

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.

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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 air carriers from the Fund; 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” which 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 educational or charitable purposes. (Nev. Const.
5 Art. 8, § 9) The State does not donate, loan or “gift” its money in violation of this
6 constitutional provision when the State dispenses state funds for a public purpose
7 and the State receives a valuable benefit or fair consideration in exchange for the
8 dispensation of such funds. (*Lawrence v. Clark County*, 127 Nev. Adv. Op. 32, 254
9 P.3d 606, 616 (2011)) In most cases, the courts generally will give great weight and
10 due deference to the Legislature’s finding that a particular dispensation of state
11 funds serves a public purpose and the State receives a valuable benefit or fair
12 consideration in exchange for the dispensation. (*Washoe County Water Conserv.*
13 *Dist. v. Beemer*, 56 Nev. 104, 115 (1935); *Cauble v. Beemer*, 64 Nev. 77, 82-85



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(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 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. Grants 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 10** of this bill 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 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 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



1 Court held that when the Legislature authorizes a state agency to
2 dispense state funds:

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

7 (2) The courts will give great weight and due deference to
8 the Legislature's finding, and the courts will uphold the
9 Legislature's finding unless it clearly appears to be erroneous and
10 without reasonable foundation; and

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

15 2. The Legislature further finds and declares that:

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

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

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

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

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

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

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

43 **Sec. 2.** *As used in sections 2 to 10, inclusive, of this act,*
44 *unless the context otherwise requires, the words and terms defined*



1 in sections 3 to 5.7, inclusive, of this act have the meanings
2 ascribed to them in those sections.

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

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

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

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

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

16 **Sec. 5.5.** "Nonhub airport" has the meaning ascribed to it in
17 49 U.S.C. § 47102.

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

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

22 (a) The Executive Director of the Office of Economic
23 Development; and

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

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

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

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

34 **Sec. 7.** The Commission shall:

35 1. Administer the Fund; and

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

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

42 2. The money in the Fund must be invested as other state
43 funds are invested. All interest earned on the deposit or investment
44 of the money in the Fund, after deducting any applicable charges,



1 must be credited to the Fund. Claims against the Fund must be
2 paid as other claims against the State are paid.

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

6 **Sec. 9. 1.** The Commission shall develop a program to
7 provide grants of money from the Fund to an air carrier that will
8 service or provide enhanced air service to a commercial service
9 airport that is:

10 (a) A small hub airport or nonhub airport; and

11 (b) Certified by the Federal Aviation Administration pursuant
12 to 14 C.F.R. Part 139.

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

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

19 (b) Commitments from the air carrier that if the Commission
20 awards the grant to the air carrier, the air carrier will enter into a
21 written agreement with the Commission that provides for the air
22 carrier to commence or continue air service to the airport
23 designated in the application in exchange for receiving from the
24 Commission one of the guarantees set forth in subsection 2 of
25 section 10 of this act; and

26 (c) The amount of the in-kind contribution from a local air
27 service development entity, the airport designated in the
28 application or the governing body of the local government that has
29 jurisdiction over the airport pursuant to subsection 3 of section 10
30 of this act and the method in which the contribution will be
31 provided.

32 **Sec. 10. 1.** The Commission may make a grant if the
33 Commission finds that the grant will enable an air carrier to
34 commence or continue air service to a small hub airport or
35 nonhub airport and provide economic benefit to this State.

36 2. The Commission may make a grant from the Fund only to:

37 (a) Guarantee that an air carrier will receive an agreed
38 amount of revenue per flight that the air carrier operates in to or
39 out of the airport designated in the application pursuant to
40 paragraph (a) of subsection 2 of section 9 of this act;

41 (b) Guarantee that the air carrier will charge a reduced or
42 subsidized price to customers who use the air carrier to travel to or
43 from the airport designated in the application pursuant to
44 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 Commission.

3. A grant awarded from the Fund must pay 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 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, 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:

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

(I) Of rent for 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. 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 to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 16, 2016, and September 15, 2017, respectively.

Sec. 12. (Deleted by amendment.)



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

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