

Senate Committee on Economic Development

February 26, 1973

9 a.m.

407 State Capitol

Members Present: Senator John Burns, Chairman
Senator George Eivers
Senator Kenneth Jernstedt
Senator E. D. Potts

Excused: Senator Betty Browne
Senator Ted Hallock, Vice Chairman
Senator Robert F. Smith

Witnesses: Senator L. W. Newbry
Lionel Topaz, Assistant Commissioner, Public
Utility Commission
Thomas Cavener, Jefferson State Airlines,
Ashland
W. Paul Payne, Pacific Northern Airlines,
Hillsboro
Michael M. Murphy, Hughes Air West, Seattle
David Cavener, Jefferson State Airlines,
Ashland
Paul Burket, Administrator, Oregon State
Board of Aeronautics
Vernon Chase, Aviation Trade Development,
Port of Portland
Ed Whalen, Director, Division of Economic
Development

Chairman Burns called the meeting to order at 9 a.m. and recognized Sen. Lynn Newbry, a principal sponsor of the bill.

Sen. Newbry indicated his interest in the proposed legislation stemmed from his work with the Transportation Task Force during the past interim. A study by the Task Force revealed that Oregon has no air transportation available to smaller communities around the state.

The importance of route protection to assure financial success of third-level carriers was stressed by Sen. Newbry. He suggested the bill be amended to exempt charter or air taxi service and flights initiated by forest service agencies. He also recommended an indirect subsidy to the airlines by exempting them from payment of landing fees.

Sen. Jernstedt asked if a larger airline could step in once routes were established and thereby push the third-level

carrier out of business. Sen. Newbry said this could be avoided by instructing the Public Utilities Commissioner to discourage competing carriers.

Lionel Topaz, Assistant Commissioner of the Public Utilities Commissioner, gave a brief summation of the bill. He referred to a prepared statement (see Exhibit A, SB-240 Supporting Documents file) which contains suggested amendments.

Thomas Cavener, owner of Jefferson State Airlines, supported the bill in principal. He expressed concern, however, over rate regulation and possibly excessive insurance requirements. He emphasized the measure should provide route protection and be limited to scheduled air carriers.

W. Paul Payne, owner of Pacific Northern Airlines, said SB 240 was an unnecessary duplication of federal regulations and would put an added burden and expense on both the air carrier and the state.

Michael M. Murphy, a representative of Hughes Air West, spoke in favor of the legislation. He stated that once his company phased out its older aircraft, it would not compete for routes which included airports whose runways were inadequate for servicing jet aircraft. Yet protected routes are necessary, he said, to insure air service for the more remote areas of the state.

David Cavener, President of Jefferson State Airlines, appeared as spokesman for nine air taxi operators in the state. He testified that only through route protection could Oregon be guaranteed adequate third-level carrier service. He agreed that landing fee exemptions would be a method of inducing air service to outlying communities. Air taxi operators are against being included in the bill, he said. Their business is already self-regulated and if their rates are excessive, people won't use their services.

Paul Burket, Administrator of the Oregon State Board of Aeronautics, spoke of the need for commuter carrier regulation and in favor of the proposed legislation.

Vernon Chase, Manager of the Aviation Trade Development at the Port of Portland, said the Port in the absence of state regulations had to formulate its own minimum standards for third-level carriers. He said the Port was in support of SB 240.

Ed Whalen, Director of the Economic Development Division, who served as a Commissioner with the Port of Portland before his present appointment, indicated there were legal questions as to whether the Port had authority to impose standards on third-level carriers. He stressed route protection as an incentive to develop air routes that haven't been used before. He indicated one of the main concerns of an industry considering location in Oregon is whether the plant site is within an hour from Portland International Airport on a regular-scheduled airline.

The meeting was adjourned at 10:30 a.m.

Respectfully submitted,


Committee Clerk

Log to Recordings of Senate Economic Development Committee--
February 26, 1973

Tape 3, Side 2

Sen. Burns announced the Task Force at its recent meeting had recommended that tourism be placed within the Department of Economic Development. He then introduced Mr. Vic Fryer, Travel Information Director for the Highway Division, and asked him to describe the work of his department.

Mr. Fryer explained that the aim of Oregon's tourism program is to encourage tourists to visit the more remote areas of the state. Out-of-state advertising is geared toward promotion of central and eastern Oregon; instate toward encouraging interstate travel by local residents.

Sen. Burns noted that few states have a tourism program within the Highway Department. Washington's, for example, is located in the Department of Economic Development. Sen. Burns asked Mr. Fryer to appear before the committee on March 14 with information about the funding of Washington's program.

Sen. Smith expressed doubt about passage of SB 224 if tourism was added to the responsibilities given the Economic Development Department. There is too much public dismay over the amount of tax dollars now spent to entice visitors into the overcrowded parks of this state, he said. He added that the Highway budget would be in better standing if more emphasis were placed on promoting tourism in uncrowded areas of the state.

Mr. Whelan discussed the manpower need to properly implement SB 224, and said five additional staff members would be adequate. The rest could be accomplished with some juggling of present personnel. He emphasized the need for three field representatives to be permanently located in the less-populated areas.

Sen. Jernstedt moved and the motion was adopted that emergency clauses be added to SB 240 and SB 224.

Mr. John Gustafson, Assistant Labor Commissioner, told the committee he was concerned about coordinating state agencies with the new commission to prevent any conflict or overlap. He suggested a statement affirming Oregon's commitment to balanced growth as a policy guideline for all agencies.

The chairman noted that SJR 5 had been scheduled twice for hearings with no testimony. Sen. Smith moved to table the resolution, and it was so ordered.

Sen. Potts moved that SB 226 be reported "do pass" to the desk and referred to Ways and Means by prior reference. The motion was so ordered.

Sen. Burns noted that Sen. Lynn Newbry in his testimony of February 26 had recommended an amendment to SB 240 exempting forest service aircraft from coverage under the bill. Sen. Smith moved that this amendment be adopted. Sen. Potts moved that SB 240 be sent to the floor with the recommendation "do pass as amended". The motions were so ordered by unanimous consent, and Sen. Newbry was named to lead the floor discussion.

The meeting was adjourned at 10:05 a.m.

Respectfully submitted,


Committee Clerk

Log to Recordings of Senate Economic Development Committee--
March 7, 1973

Tape 4, Side 2

PUBLIC UTILITY COMMISSIONER OF OREGON

SENATE BILL 240

February 26, 1973

Purpose

Senate Bill 240 was introduced at the request of the Public Utility Commissioner to help provide for a favorable atmosphere for the development of intrastate air service.

The bill addresses itself to providing a regulatory umbrella over small carriers, third level carriers as they are called in the jargon of the trade.

Scope

The bill provides for regulation over all air carriage in intrastate commerce with the exception of (1) mail transportation, (2) flight instruction, (3) aerial application of agricultural chemicals, (4) air ambulance service, and (5) presently certificated Civil Aeronautics Board carriers.

The regulatory grant is complete with several exceptions.

Bill Provisions

The bill provides for certification by the state of intrastate air carriers and gives the commissioner control over sale, lease, purchase merger, or contract of such carriers.

The commissioner may regulate the rates and routes of carriers certificated, as well as set down insurance and performance bond requirements.

Senate Bill 240
February 26, 1973
Page Two

The bill sets forth the standards for awarding certificates and the methods for route changes and authority abandonment.

One of the unique features of the bill is found in Section 11, Paragraph (2), which allows the commissioner to exempt, by rule, any activity from any or all of the act's requirements if the commissioner is satisfied that the exemption would not be contrary to the public interest. The reason for this provision is to allow for a reasonable degree of flexibility in regulation. There is no sense in regulating certain activities if the public interest doesn't so require. This degree of flexibility will allow for the orderly development of intrastate air service without burdening the infant industry with unnecessary regulation.

Fiscal Impact

We estimate the fiscal impact of this bill to be \$92,000 for the upcoming biennium.

Section 13 calls for financing the regulatory activity through a tax on intrastate revenues of the carriers certificated. Upon re-examination of the situation it is my opinion that, at this stage, imposition of such a tax will act as a discouragement of air carrier development and I would like Section 13 of the bill amended to read as follows:

Section 13 (1) To finance the administration of this act and subsection (3) of ORS 756.040, there is appropriated from the General Fund \$92,000 to the Public Utility Commissioner for the biennium beginning July 1, 1973.

(2) No change.

I also request that our budget be amended to include a position for administrator of the Air-Marine Division of our Rail-Air-Marine Program,

Senate Bill 240
February 26, 1973
Page Three

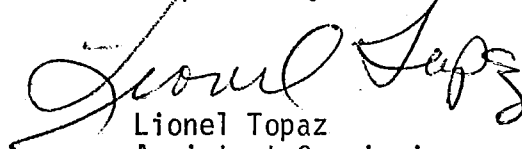
plus a secretary III. Along with normal travel expenses and overhead, this is the only expenditure I see as necessary to implement this program. The PUC expenditure limitation must also be raised accordingly.

One other amendment is necessary to alleviate a problem inadvertently created. Section 1, Paragraph (2) accidentally brings motor carriage incidental to air transportation under this act. Such carriage is already subject to our jurisdiction under ORS Chapter 767 and the language in SB 240 might confuse the matter. I therefore request the following amendment:

The words "and all transportation of persons or property for compensation by other modes incidental to or in conjunction with such carriage" found on lines 12 and 13 of Page [2], Section 1, Paragraph (2) should be deleted.

Thank you for your consideration, gentlemen.

Respectfully submitted,


Lionel Topaz
Assistant Commissioner
Rail-Air-Marine Program

Official File Copy

SB 240 Exhibit B
Pal for Committee
Economic Development

PNA

Portland-Hillsboro Airport
26225 N.W. Cornell Road
Hillsboro, Oregon 97123
Tel (503) 648-0661

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S. EC. DEVELOPMENT COM.

