*

Sec. 8. 1. *There is hereby created as a special revenue fund in the State Treasury a Nevada Air Service Development Fund. The Commission may accept gifts, grants and donations from any source for deposit in the Fund.*

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

3. *The Commission may make grants of money from the Fund to ~~airports~~ air carriers that satisfy the criteria set forth in section 9 of this act.*

Sec. 9. 1. ~~*An airport may apply for a grant from the Commission if the airport:*~~

~~*(a) Is: The Commission shall develop a program to provide grants of money from the Fund to an air carrier that will service or provide enhanced air service to a commercial service airport that ~~does not have more passenger boardings on an annual basis than a~~ is;*~~

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

~~*(b) ~~Is certified~~ Certified by the Federal Aviation Administration pursuant to 14 C.F.R. Part 139. ~~or~~*~~

~~*(c) Is located more than 150 miles from the nearest medium hub airport or large hub airport; and*~~

~~*(d) Demonstrates to the Commission that air carriers charge unreasonably high fees to service the airport or provide insufficient service to the airport.*~~

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

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

~~*(b) Commitments from ~~and~~ the air carrier ~~and the airport~~ that if the Commission awards the grant to the ~~airport,~~ air carrier, the ~~two parties~~ air carrier will enter into a written agreement with the Commission that provides for the air carrier to commence or continue air service to the airport designated in the application in exchange for receiving from the Commission one of the guarantees set forth in subsection ~~1~~ 2 of section 10 of this act;*~~

~~*(b) The cost and terms of the agreement between the air carrier and the airport; and*~~

~~*(c) The amount of the in-kind contribution from ~~the airport~~ a local air service development entity, the airport designated in the application or the governing body of the local government that has jurisdiction over the airport pursuant to subsection ~~1~~ 3 of section 10 of this act and the method in which the ~~money for such a~~ contribution will be ~~generated; and~~*~~

~~*(d) The amount of the grant for which the airport is applying.*~~

~~3. As used in this section, the terms "large hub airport," "medium hub airport," "passenger boardings" and "small hub airport" have the meanings ascribed to them in 49 U.S.C. § 47102, provided.~~

Sec. 10. 1. ~~[A grant awarded]~~ The Commission may make a grant if the Commission finds that the grant will enable an air carrier to commence or continue air service to a small hub airport or nonhub airport and provide economic benefit to this State.

2. The Commission may make a grant from the Fund ~~[may]~~ only ~~be used by an airport]~~ 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 ~~that]~~ designated in the application pursuant to paragraph (a) of subsection 2 of section 9 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 ~~that]~~ designated in the application pursuant to paragraph (a) of subsection 2 of section 9 of this act;
or

(c) Guarantee a profit goal for the air carrier that is established by agreement between the air carrier and the ~~airport]~~

~~2. An airport that receives a Commission.~~

3. A grant awarded from the Fund must pay ~~[with the grant]~~ 80 percent of the cost of a guarantee described in subsection 1. The remaining 20 percent of the cost of the guarantee must be paid by ~~the airport or]~~ a local air service development entity, the airport designated in the application pursuant to paragraph (a) of subsection 2 of section 9 of this act or 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 2 from the local air service development entity, airport or governing body ~~of the local government must]~~, 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 ~~[money or in kind, or both. An]~~ an in-kind contribution ~~[may be in the form of]~~

~~(c)]~~, which may include, without limitation:

~~(1)]~~ (I) A waiver or reduction in favor of the air carrier:

~~(1)]~~ (I) Of rent for use of the terminal;

~~(2)]~~ (II) For landing fees; or

~~(3)]~~ (III) For other airport charges or taxes; or

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

Sec. 11. 1. There is hereby appropriated from the State General Fund to the Nevada Air Service Development Commission created by section 6 of this act the following sums for deposit in the Nevada Air Service Development Fund created by section 8 of this act:

For the Fiscal Year 2015-2016.....\$1,000,000

For the Fiscal Year 2016-2017.....\$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 committed for expenditure after June 30 of the respective fiscal years by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 16, 2016, and September 15, 2017, respectively, by either the entity to which the money was appropriated or the entity

1 to which the money was subsequently granted or transferred, and must be reverted
2 to the State General Fund on or before September 16, 2016, and September 15,
3 2017, respectively.

4 **Sec. 12.** The provisions of NRS 354.599 do not apply to any additional
5 expenses of a local government that are related to the provisions of this act.

6 **Sec. 13.** This act becomes effective upon passage and approval.