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FIRST REPRINT

A.B. 242

ASSEMBLY BILL NO. 242—ASSEMBLYMEN COHEN,
FRIERSON AND ELLISON

MARCH 11, 2019

JOINT SPONSOR: SENATOR GOICOECHEA

Referred to Committee on Taxation

SUMMARY—Makes various changes relating to regional commercial air service in this State. (BDR 18-1024)

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; creating the Nevada Air Service Development Fund; providing for the management of the Fund; setting forth the duties of the Commission; 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
12 Nev. 390, 405 (2011)) In most cases, a court generally will give great weight and



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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))

Section 10 of this bill creates the Nevada Air Service Development 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 of this bill creates the Nevada Air Service Development Fund and provides that the Commission may accept monetary gifts, grants and donations from any source for deposit in the Fund. **Section 11** further provides for the management of the money in the Fund and authorizes the Commission to award grants of money from the Fund to certain air carriers that meet the requirements of **section 13** of this bill. **Section 12** of this bill provides that the Commission shall administer the Fund.

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, nonhub airports or certain large hub 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 a certain 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 or an airport receiving service or increased service must pay the remaining 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 surety or guarantor for the debts of a company, corporation or association.



(c) In *Lawrence v. Clark County*, 127 Nev. 390, 405 (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. 390, 399 (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 hereby 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 of money.

(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, nonhub airports and large hub 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 of money from the program because:

(1) The program requires the dispensing state agency to review all facts, figures and necessary information when making each grant of money from the program to determine whether the grant will provide economic benefit to the 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 of money from the program unless the agency receives a commitment



1 from the air carrier receiving the grant to commence or continue air
2 service to a designated small hub airport, a nonhub airport or a large
3 hub airport that services small hub airports and nonhub airports.

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

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

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

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

15 **Sec. 6.** *"Fund" means the Nevada Air Service Development*
16 *Fund created by section 11 of this act.*

17 **Sec. 6.5.** *"Large hub airport" has the meaning ascribed to it*
18 *in 49 U.S.C. § 47102.*

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

- 20 1. *A tourism or development organization;*
21 2. *An organization formed to encourage increased air service*
22 *in this State; or*
23 3. *A chamber of commerce.*

24 **Sec. 8.** *"Nonhub airport" has the meaning ascribed to it in*
25 *49 U.S.C. § 47102.*

26 **Sec. 9.** *"Small hub airport" has the meaning ascribed to it in*
27 *49 U.S.C. § 47102.*

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

- 30 (a) *The Executive Director; and*
31 (b) *The members of the Commission on Tourism as provided*
32 *in NRS 231.170.*

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

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

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

41 **Sec. 11.** 1. *There is hereby created as a special revenue*
42 *fund in the State Treasury the Nevada Air Service Development*
43 *Fund.*

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



3. 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.

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

Sec. 12. 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.

Sec. 13. 1. 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 routes that service an airport that is:

(a) A small hub airport, a nonhub airport or, if the air carrier provides air service through a large hub airport that services small hub airports and nonhub airports, a large hub airport; and

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

2. An application for a grant of money 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, nonhub airport or large hub airport described in subsection 1 for which the air carrier will commence or continue air service if the grant is awarded;

(b) Commitments from the air carrier that if the Commission awards the grant to the air carrier, the 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 2 of section 14 of this act;

(c) The amount of the in-kind contribution from a local air service development entity or the airport designated in the application and the method in which the contribution will be provided; and

(d) Letters of support from each airport that participates in the air service route offered by an air carrier pursuant to subsection 1.

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



(a) *Enable an air carrier to commence or continue air service to a small hub airport, nonhub airport or large hub airport described in subsection 1 of section 13 of this act; and*

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

(b) *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; or*

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

4. *The contribution to the cost of the guarantee pursuant to subsection 3 from the local air service development entity or airport, 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 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 or airport 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 11 of this act:

For the Fiscal Year 2019-2020..... \$1,000,000

For the Fiscal Year 2020-2021..... \$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



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1 transferred in any manner, and any portion of the appropriated
2 money remaining must not be spent for any purpose after
3 September 18, 2020, and September 17, 2021, respectively, by
4 either the entity to which the money was appropriated or the entity
5 to which the money was subsequently granted or transferred, and
6 must be reverted to the State General Fund on or before
7 September 18, 2020, and September 17, 2021, respectively.

8 **Sec. 16.** (Deleted by amendment.)

9 **Sec. 17.** This act becomes effective upon passage and
10 approval.