February 27, 1973

OREGON STATE ARCHIVES

Senator John D. Burns
Oregon State Senate
State Capitol
Salem, Oregon 97310

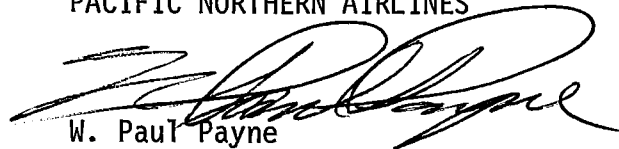
Dear Senator Burns:

Enclosed is a copy of Civil Aeronautics Board Docket 21761 which was referred to in my testimony to the Senate Committee on Economic Development on February 26.

I hope you will have time to read it over carefully so that you may understand the position taken by Pacific Northern Airlines as related to Senate Bill 240.

Very truly yours,

PACIFIC NORTHERN AIRLINES



W. Paul Payne
General Manager

WPP:pb

Enclosure

PACIFIC NORTHERN AIRLINES

September 6 and 7, respectively, further answers to the Bureau's petition were submitted by Rocky Mountain Airways and by Executive Air Fleet Corporation.^{3/}

The petitions, without challenging our underlying findings in Order 72-7-61, seek clarification and/or modification of the language employed in Regulation ER-748 to implement those findings. Under that regulation, air taxis would be permitted to operate aircraft with a "maximum passenger capacity" of 30 seats and a "maximum payload capacity" of 7500 pounds.^{4/} These capacity tests were, in turn, defined as follows:

" 'Maximum passenger capacity' - means the maximum number of passenger seats for which an aircraft is configured.

'Maximum payload capacity' - means the maximum weight of that portion of an aircraft's useful load which, actually or potentially, produces revenues."

The pleadings on reconsideration maintain that the definition of "maximum payload capacity" is ambiguous in a number of respects, leaving some uncertainty as to whether such aircraft as the Convair 440 or the F-27 could qualify under the new rule (assuming that no more than 30 passenger seats were installed on these airplanes). Upon consideration of the matters presented, we agree that there is a need for clarification of the 7500-pound

^{3/} Rocky Mountain's answer was accompanied by a petition for leave to intervene, while Executive's was accompanied by a motion for leave to file. While good cause has not been shown to permit intervention at this late stage of the proceeding, we will accept the answers of both carriers. Similarly we will accept further pleadings submitted by Provincetown-Boston Airline (i.e. a reply to Southeast's answer) and by Southeast (i.e. an answer to Provincetown-Boston's reply). While we are not convinced that good cause has been shown for the acceptance of either of these otherwise unauthorized documents, they concern matters first raised on reconsideration and should therefore be accorded considerable latitude.

^{4/} This new rule is not applicable to operations within Alaska or Hawaii which continue to be governed by the 12,500-pound takeoff weight standard.

Official File Copy

SB 240 Exhibit B
Civil Aeronautics Bd

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OREGON STATE ARCHIVES

Order 72-9-62

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

SERVED SEP 15 1972

Adopted by the Civil Aeronautics Board
at its office in Washington, D.C.,
on the 15th day of September, 1972

PART 298 WEIGHT LIMITATION INVESTIGATION	:	Docket 21761
	:	
	:	

OPINION AND ORDER ON RECONSIDERATION

BY THE BOARD:

By Order 72-7-61 in the above-named proceeding, we decided that the existing 12,500-pound takeoff weight limitation on air taxi aircraft under Part 298 should be replaced by a 30-seat/7500-pound payload capacity restriction. Contemporaneously, we issued Regulation ER-748, to be effective September 17, 1972, to implement the amendments found to be in the public interest in the Part 298 Weight Limitation Investigation. On August 8, 1972, Southeast Airlines filed a petition for modification of ER-748 or for reconsideration of Order 72-7-61, and the Bureau of Operating Rights filed a petition for clarification and modification of ER-748.^{1/} Answers to the petitions were filed by Provincetown-Boston Airline and by Southeast.^{2/} On

^{1/} A letter raising the same matters was submitted by the National Air Transport Conferences (NATC).
^{2/} An answer was also filed by Texas International Airlines. However, the carrier subsequently filed a motion for leave to withdraw its answer. TXI's motion will be granted.

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for determining whether an airplane qualifies under the 7500-pound payload criterion. As here revised, this new definition provides as follows:

"Maximum payload capacity" - means the maximum certificated takeoff weight of an aircraft, less the empty weight, 7/ less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, flight crew, steward's supplies, etc.). For purposes of this Part, the allowance for the weight of the crew, oil, and fuel is as follows: (a) crew - 200 pounds per crew member required under FAA regulations, (b) oil - 350 pounds, (c) fuel - the minimum weight of fuel required under FAA regulations for a flight between domestic points 200 miles apart: 8/

Provided, however, that in the case of aircraft for which a maximum zero fuel weight is prescribed by the FAA, 9/ maximum payload capacity means the maximum zero fuel weight, less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum flight crew, steward's supplies, etc., but not including disposable fuel or oil).

The first definition, applicable to aircraft for which no maximum zero fuel weight is prescribed, draws on the existing definition of "available load" in section 03 of Part 241 of the Board's regulations. In addition, to provide more concrete guidelines, it establishes allowances for the three major categories of operating load: the weight of the crew, oil and fuel. The crew allowance follows a standard already utilized by the Board for passenger weight, while the oil allowance reflects the Bureau's recommendations based on an estimate of the average oil capacity of aircraft in the

7/ Empty weight is defined in section 03 of Part 241.

8/ Assumes VFR weather conditions and flights not involving extended overwater operations.

9/ The maximum zero fuel weight is the maximum permissible weight of an airplane with no disposable fuel or oil. The zero fuel weight figure may be found in the FAA's type certificate data sheets and/or in FAA-approved flight manuals.

payload capacity test, for the guidance of aircraft manufacturers and the air taxi industry.

In adopting a 7500-pound payload limitation, in combination with the 30-seat restriction, we intended to impose essentially a capacity, rather than an operating, standard. As our opinion indicated, we did not intend to transform the basic character of the Part 298 exemption by authorizing the operation of large aircraft, leaving it to the individual operator to limit its actual payload on such aircraft to 7500 pounds. Apart from the enforcement problems such a rule would present, it would eliminate certain of the advantages--such as cabin roominess, and greater flight range--that we expected certificated operators to retain over exempted carriers.^{5/}

Similarly, we did not mean to qualify within the new rule such aircraft as the Convair 440, Martin 202 or 404, or F-27, all of which are generally capable of carrying payloads in excess of 7500 pounds, but whose payloads are lower on long-haul flights requiring more fuel, or can be reduced artificially--through the use of unnecessary ballast,^{6/} for example.

To clarify the meaning of the 7500-pound payload test and to implement our aims as set forth above, we have replaced the general definition of maximum payload capacity which appeared in Regulation ER-748, with a more detailed formula for computing an aircraft's payload capacity for the purposes of Part 298. We appreciate that no general method for measuring the precise actual payload capacity of each aircraft is available. However, we believe that the dual definition we are now adopting provides a workable standard

^{5/} See our earlier Opinion, pp. 30,31.

^{6/} Not including fixed ballast required by the FAA's safety regulations.

This is so because zero fuel weight, as the maximum permissible weight of an airplane without fuel or oil, establishes an actual structural ceiling on maximum payload, in the sense that any additional weight over and above an aircraft's zero fuel weight (and up to its maximum certificated takeoff weight) may consist only of fuel and oil and not more payload.

Finally, while we have determined, on the available evidence, that our dual definition offers a sound method for computing maximum payload capacity, we recognize that the existing record on this question is rather limited. Thus, no detailed proposed definition of payload capacity was submitted until the Bureau filed its petition for clarification of Regulation ER-748, and the payload formula we have adopted relies heavily on the maximum zero-fuel-weight test recently proposed to us by Executive Air Fleet. Therefore, although we will permit the amended Part 298, with our revised definition of payload capacity, to become effective on September 17 we will afford interested persons (whether or not they are parties to the Part 298 case) a further opportunity to comment on this payload definition. The Board will carefully evaluate any such comments, and, if necessary, will make such further changes in the payload capacity formula as may be appropriate.

Any such comments will be filed within 30 days of the service date of this order and will be directed solely at the question of the appropriate method for computing maximum payload capacity in view of our objectives set forth earlier. Any person objecting to the Board's definition of maximum payload capacity, adopted herein, shall support its objection with specific argument and detailed underlying data. The Board will not entertain comments

DC-3/Convair 440 size range. For measuring fuel weight, the most important operating load element, we have adopted as a standard the minimum required under FAA safety regulations for a domestic flight over a 200-mile segment, under fair weather conditions. A flight-length limitation is necessary to clarify our intention (noted earlier) not to include within the exemption long-haul operations with aircraft that carry payloads of more than 7500 pounds, but are capable of carrying payloads of more than 7500 pounds over short-hauls. We have chosen a 200-mile segment as a yardstick for our fuel load allowance because more than 90 percent of scheduled operations are conducted in markets of fewer than 200 miles,^{10/} and we expect the third-level industry to continue concentrating on these short-haul markets.

Next, in the case of aircraft for which the FAA requires a maximum zero fuel weight, we have adopted a formula for computing payload which starts with the zero-fuel-weight figure--rather than with the maximum takeoff weight--and requires no allowance for fuel or oil. A basic advantage of this second formula, proposed by Executive Air Fleet, is that it represents--in situations where it can be applied--a more uniform test with fewer variables than the formula to be employed in the case of aircraft having no maximum zero fuel weight. As a result, it should offer clearer guidance to aircraft manufacturers and air taxis, and should prove easier to administer. Another important consideration is the fact that any aircraft shown by the zero-fuel-weight formula to have a payload capacity below 7500 pounds, can under certain circumstances have a greater maximum payload, regardless of its certificated maximum takeoff weight or whether it is used in long-haul or short-haul operations.

^{10/} See Order 72-7-61, p. 22.

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relating to any matter, other than the payload capacity definition, at issue in the Part 298 case, including requests for a change in the general 30-seat/^{11/} 7500-pound payload test.

ACCORDINGLY, IT IS ORDERED THAT:

1. An amendment to Part 298 of the Board's Economic Regulations, in the form attached hereto, be and it hereby is adopted;
2. Said amendment shall be effective on September 17, 1972;
3. Interested persons may file comments on the revised definition of "maximum payload capacity," adopted herein, within 30 days of the service date of this order; and reply comments may be filed within 10 days thereafter;
4. Except to the extent granted herein, all petitions, motions and requests herein be and they hereby are denied.

This order shall be published in the Federal Register.

BROWNE, Chairman, GILLILLAND, Vice Chairman, MINETTI, MURPHY and TIMM, Members, concurred in the above opinion and order.

HARRY J. ZINK

Secretary

(SEAL)

^{11/} Similarly, the Board will not entertain comments favoring a definition of maximum payload, like that proposed by Southeast, which would authorize the use of large aircraft so long as they were actually operated with payloads of less than 7500 pounds.

Regulation ER-759

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Economic Regulations
Amendment No. 14 to Part 298
Effective: September 17, 1972
Adopted: September 15, 1972

PART 298 - CLASSIFICATION AND EXEMPTION OF AIR TAXI OPERATORS
IMPLEMENTING AMENDMENT

By ER-748, adopted July 18, 1972, and published at 37 F.R. 14692, the Board adopted certain amendments to Part 298, thereby implementing its decision in the Part 298 Weight Limitation Investigation, Docket 21761.^{1/} These amendments, which are to become effective on September 17, 1972, include a new definition of "Maximum payload capacity," namely, the maximum weight of that portion of an aircraft's useful load which actually or potentially produces revenues. In Order 72-9-62, September 15, 1972, issued contemporaneously herewith, the Board has determined to clarify this general definition by providing a more detailed formula for computing an aircraft's payload capacity for the purposes of Part 298. The amendment herein reflects that determination.

Since the amendment herein merely implements the definitional clarification to Part 298 made by the Board in Order 72-9-62, supra, the Board finds that notice and public procedure thereon are unnecessary, and that the amendment may be made effective on less than 30 days' notice.

1/ Order 72-7-61, July 18, 1972.

As stated in said order, we will accept further comments and reply comments directed solely to the question of the appropriate method of computing maximum payload capacity. Comments should be filed within 30 days of the service date hereof and reply comments within 10 days thereafter.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 298 of the Economic Regulations (14 CFR Part 298) effective September 17, 1972, as follows:

Amend §298.2 by defining the term "maximum payload capacity" to read as follows:

§298.2 Definitions.

As used in this part:

* * * * *

"Maximum payload capacity" - means the maximum certificated takeoff weight of an aircraft, less the empty weight,^{2/} less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, flight crew, steward's supplies, etc.). For purposes of this part, the allowance for the weight of the crew, oil and fuel is as follows: (a) crew - 200 pounds per crew member required under FAA regulations, (b) oil - 350 pounds, (c) fuel - the minimum weight of fuel required under FAA regulations for a flight between domestic points 200 miles apart;^{3/} Provided, however,

2/ Empty weight is defined in section 03 of Part 241 as follows: "the weight of the airframe; engines, propellers, and fixed equipment. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid."

3/ Assumes VFR weather conditions and flights not involving extended overwater operations.

That in the case of aircraft for which a maximum zero fuel weight is prescribed by the FAA, ^{4/} maximum payload capacity means the maximum zero fuel weight, less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum flight crew, steward's supplies, etc., but not including disposable fuel or oil).

* * * * *

(Sections 204 and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 771; 49 U.S.C. 1324, 1386).

By the Civil Aeronautics Board:

HARRY J. ZINK

Secretary

(SEAL)

4/ The maximum zero fuel weight is the maximum permissible weight of an airplane with no disposable fuel or oil. The zero fuel weight figure may be found in the FAA's type certificate data sheets, and/or in FAA-approved flight manuals.

72-7-61

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

DOCKET 21761

PART 298 WEIGHT LIMITATION INVESTIGATION

Decided: July 18, 1972

Existing 12,500-pound takeoff weight limitation on air taxi aircraft under Part 298 replaced by a 30-passenger/7,500-pound payload restriction, except for intra-Hawaii operations. Decision on applicability of amended rule to intra-Alaska services deferred.

APPEARANCES:

Same as in the examiner's initial decision and, in addition, the following:

David N. Bricton, for Frontier Airlines
Clifford Elkins, for the New York State Department of Transportation
Robert R. Flatley, for the Green Bay parties
Ernest T. Kaufmann, for Western Air Lines
Edward MacNeal, for the Colorado parties
Thomas S. Miles, for the National Air Transportation Conferences
J. W. Rosenthal, for deHavilland Aircraft of Canada and Houston Metro
V. Michael Straus, for Provincetown-Boston Airline
John C. Smuck, for Southern Airways
Nathaniel P. Breed, Jr., for the Bureau of Operating Rights

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labor and civic parties and government agencies.^{3/} Oral argument has been heard and the case stands submitted for decision.

We have decided to affirm the examiner's determination that Part 298 should be revised to replace the existing 12,500-pound takeoff weight limitation with a 30-seat/7,500-pound payload capacity restriction. The new rule will require air taxi aircraft to meet both the 30-seat and 7,500-pound payload tests; that is, airplanes having either a seating

^{3/} Alaska Airlines, Allegheny Airlines, Antilles Air Boats, Commuter Airlines, Delta Air Lines, Eastern Air Lines, Frontier Airlines, Golden West Airlines, Hawaiian Airlines, Hughes Air Corp.-Mohawk Airlines-North Central Airlines, filing jointly, Ozark Air Lines, Piedmont Aviation, Provincetown-Boston Airline, Southeast Airlines, Southern Airways, Texas International Airlines, Western Alaska Airlines, Wien Consolidated Airlines, deHavilland Aircraft and Houston Metro Airlines, filing jointly, Fokker-VFW International, the Colorado parties, the Green Bay parties, the Kansas City parties, the Massachusetts Port Authority, the Philadelphia parties, the Postmaster General and the Department of Transportation (DOT). In addition, the following adopted their briefs to the examiner as their briefs to the Board: Trans World Airlines, Western Air Lines, Hawker Siddeley Aviation, the Louisville and Jefferson County Air Board, the Commonwealth of Puerto Rico, the Air Line Pilots Association, International (ALPA), and the Bureau of Operating Rights.

Finally, briefs accompanied by motions to file an otherwise unauthorized document were submitted by the National Association of Regulatory Utility Commissioners, the New York State Department of Transportation, and Thomas J. Harris. Good cause for late filing having been shown, each of these briefs will be accepted. However, we will not accept the brief of Pilgrim Aviation and Airlines, since the carrier is not a formal party to this proceeding and has submitted no motion seeking permission to file its brief.

OPINION

BY THE BOARD:

At issue in this proceeding is the need for liberalizing the existing 12,500-pound takeoff weight limitation for air taxi aircraft under Part 298.^{1/}

In his initial decision, attached hereto as an appendix, Examiner Merritt Ruhlen found that the 12,500-pound limitation should be relaxed to permit the use of aircraft capable of carrying a maximum of 30 passengers or a payload of 7,500 pounds.^{2/} However, the examiner determined that the present restriction should be retained for intra-Alaska and intra-Hawaii services. In addition, he found no need for according special treatment to STOL or amphibious aircraft or for adopting more liberal rules in noncompetitive markets.

The Board has exercised its right of discretionary review. Briefs to the Board have been filed by numerous air carriers, aircraft manufacturers,

^{1/} See Order 70-1-15, January 5, 1970 and Order 70-2-48, February 12, 1970.

^{2/} The 7,500-pound payload is designed to permit the carriage of 1,500 pounds of cargo and mail with a full 30-passenger load.

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or bus has become an increasing competitive force in short-haul markets, stimulated by the construction of a massive interstate highway system designed to comprise 42,500 miles and to reach 92 percent of cities over 50,000 in population when completed in 1978.^{5/}

Coupled with these factors and related to them have been several developments within the airline industry. These include sharp rises in operating costs outstripping modest revenue growth at many small communities, and a tendency on the part of local service carriers to concentrate more and more on longer haul, higher density markets. Characteristic of this latter trend has been the locals' acquisition of a large jet fleet and their use of higher capacity turboprop aircraft to replace the DC-3, the standard local service airplane of the early 1950s.

The confluence of these circumstances has produced a sharp cutback in certificated service to small communities. The examiner observed, for example, that 416 points have been deleted from airline routes since 1952, with 238 of them thereby removed from the certificated system.^{6/} Also, certificated operations are currently suspended at some 50 additional points, and numerous others have lost direct service at their own airports as a result of hyphenations with other cities. Finally, the same set of circumstances that resulted in these deletions and suspensions has also produced substantial reductions in scheduled frequencies to a considerable

^{5/} See the Bureau of Operating Rights' study, Service to Small Communities, Part III, March 1972.

^{6/} In all, about 370 points have been deleted from the certificated system during the Board's administration of the Act.

capacity of more than 30 passengers or a payload capacity in excess of 7,500 pounds will not qualify under the revised exemption. In addition, while we accept the examiner's reasons for not applying the new rule to intra-Hawaii services, we will defer any decision with respect to intra-Alaska operations until after our determination of the bush route issues in the Alaska Service Investigation, Docket 20826. Accordingly, except to the extent modified herein, we adopt the examiner's findings and conclusions as our own.

General Considerations

Since 1952, when they were first permitted to operate regularly scheduled services (see ER-167, January 11, 1952), air taxis have played a vital role in supplementing the network of certificated services which forms the backbone of the nation's air transportation system. In fact, the creation of this class of carriers operating outside of the basic certificated structure, has proved a key element in the Board's efforts to foster the fundamental policy mandate established by the Congress--the encouragement and development of an air transportation system properly adapted to the present and future needs of the United States.^{4/} Third-level carriers have contributed to this basic goal by assuming a growing share of the responsibility for service to short-haul, low-density markets, particularly from the period beginning in the early 1960s. A complex of factors has led to this result.

First, demographic changes, including population flows from small towns to metropolitan areas, have significantly affected traffic demand in many small communities where certificated service was found warranted twenty or more years ago. Next, surface transportation by private auto

^{4/} As the courts have recognized, operations conducted pursuant to exemption authority are as legal and proper as operations conducted pursuant to certificate authority and, in appropriate circumstances, it is desirable to formulate general exemptive regulations applicable to a class of carriers. Air Line Pilots Ass'n v. CAB, No. 24062 et al. (D.C. Cir. January 14, 1972), Seaboard and Western Air Lines v. CAB, 181 F.2d 515, 518 (D.C. Cir. 1949), cert. denied, 339 U.S. 963.

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of the public of basic comforts normally to be expected in modern air transportation has hindered the taxis' ability to attract surface passengers to air travel, has imposed an economic burden on many Part 298 operators, and caused serious difficulties for the Postal Service.

Under the circumstances, we believe that the existing weight standard should be maintained only if necessary to protect the certificated system. Given the phenomenal growth of certificated transportation, in general, and the fundamental changes since 1952 in the character of the locals' services, in particular, the measured relaxation of Part 298 which we favor in this proceeding should not, on the facts before us, jeopardize the network of certificated carriers. Of course, the Board will continue to monitor the activities of third-level carriers and to study their impact on the airlines on the basis of actual operating experience under the revised regulation. If necessary, we would not hesitate to use our regulatory powers to preserve the certificated system from harmful competition by the exempt carriers.

Finally, for reasons to be detailed below (pp. 33-35), we agree with the examiner that the enforcement of the Act, to the extent it would prohibit the amended Part 298 exemption adopted here, would be an undue burden on the class of air taxi operators by reason of the limited extent of, and unusual circumstances affecting, their operations, and is not in the public interest. Nonetheless, we remain free in individual situations--where, for example, a substitute service agreement between a certificated carrier and a commuter is involved--to examine the specific factual circumstances at issue, if necessary, before deciding on the perimeters of a particular air taxi's authority.^{8/}

^{8/} We expect to issue shortly an order dealing with the substitute service arrangements remanded to the Board by the Court of Appeals in ALPA v. CAB.

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number of smaller cities still within the certificated system, many of which are served as an adjunct of a trunkline's or a local's longer haul operations.

Air taxis--commuters in particular--have thus responded to a crucial public need in helping to fill service gaps flowing from these basic changes in the pattern of certificated services. At the same time, they have expanded their traditional services to off-route points that had never been certificated, and have continued to connect satellite airports with major hubs in the same metropolitan area. Thus, in fiscal 1971 the 126-passenger commuters operating under Part 298 carried nearly 4.4 million passengers in over 300 cities and 1,300 markets. In the overwhelming majority of these markets, air taxis provided the only scheduled through service. And, at no subsidy cost to the Federal treasury.

Significantly, the record also indicates that despite the development in the mid-1960s of more sophisticated, higher capacity aircraft capable of meeting the 12,500-pound limitation,^{7/} this restriction proved an effective tool in channeling air taxi energies in service to short-haul, low density markets, and in assuring that third-level operations, overall, complemented rather than competed with the certificated industry.

On the other hand, the 12,500-pound rule has in recent years proved an unnecessarily severe and overly rigid instrument. As detailed below, there is ample evidence that the rule has deprived a substantial segment

^{7/} Notably, the 15-seat Beech 99 and the 20-seat deHavilland Twin Otter.

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example, air taxi passengers have been denied such basic amenities of modern air travel as pressurization, air conditioning, adequate seat pitch and head room, and lavatory facilities.

The takeoff weight restriction has also harmed commuter operations by limiting fuel capacity,^{10/} with the result that under poor weather conditions, passengers and baggage must often be "bumped" to meet additional fuel reserve requirements. Sometimes, entire flights must be canceled. Also, insufficient fuel capability has imposed a further financial burden on air taxis by making it necessary for them to purchase substantial amounts of fuel at higher prices away from their home base.^{11/}

Apart from the difficulties attributable to the form of the present restriction, a maximum 12,500-pound takeoff weight does not, in many instances, permit adequate seating capacity or cargo and mail volume. As the examiner found, the current rule, which effectively limits Part 298 aircraft to 19 or 20 passengers, requires the uneconomic operation of extra sections to meet peak traffic demands. This is particularly a problem for commuters which feed traffic to certificated carriers at large air terminals, where the airlines' frequencies may be "bunched" around specific periods of the day.^{12/} Also, because the weight restriction provides greater incentives for utilizing limited available space for the transportation of passengers, it has hindered the economically desirable practice of combining passenger and cargo services on the same flight.

^{10/} Even on existing commuter aircraft such as the Twin Otter, the 12,500-pound rule limits fuel capability to about 43 percent of capacity, under full payload conditions.

^{11/} EX-T-1, pp. 6-9.

^{12/} See testimony of Fred L. Austin for Golden West, hearing transcript, p. 202.

Need for Revision of the 12,500-Pound Weight Standard

The existing 12,500 pound restriction was first adopted by the Board in 1949, as a limitation on the aircraft of "small irregular carriers," a class of noncertificated operators which preceded air taxis.^{9/} The rule was later incorporated into Part 298 when that regulation was promulgated authorizing air taxis to operate scheduled service. As we have noted, the basic purpose of the weight restriction was to prevent destructive competition between air taxis and the certificated airlines. For reasons discussed below, see pp. 17-32, we find that neither the existing Part 298 exemption nor our proposed extension poses a substantial threat to the certificated system. Accordingly, this section of our opinion will focus on the affirmative need per se for revision of the weight limitation.

The evidence of record demonstrates that the existing weight standard has substantially hampered the quality of service that air taxis provide the public, and has unduly curtailed the development of the third-level industry and the operating flexibility of nonsubsidized Part 298 operators.

Part of the problem stems from the form of the present restriction--expressed in terms of a maximum takeoff weight rather than a passenger and/or payload limitation. This has encouraged aircraft manufacturers to use the limited weight available in a manner designed to produce maximum seating capacity, often at the cost of passenger comfort features. For

^{9/} Board regulations were thereby made to conform with FAA (then CAA) standards for small aircraft.

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from the argument that no blanket liberalization is warranted, on the one hand, to claims that the examiner has not gone far enough, on the other. We have carefully weighed these objections, but have decided, on balance, to affirm the examiner's judgment.

First, little express opposition has been focused on the proposed change in the form of the Part 298 limitation--i.e., from a maximum take-off weight to a seat/payload capacity.^{15/} However, a number of parties on review challenge, at least to some degree, the examiner's finding that air taxis should be allowed to increase the maximum number of passengers they may carry on a single airplane from 20 to 30, and to raise their maximum payloads from about 5,000 to 7,500 pounds. Their objections fall into three broad categories: 1. Three of the four trunkline parties (Delta, Eastern and Western)^{16/} and Allegheny disagree with the examiner only to the extent that his amended limitation would exceed a 25-passenger/6,500-pound payload level. 2. TWA, most local service carriers, several commuters,^{17/} and a number of civic parties urge that to the extent relief from currently permissible capacity limitations may be desirable, it should be considered by the Board on an ad hoc basis--in response to individual

^{15/} To the extent that several parties seem to oppose even an alteration in the form of the Part 298 restriction, their position is based on a denial of the Board's legal authority to extend the blanket air taxi exemption, and on claims that any significant expansion of Part 298 authority will harm the certificated system. Both issues are discussed below, pp. 17-35.

^{16/} On review, Allegheny has altered its position somewhat. It now urges that the existing restriction be retained in subsidy-eligible markets served by local service carriers.

^{17/} Civic parties opposing the examiner's recommendation are: The Colorado, Green Bay, Kansas City and Philadelphia parties and the Louisville and Jefferson County Air Board. Civic groups supporting the examiner are: the Massachusetts Port Authority, the National Association of Regulatory Utility Commissioners, the New York State Department of Transportation, the New York Port Authority, and the Commonwealth of Puerto Rico.

Indeed, limited space even for baggage on small airplanes has at times proved a serious inconvenience for passengers connecting to commuters after long-haul trips on large certificated aircraft.

Finally, the Postmaster General has submitted extensive evidence detailing the Postal Service's need for greater mail capacity in air taxi services.^{13/} The conflict between the demands of passengers, who prefer daytime travel, and mail, which must be moved largely at late night hours, has produced major transportation problems for the Service because of the certificated airlines' passenger-oriented schedules and reduced services at smaller airports. Air taxi mail service has therefore become an "integral part of the postal transportation system."^{14/} However, the current 12,500-pound weight standard, by confining revenue payloads on Part 298 craft to the 3,500-5,000-pound range, has impeded effective mail delivery which, according to the Postal Service, demands 6,000-pound payload capabilities. In view of the Board's basic statutory obligation to encourage an air transportation system adapted to the present and future needs of the Postal Service, we find this a significant public interest consideration favoring a relaxation of the existing rule.

Recognizing the handicaps imposed by the 12,500-pound test, the examiner decided that it should be replaced by a 30-passenger/7,500-pound payload restriction. However, while nearly all air taxi parties and many certificated carriers acknowledge the drawbacks of the present rule, there is widespread disagreement in the case with respect to the examiner's proposed amendment. The parties raise a variety of objections, ranging

^{13/} Exhibits POD-199, 200.
^{14/} Postmaster General's brief to the Board, p. 3.

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effective integration of 30-passenger aircraft with the present fleet of smaller commuter planes. For example, there were nearly 50 commuter markets in fiscal 1971 which generated 50 or more daily passengers.^{18/} Moreover, the introduction of larger, more comfortable equipment might well stimulate additional traffic by attracting passengers who might otherwise travel by surface modes.

Next, a 30-passenger limit would provide air taxis greater flexibility in experimenting with available aircraft in the 20-30-passenger class. There are presently only a limited number of aircraft types in this category that might be used by air taxis. Listed in the record, for example, were the DC-3 and Nord 262 and 262-C (Frégate), all capable of carrying more than 25 passengers. We see no reason to apply an arbitrary 25-passenger cutoff that would prevent air taxis from utilizing these aircraft and acquiring wider experience operating larger airplanes under FAA regulations. This is particularly true because the only 20-25-passenger craft seriously discussed in the record, the 24-seat Saunders ST-27, is still awaiting FAA certification, although it may become available in the relatively near future.

Second, it is our judgment that a liberalization of Part 298, as opposed to a case-by-case consideration of requests to operate large aircraft, offers the best hope for the development of air taxi services. To

^{18/} However, there is little evidence that capacity increases in these markets would substantially harm certificated airlines. Thus, 70 percent of the markets received no direct certificated service, and in only 13 percent did local service carriers participate in a significant share of the single-carrier certificated traffic.

exemption or certification applications. 3. Lastly, most of the parties who dispute the examiner's position claim that a blanket liberalization would not help the air taxi industry or the traveling public because 30-passenger airplanes would not be economical, in view of the more stringent FAA operating standards applicable to aircraft of more than 12,500 pounds takeoff weight.

We find these arguments unpersuasive. We have already decided that there is a clear need for a relaxation of the passenger/payload capacities of air taxi aircraft. Obviously, the Board cannot at this time determine with mathematical precision the exact extent of that need for the present and immediate future. We can only estimate, after a careful analysis of the record evidence and officially noticeable data, where the line should be drawn separating air taxi from certificated aircraft in a manner that would most appropriately serve the needs of the third-level industry and small community traffic, without impinging on the basic certificated structure of air transportation contemplated by the Act. In our judgment, the 30-seat/7,500-pound payload rule favored by the examiner (and the Bureau) best responds to this purpose.

Those parties which find a 25-passenger--but not a 30-passenger--limit acceptable have settled on this figure largely as a compromise between no change and the examiner's proposal, and not because of any express showing that the record can support a 25-passenger standard and no more. We find a 30-passenger criterion preferable for several reasons.

First, while traffic figures for demand air taxis are not available, the latest commuter traffic data and testimony at the hearings indicate numerous very short-haul markets with sufficient densities to permit the

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commuter, services to small communities at a more advanced level of comfort and dependability demands aircraft with a greater passenger appeal.

Of course, we cannot be certain that even a blanket relaxation of the weight limitation will create enough demand within the air taxi industry to induce manufacturers to produce new 20-30-passenger commuter aircraft. While manufacturers who participated in this proceeding all conceded that such airplanes presented no technological difficulties, they disagreed as to whether they could be built economically under FAR-25, the airworthiness rule for transport category aircraft.^{19/} Nevertheless, airplanes like the Twin Otter, introducing important technological and economic advances, have been produced in the past to meet the 12,500-pound standard for air taxi aircraft under Board and FAA regulations. Under the circumstances, we believe there is a very real likelihood that a revision of the Board's rule will stimulate the manufacture of new airplanes designed to take advantage of the more liberal standards adopted in this investigation. This is especially so because the FAA now requires all new aircraft types with 10 or more passengers to meet the more stringent airworthiness criteria of FAR-25 (rather than FAR-23), so that much of the stimulus that prompted manufacturers to keep new commuter equipment within the 12,500-pound weight level is no longer present. In short, we find

^{19/} Not surprisingly, deHavilland, Hawker Siddley and Fokker, all of which are promoting 40-50-seat aircraft, insisted that a 30-seat airplane was not economical. Witnesses for Saunders, builder of the ST-27, and Aérospatiale, manufacturer of the N-262 and Frégate, took the opposite position.

begin with, a change by rulemaking may well have a greater stimulative impact in inducing air taxis to introduce somewhat larger, more comfortable and possibly more economic airplanes in some markets, by removing the need for prosecuting individual exemption applications, a considerable financial burden to many Part 298 operators. Contemporaneously, a rule amendment would relieve the Board of a sizeable administrative burden. We note in this connection that of the currently effective large aircraft exemptions granted by the Board, about 30 would be unnecessary under Part 298 as revised in this proceeding.

More important, reliance solely on individual exemption procedures would virtually eliminate any incentive for manufacturers to build new 20-30-passenger/7,500-pound payload airplanes designed for air taxi, particularly commuter, service. We believe that new aircraft of this kind are important to the optimal development of the third-level industry, which is in turn a vital component of the national air transportation system. At present, the N-262 is the only airplane mentioned in the record with a capacity of fewer than 30 passengers that embodies substantially all the comfort features lacking in existing commuter equipment, including full pressurization, air conditioning, lavatory facilities and more spacious cabin and baggage compartments. However, it is available in relatively limited quantity. While the DC-3 offers some comfort advantages over airplanes of less than 12,500-pounds takeoff weight--chiefly cabin roominess and extra baggage and cargo space--and also has greater fuel capabilities, it is nevertheless an aging aircraft that can be expected to fill a very limited and short-term need. The growth of air taxi, and particularly

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operations. For example, an air taxi operating large aircraft would be subject to the broad safety standards applicable to supplemental carriers under Part 121. However, the particular operating specifications to be imposed by the FAA would be tailored to the individual characteristics of the carrier involved.^{21/} Under the circumstances, it would be unwise for the Board to block at the outset a real opportunity for the development of improved public services by air taxis on the unsupported assumption that these operations could not be conducted profitably under FAA regulations. The sounder course, in our view, is to permit air taxis to make the attempt.

Next, in supporting a 30-passenger/7,500 pound payload limit, we also agree with the examiner's view that more liberal revisions (40-50 passengers and a 10,000-pound payload) advocated by several parties should not be adopted. In the first place, there is little showing in the record of an immediate need by third-level carriers for equipment with at least twice the capacity now permitted. As the examiner found, so large and sudden an increase could have a considerable negative impact on local service carriers, who still use a sizeable number of 40-55-seat planes in serving their smaller markets. Equally important, widespread use by commuters of aircraft of this size at this time could substantially undermine their existing high frequency levels, a basic service feature of commuter travel that should be preserved. For these reasons, the Board will follow a cautious approach enabling it to weigh the effects

^{21/} See testimony of Richard S. Sliff of the FAA, hearing transcript beginning at p. 1564.

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that a revision of Part 298 offers the greatest promise for creating incentives to the production of new airplanes appropriate to the third-level industry; in our judgment, this represents a significant decisional factor favoring a blanket liberalization over ad hoc treatment of large aircraft exemptions.

In addition, we wish to emphasize that our decision to affirm the examiner is in no way grounded on the expectation that the FAA will dilute its safety requirements for the operation of airplanes of more than 12,500-pounds takeoff weight, in response to our action here. On the contrary, the record demonstrates an opposite trend, with the FAA imposing more and more stringent standards on air taxi operations under Part 135, and steadily narrowing the basic differences between that regulation and Part 121, which governs certificated services with larger aircraft. We consider this a highly desirable trend because the safety of air taxi operations is, of course, basic to their continued growth and development.^{20/}

It is very difficult to judge, on the available evidence, whether stricter operating rules applicable to aircraft exceeding 12,500 pounds will prove a serious economic obstacle to the development of more advanced air taxi services. At the hearings, there was testimony on both sides of this issue by a number of air taxis, little of it, however, based on solid underlying data. Indeed, evidence introduced by DOT shows that it may be impossible to resolve this question in any meaningful way without actually permitting air taxis to experiment with broader Part 298 authority and studying the concrete results of their actual experience. This is so because the FAA does not apply identical operating requirements to all carriers utilizing large equipment regardless of the nature of their

^{20/} The National Transportation Safety Board recently conducted hearing to examine the need for further changes in FAA regulations governing air taxis.

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"undue burden" findings required by section 416(b) of the Act. The underlying theme running through these arguments is that the growth and increased sophistication of air taxi services since they were first authorized to operate on a regular basis in 1952 have virtually transformed the nature of the industry. As a result, the statutory prerequisites--i.e., public interest and undue burden findings--which sustained the grant of the original exemption may no longer apply even to existing commuter operations, much less to the extended services made possible by the Board's action in this proceeding.

We are unpersuaded by these contentions. We have already expressed our view that air taxis are a perfectly legitimate, indeed a vital, component of the air transportation system, notwithstanding that their operating rights rest on exemption rather than certificated authority. Nonetheless, the Board is well aware that its exemption powers are not limitless, and, specifically, that they cannot be used to undermine the basic certificated framework envisioned by the Act. However, we conclude that the evidence before us does not support the notion that a relaxation of Part 298 to permit 30-passenger/7,500-pound payload aircraft would endanger the structure of certificated services.

Very little hard evidence has been submitted in this investigation that relates directly to the incremental effects of this liberalization of Part 298. Indeed, the great bulk of the concrete data before us deals with the existing relationships between air taxis and certificated airlines, which a number of parties use as a springboard for attacking

of the more modest liberalization favored by the examiner on the basis of actual operating experience.^{22/}

Lastly, while most of the attention and virtually all the controversy in this proceeding has centered on commuter carriers, we will also extend the coverage of the new rule to demand or irregular operators, who form the overwhelming majority of air taxis. While our amendment will have little impact on many demand carriers, who now use airplanes far smaller than the existing 12,500-pound limit permits, the evidence of record nevertheless shows a substantial need for a larger capacity aircraft within this class of air taxis, as the examiner found.^{23/} In view of the negligible competitive effect the inclusion of demand operators would have on the certificated system, we see no reason to limit the revision of Part 298 to commuters.

Impact on the Certificated System

(a) General

We now turn to an examination of the effect of a broadened Part 298 weight limitation on the certificated system.

The airline parties challenge our expansion of the rule on a number of legal and policy grounds, whose common denominator is that substantial harm will befall the network of certificated carriers. They also deny that the Part 298 exemption, as here amended, can be supported by adequate

^{22/} In addition, we adopt as our own the examiner's findings and conclusions denying special treatment to "noncompetitive" markets or to STOL or amphibious aircraft.

^{23/} About 20 demand operators testified at the hearings to their need for larger airplanes. In addition, numerous other demand air taxis who could not be present supported a revision of the Part 298 weight limitation in questionnaires submitted to the Board.

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short-haul, low-density markets and of feeding passengers into the 25/ certificated system.

First, on the narrow question of commuter operations between points served by certificated carriers, the Board's historic position has been both clear and consistent. From the beginning, i.e., 1952, we have permitted scheduled air taxi services in such markets in the face of explicit objections by a number of airlines (Western, Continental and Resort Airlines). In 1955, when Part 298 was up for renewal, the Board again expressly rejected the request of the Conference of Local Airlines, based on arguments similar to those offered here, that scheduled air taxis be barred from markets served by the locals. Our premise, then as now, was that the nature of third-level services with small aircraft is fundamentally different from that of certificated operations, so that the potential for serious competitive harm to the latter is limited even if

25/ Therefore, air taxis continue, in essence, to provide "jitney" services of a kind not offered by other carriers. (Jitney services, by dictionary definition, refers to common carriage of passengers in a small vehicle for a small fare, and commonly over a regular route. See Webster's New International Dictionary 2d (1949).) ALPA and several locals cite an FAA notice of rulemaking as standing for the opposite proposition. Specifically, in considering stricter safety standards for air taxis, the FAA stated that ". . . the volume of the air taxi operations with small aircraft can no longer be considered as 'jitney' operations." 32 F.R. 4500, March 24, 1967. We find this citation inapposite to the question before us. First, the interpretation of the Board's expressions of policy is primarily the Board's responsibility. More important, ALPA seems to overlook the totally different setting of the FAA proceeding. The FAA was, of course, concerned with the absolute increase in the volume and sophistication of air taxi operations because, for purposes of its safety regulations, it would have mattered little that certificated services had grown even more rapidly. By contrast, our examination of the air taxi industry's role in domestic aviation would be virtually meaningless if not related to the overall development of and changing patterns in air transportation.

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any further expansion of air taxi authority. Under the circumstances, we believe that detailed comments clarifying our views on these existing relationships are in order.

At the outset, we find that the parties who dispute the examiner's decision have presented a misleading picture of the historical background of Part 298. Also, they have managed to portray the rapid growth of air taxi services as a menace to certificated carriers largely by ignoring or soft pedaling the latter's parallel and even more dramatic growth.

For example, several local service airlines, ALPA and a few civic parties claim that current commuter operations, particularly between city pairs also served by certificated carriers, go well beyond the air taxis' transportation function as originally contemplated by the Board in promulgating Part 298. They cite for support the preamble to the 1952 rule, where the Board expressed its belief that the "proper place for the operator of small aircraft in the domestic aviation picture . . . is to provide connecting air services to off-route points or 'jitney' services of a kind not offered by other air carriers." (emphasis added.) ^{24/}

Nothing in this language or in the historical development of scheduled air taxi services since then confirms the thesis that third-level carriers have altered their essential role of providing high frequency services in

^{24/} ALPA persists in misquoting this language by substituting the phrase "to provide connecting air services to off-route points on 'jitney' services." This gives the erroneous impression that the Board intended to exclude air taxis from city pairs on the certificated system.

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More important, the revenue passenger mileage attributable to commuters in that year represented about .4 percent of certificated domestic RPMs, indicating no significant proportional expansion of air taxi RPMs since ^{28/}1952, when they equalled .5 percent of certificated industry totals.

In addition to their very limited share in the total volume of domestic air traffic, commuters continue to serve different types of markets from those served by certificated carriers. For example, in fiscal 1971 more than 60 percent of third-level passengers traveled in markets of fewer than 100 miles, while more than 90 percent moved in markets of fewer than 200 miles. By contrast, nearly 90 percent of domestic passengers in the certificated system were carried between points more than 200 miles apart.

The fact that scheduled air taxis continue to occupy their traditional transportation role is most obvious in the great majority of their markets which currently receive no direct certificated service. However, even in markets served both by commuters and certificated carriers there is little evidence of a substantial harmful impact on the latter, primarily because even under those circumstances, the two classes of service are often not competitive in any meaningful sense. Thus, air taxis typically connect satellite airports with major air terminals in the same metropolitan area or conduct high-frequency flights to small communities. For the most part, any certificated service to such markets would consist of minimal frequency levels and services geared not to the needs of local

^{28/} Because traffic data for the 1,400 or so demand and irregular air taxis are not available, we cannot ascertain the exact RPM totals for the entire air taxi industry. However, the claims that Part 298 carriers are now encroaching or may soon encroach on the certificated system are--at least in this proceeding--almost exclusively focused on commuters. Therefore, the fact that the latter have generated a negligible proportion of the total RPMs in domestic air transportation tends to undercut the argument that air taxi growth in relation to that of certificated carriers has been substantial.

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both classes serve some city pairs in common. The experience of the last 20 years fully supports this position.

Obviously, the air taxi industry has matured in the 20-year interval, responding to the changing traffic demands in many small communities and to the service gaps produced by shifting patterns of certificated operations;^{26/} in recent years, also, technological advances have permitted some improvements in air taxi aircraft meeting the 12,500-pound standard. However, these developments have not disturbed the essential balance between certificated and exempted services.

Specifically, the air taxis' progress cannot be considered in a vacuum. Instead, it must be examined in the context of the overall development of domestic air transportation. Proceeding on that basis, the record demonstrates that air taxis, including commuters, continue to perform their traditional transportation function, which is to complement rather than supplant certificated services. Thus, while much has been made of the rapid expansion of commuter services as a threat to the airlines, the nearly 4.4 million passengers carried by these scheduled Part 298 operators in fiscal 1971 amounted to less than 3 percent of the traffic enplaned by certificated carriers in scheduled domestic operations.^{27/}

^{26/} See pp.3-5 , supra.

^{27/} In fact, this comparison of commuter to domestic certificated traffic overstates the commuters' ratio, because nearly 30 percent of third-level passengers are carried in Caribbean, intra-Alaska, or intra-Hawaii markets, which are not included in the Board's domestic O&D passenger surveys.

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30/ routings. It is therefore unsound, in our judgment, to view any significant share of Golden West's Los Angeles-Ontario traffic as diverted 31/ from the certificated system.

The purpose of this analysis is not to suggest that there are no markets in which air taxis compete with certificated airlines. Clearly, 32/ there are some. Also, despite their basically different transportation function, air taxis may have a minor diversionary effect on the short-haul beyond or intermediate point traffic which supports the certificated airlines' long-haul operations. However, the weight of the evidence indicates that the overall competitive impact of air taxis has been and continues to be slight; certainly, it does not approach the seriousness of a threat to the certificated system.

30/ Western's objectives are thus not too different from those of American, which operates aircraft between Los Angeles and Ontario for purposes of routing convenience, although barred from carrying local traffic in the market.

31/ A less dramatic, though telling, example is Chicago-Springfield, served by Ozark and Chicago & Southern Airlines, and likewise a leading commuter market in fiscal 1971. Here too, the record indicates that most of the commuter's passengers were stimulated, rather than diverted from Ozark. Air taxi operations to Meigs Field in the heart of the Loop area of Chicago have attracted a sizeable number of Springfield-Chicago passengers, very few of whom would have utilized Ozark's services to O'Hare, some 18-20 miles and up to two hours' driving time from the downtown area. (Chicago and Springfield are only about 190 road miles apart.) See hearings transcript, pp. 1689-1693. The absence of any significant diversionary impact on Ozark is demonstrated by the historic growth patterns of certificated passengers in this market. For example, single-carrier O&D traffic grew from about 82,000 in 1966, the last full year without commuter "competition," to 95,000 in 1969. While 1970 resulted in nearly a 15-percent drop in certificated traffic--partly because of a labor strike at Ozark--this cannot be attributed to the commuter carrier, whose traffic showed no significant growth in that year.

Significantly, Ozark has recently introduced small aircraft operations (with Twin Otters) to Meigs Field in the hope of capturing a share of the Springfield-Meigs Field market developed by air taxi services.

32/ For example, the handful of markets where local service carriers have experimented with aircraft under the 12,500-pound weight level. Such operations represent a negligible portion of the locals' system-wide services.

traffic but to the longer haul operations on which these small points are intermediate stops. As a result, many passengers carried by air taxis between points also served by scheduled airlines cannot realistically be considered diverted passengers, because their travel needs could not in any event be met by certificated airlines--including locals--given the service trends of the last two decades. Since surface transportation presents an attractive alternative for most commuter passengers in the short-haul markets at issue, a factor virtually ignored in the exhibits of the certificated carriers, such passengers would not be compelled to rely on limited and inconvenient certificated air services.

To illustrate, the 46-mile Los Angeles-Ontario market, the largest commuter market in the contiguous United States, nominally has point-to-point competition between Golden West and Western.^{29/} In actuality, this appearance of competition is illusory because only Golden West operates the kind of frequent, turn-around service that can be expected to make a dent against the convenient surface transportation modes that capture the overwhelming bulk of the traffic moving between these points. On the other hand, Western's single daily round trip with jet aircraft is not designed to attract a substantial number of Los Angeles-Ontario passengers, but to combine Sacramento-Los Angeles and Sacramento-Ontario traffic flows on the same flight, and to position its aircraft for Ontario-beyond

^{29/} The OAG also lists Air West in the market. However, that carrier operates exclusively between Burbank and Ontario and is not a significant participant in Los Angeles-Ontario certificated traffic.

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In weighing the impact of third-level carriers on local service airlines, the Board finds little support for the view that the locals have been substantially harmed. As we have noted, the rapid growth of air taxi services--to which the locals point--has occurred in the context of widespread changes in the character and range of local certificated operations. For instance, when Part 298 was adopted in 1952, the locals carried a total of 773,000 passengers in scheduled services, and earned about \$16 million in passenger revenues. The aircraft they operated had an average seating capacity of 18. By 1970, however, the local carriers' domestic traffic had multiplied more than 30 fold, reaching 26 million passengers, and their passenger revenues had grown correspondingly to nearly \$628 million. Also, the local carriers' scheduled RPMs had increased from 299 million to 7.4 billion, and the industry's available seats per aircraft had jumped to 70.1.

Moreover, these bare statistics tell only part of the story. The great bulk of the locals' growth took place in the 1960's when, in response to various economic stimuli, they acquired a large jet fleet and began concentrating increasingly on longer haul, higher density markets.^{36/} The local airline parties have attempted to downplay this trend, which they claim the examiner has exaggerated, by arguing that 40-55-seat turboprops still represent the largest share of their aircraft inventory. We find this argument misleading because it gives an erroneous impression of the relative significance of propeller and jet planes in the locals' operations and, equally important, overlooks recent currents. Thus, while

^{36/} See pp.3-4, supra.

Moreover, while attention in this case has focused on the clashing interests of certificated and third-level carriers, their services are primarily complementary. A study of the U.S. commuter industry performed for DOT by Waldo and Edwards, concluded that the bulk of scheduled air taxi operations are radial in character, feeding traffic into and out of important hub cities.^{33/} A substantial majority of commuter passengers, a range of 70-80 percent, connect to or from certificated flights at these terminals. Consequently, to the extent commuters have stimulated substantial new air traffic in many short-haul markets, their efforts have had a significant generative impact on certificated operations, as even a number of the airline parties (Mohawk^{34/} and Allegheny, for instance) have conceded.

(b) Impact on Local Service Carriers.

While our observations, thus far, have concentrated on the relationship between air taxis and the domestic certificated structure, in general, we have also considered the impact of third-level carriers on local service airlines, in particular. In doing so, we recognize that the locals are potentially in a far more vulnerable position than the trunklines. In fact, no serious attempt has been made to demonstrate that air taxis, even with somewhat broader authority, are a menace to the trunk carriers. In this connection, we note that only four of the eleven domestic trunks have excepted to the examiner's decision and only one--TWA--opposes any relaxation in the permissible passenger/payload capacities of air taxi aircraft.^{35/}

^{33/} The U.S. Commuter Airline Industry Its Current Status and Future Outlook, Waldo and Edwards, Inc., November 1970.

^{34/} See exhibit MO-2.

^{35/} Despite its strong position on this issue, TWA does not seem overly concerned about commuter competition. At the hearings, a TWA witness testified that the carrier does not even keep track of air taxi operations over its system. Transcript, p. 1761.

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however, only three locals--Air West, Ozark and Texas International--have even made a serious attempt in this direction.^{40/} However, even Air West's exhibits (RW 9-16), the most extensive in the record on this issue, are seriously flawed by a failure to relate its traffic reduction in a number of markets to the introduction of air taxi services, and by a tendency to disregard such factors as independent service cutbacks by Air West, increases in certificated competition, and the effects of surface travel competition stimulated by highway construction.^{41/}

The locals' claims of substantial harm are further contradicted by the commuters' fiscal 1971 experience. Specifically, we have studied the top 150 commuter markets in that year, which generated over 80 percent of the total traffic carried by scheduled air taxis. Although these larger air taxi markets might be expected to hold the greatest potential for diversion from certificated operations, our analysis indicates no serious encroachment on the local service airlines. In fact, in only about 10 percent of these markets were local airlines (a) operating through services in both directions and^{42/} (b) significant participants in the single-carrier

^{40/} Two carriers, Allegheny and Mohawk, conceded that they suffered no serious diversion; Piedmont similarly made no claim that it had been harmed. A fourth carrier, Frontier, submitted diversion estimates only as an appendix to its materials for oral argument. Since these estimates raise substantial questions and were not submitted in the record or subject to cross-examination, they will not be considered in our decision. For example, Frontier's claim of a \$1 million revenue diversion assumes that all revenues diverted by commuters from the certificated system in markets served by Frontier are diverted from Frontier, despite the fact that the carrier's share of the certificated traffic in some of these markets is less than 50 percent.

^{41/} See hearing transcript, 1489-1525. In addition, neither Ozark nor Texas International made a persuasive showing of serious injury. Ozark's diversion claim is largely centered on the Chicago-Springfield market. See footnote 31, p. 24, *supra*. Texas International estimates about \$600,000 diversion in two markets where it operates through service. However, this represents a mere one percent of the carrier's systemwide passenger revenues. While TXI also claimed some diversion in markets where it provided only connecting service, its estimates in this connection were largely speculative.

^{42/} Based on OAG, June 1, 1971.

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large jets still comprised only about 40 percent of the locals' total aircraft in 1971, they generated over 70 percent of the local industry's scheduled RPMs and substantially surpassed propeller aircraft in present depreciated value.^{37/} These results are particularly dramatic for the rapid growth in jet operations they demonstrate over the last five years or so.^{38/} For these reasons, we believe the record fully bears out the examiner's findings on the shift of emphasis in certificated local services over the past two decades.^{39/}

Therefore, as in the case of the certificated network in general, the striking expansion in the volume and nature of local service operations undermines the assumption that air taxis have altered their transportation role vis a vis the locals simply because they have also grown in the same period.

Next, while several locals claim that existing air taxi competition already causes serious injury to certificated carriers, their contentions are not supported by the record as a whole.. We recognize that diversion estimates have been complicated in this proceeding by the absence of extensive commuter traffic data for specific markets. Nevertheless, the airline parties could have submitted far more complete exhibits detailing the impact of air taxi services on their own traffic volumes. In fact,

^{37/} Form 41 data for the period ending December 31, 1971.

^{38/} At the end of 1966, less than 5 percent of the locals' aircraft were jets, and they generated only 10 percent of the industry's RPMs.

^{39/} These findings are also supported by deletions and suspensions of service by locals at many small points, and cutbacks in flight frequencies at many others. See pp. 4,5, supra.

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Having decided that existing air taxi operations have not damaged the certificated structure, we also conclude that our revision of Part 298 should not substantially alter the essentially complementary relationship between certificated and exempt carriers or pose a threat even to the local service industry.

While air taxis will now be able to offer the public basic amenities previously available only on certificated services, the relatively modest additional passenger and payload capacity we are authorizing will not change the basic character of commuter services, which will continue to concentrate on short-haul, low-density markets. This is so because certificated carriers will retain significant advantages in operating costs per seat mile, cargo and fuel capacity, and flight speed and range, factors that take on increasing importance in longer-haul, higher-density services. Also, certificated airlines will be able to provide more spacious cabin facilities, even on their smaller turboprop aircraft, and, in general, will continue to draw on their greater market appeal in circumstances where they offer services responsive to the needs of air passengers. In short, they will maintain precisely the kinds of advantages they first had when Part 298 was adopted.

At that time, it must be remembered, certificated local services were conducted with unpressurized and non-air-conditioned DC-3 airplanes with a maximum takeoff weight of 25,000 pounds and an 18-20-passenger seating capacity. The primary differences between the DC-3s and air taxi aircraft within the 12,500-pound rule were an extra 9-10-passenger seats, additional cargo and mail volume, greater fuel capabilities, roomier cabins

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43 certificated traffic. In the table below, we have set out the number of passengers and total RPMs generated by commuters in those of their top 150 markets that were also served by local service carriers:

Carrier	Commuter Passengers in Markets on Locals System	Commuter Passenger's as % of Local's System Scheduled Passengers	Commuter RPMs (000)	Commuter RPMs, as % of Locals System Scheduled RPMs
Air West	122,008	3.5	15,560	1.6
Allegheny ^{44/}	116,963	1.9	11,796	.7
Frontier	50,954	1.9	5,427	.5
Mohawk	28,565	1.9	5,170	1.4
North Central	78,437	2.0	8,352	1.0
Ozark	53,981	2.1	8,593	1.2
Piedmont	0	0	0	0
Southern	6,493	.4	948	.02
Texas International	<u>30,619</u>	<u>1.3</u>	<u>4,249</u>	<u>.6</u>
Unduplicated Total	402,970 ^{45/}	1.5	51,841	.7

43/ We have employed a 10-percent market share as a test for significant participation.

44/ Does not include markets where Allegheny and an Allegheny commuter provide the only direct service.

45/ We emphasize that these are not necessarily diverted passengers; only those carried in markets served by locals, where the latter had at least a 10-percent share of the certificated traffic.

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We have held extensive hearings and concluded, on the basis of a full record, that the 12,500-pound test should be replaced by a 30-passenger/7,500-pound payload standard. As in the past, we will continue to permit departures from the new standard only in very exceptional circumstances.

Under the circumstances and in the absence of persuasive evidence that our relaxation of Part 298 will hurt the certificated network,^{47/} we find that the public interest requires that the existing 12,500-pound weight standard should be replaced by a 30-passenger/7,500-pound payload limitation.

(c) Section 416(b) Findings.

Finally, we conclude that enforcement of the certificate provisions of the Act, to the extent it would preclude the authority approved here, would not be in the public interest, and would be an undue burden on the class of air taxi operators.

We have already discussed two of the public interest grounds favoring an amendment of the Part 298 exemption over individual certificate procedures: first, such an approach offers the best hope for stimulating the manufacture of new aircraft necessary to the development of air taxi services, and, second, it would relieve the Board of a sizeable administrative burden.^{48/} Equally important, certification under the Act affords an inappropriate regulatory framework for the regulation of air taxi services, including commuter operations. Air taxis conduct nonsubsidized services of a kind that certificated carriers, by and large, have not been able to operate successfully

^{47/} We find it noteworthy that even Texas International, one of the strongest opponents of our revision of Part 298, concedes that the local service carriers will still be able to withstand air taxi "competition." See TXI's reply brief to the examiner, p. 18.

^{48/} See p. 13, supra.

and various other operating advantages--all of which the certificated airlines will continue to enjoy to a greater extent than they did originally.^{46/}

In effect, our action in this case, far from disturbing the balance between air taxi and certificated services, will restore it, in part, by drawing the line between them in a manner that recognizes the substantial development of certificated operations since 1952. Moreover, in view of the air taxis' chief function of feeding small community traffic into the certificated system, the airlines may well have more to gain than to lose in more flexible Part 298 authority that would permit third-level carriers to bring more effective service to the public.

Several local carriers argue that a blanket 30-passenger/7,500-pound payload rule would authorize air taxi services in a few markets with equipment whose use the Board has refused to approve in considering requests for individual aircraft exemptions. (Only one such instance was actually cited by the locals, and it did not involve scheduled air taxi service.) We find no inconsistency in this fact. As long as the general Part 298 exemption applied a 12,500-pound takeoff weight test, the Board was extremely reluctant to approve departures from that test except in highly unusual circumstances. As a practical matter therefore, the Board routinely rejected (on the pleadings and without hearing) large aircraft exemptions for air taxis in markets or areas served by certificated carriers. By contrast, the very purpose of this proceeding is to examine the need for a revision of the basic class exemption standards of Part 298.

^{46/} Even the smaller local service airplanes now in general use offer 10-15 more seats, 40-100 percent greater payload capacity, roomier cabins, greater speed and often several times the range possible for air taxis under the new rule.

in fiscal 1971.^{49/} Moreover, while revenue data for scheduled air taxis are not available, use of an estimated average yield of 16¢ per RPM produces total gross passenger revenues for the entire industry of about \$70 million.^{50/} This amounts to an average of \$550,000 in revenues for each of the 126 passenger commuters, compared to average revenues in the same period of \$72 million for each of the nine certificated locals. There are also other indications that certificate procedures would impose a substantial financial strain on air taxis. For example, although air taxis are not required to report their profit/loss data, the Waldo and Edwards study cited earlier found that commuters, overall, have been operating at a loss, with some carriers absorbing sizeable losses while even profitable operations were only marginally so.^{51/}

^{49/} See pp. 17-25 , supra. In addition, several parties have pointed to the number of commuter aircraft as an indicator of the industry's size and strength. However, the quantity of such airplanes per se is not a particularly significant statistic, unless the number of operators and the nature and value of the aircraft are also considered. Thus, at the end of fiscal 1971, the 161 commuters registered with the Board operated 690 airplanes, of which only about 20 percent were the more modern 15-20-seat turboprops developed in the mid-1960s. In all, the current depreciated value of all commuter aircraft represents a small fraction of the depreciated worth of certificated aircraft.

^{50/} Our 16¢ yield is based on estimates in the Waldo and Edwards study, supra.

^{51/} Waldo and Edwards, p. 41. These conclusions are corroborated by the apparently high rate of failure among commuters, also reported in the study. Considering the limited extent of air taxi operations and the financial problems affecting third-level carriers as a group, the costs of certificate procedures would represent a serious financial strain. While these costs may be expected to vary with individual circumstances, a useful example is the recent Reopened TAG-Wright Case, where Wright estimated that its legal and consultant fees, alone, expended in acquiring a certificate in the reopened proceeding would amount to \$50,000. See Docket 22034, Transcript p. 505.

In addition, the record of air taxi participation in this proceeding lends some further support to our finding that certification procedures would be a financial burden on Part 298 carriers. Thus, while about 400 air taxis participated under Rule 14 of the Board's Rules of Practice, only about 45 were actually able to appear at the hearings, despite the fact that hearing sessions were held in San Francisco, Chicago and Houston, as well as Washington, D.C. Moreover, the majority of air taxis appearing at the hearing, including some of the larger commuter carriers, were not represented by counsel.

even with federal subsidy--i.e., services in extremely short-haul, low-density markets where surface transportation modes are often an attractive travel alternative. Functioning at a relatively high financial risk in such an economic environment, air taxis must have the maximum possible operational flexibility--including the freedom to quickly enter markets which might help to bolster their operations and the freedom to exit from markets which prove to be a drain on their resources--if they are to continue to fulfill their important role in the national air transportation picture. Moreover, because of this need for flexibility, we do not view route protection and the concomitant obligations which attach to certification, as a desirable goal for the air taxi industry in general. However, in individual circumstances where route security may be appropriate, carriers remain free to request, and we remain free to employ, the certification provisions of the Act. See Reopened TAG-Wright Case, Order 72-2-52 February 14, 1972, and Aspen Airways, Order 71-1-98, January 20, 1971. As we have noted, in the overwhelming majority of commuter markets air taxis provide the only scheduled through service, and the capacity restriction applicable to Part 298 aircraft, even as liberalized in this proceeding, should prove a sufficient safeguard to prevent a transformation of the third-level carriers' transportation function. Accordingly, we find that enforcement of the certificate provisions of the Act would not be in the public interest.

For some of the same reasons, the certification requirements would be an undue burden on air taxis, as a class, by reason of the limited extent of, and unusual circumstances affecting, their operations. We have already detailed the limited extent of air taxi services (including the restricted size of their aircraft), noting specifically that the entire commuter industry--which was the focus of the controversy surrounding this issue--generated revenue passenger mileages equal to only .4 percent of domestic certificated totals

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3. That the Board's decision with respect to intra-Alaska markets will be deferred until after final determination of the bush route issues in the Alaska Service Investigation, Docket 20826.

An appropriate order will be entered.

BROWNE, Chairman, GILLILLAND, Vice Chairman, MINETTI, MURPHY, and TIMM, Members, concurred in the above opinion.

This burden would be further aggravated by the unusual circumstances affecting air taxi operations--nonsubsidized, high-risk services with small aircraft in short-haul, low-density markets where surface transportation is often an attractive alternative. As we have observed, the operating flexibility air taxis must have to conduct such operations would be seriously undermined if they were required to go through a formal hearing prior to instituting service and, equally important, to undertake a formal hearing before altering or discontinuing service.^{52/} Such requirements would constitute an effective bar to the continuation of nonsubsidized air taxi services.

Accordingly, in view of the foregoing and all the facts of record, we find:

1. That the public interest requires the amendment of Part 298 by replacing the existing 12,500-pound takeoff weight limitation on air taxi aircraft with a 30-seat and 7,500-pound revenue payload restriction.

2. That such amendment shall not apply to intra-Hawaii operations; and

^{52/} See p. 33, supra.

APPENDIX

DOCKET 21761

THE EXAMINER'S INITIAL DECISION REFERRED TO HEREIN IS NOT ATTACHED TO THIS COPY BECAUSE OF THE WIDE CIRCULATION GIVEN AT THE TIME OF ITS RELEASE. THE INITIAL DECISION IS ATTACHED TO THE ORIGINAL OF THE BOARD'S OPINION AND TO THE OFFICIAL COPIES IN THE BOARD'S FILES AND MAY BE EXAMINED THERE. IT WILL ALSO BE PRINTED AS PART OF THE OFFICIAL "CIVIL AERONAUTICS BOARD REPORTS."

UNITED STATES OF AMERICA
 CIVIL AERONAUTICS BOARD
 WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
 at its office in Washington, D.C.,
 on the 18th day of July, 1972

 PART 298 WEIGHT LIMITATION INVESTIGATION :

Docket 21761

O R D E R

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions and decision, which is attached hereto and made a part hereof;

IT IS ORDERED THAT:

1. Amendments to Part 298 of the Board's Economic Regulations, in the form attached hereto, be and they hereby are adopted;
2. Said amendments shall be effective on September 17, 1972.
3. The issue of intra-Alaska air taxi services be and it hereby is deferred until after final Board order in the Alaska Service Investigation (Bush Routes Phase), Docket 20826.
4. Except to the extent granted, dismissed or deferred herein, all applications, motions, and requests herein be and they hereby are denied;
5. This order shall become effective on July 18, 1972.

By the Civil Aeronautics Board:

HARRY J. ZINK

Secretary

(SEAL)

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12,500 pounds, as specified in Part 298, should be replaced with a passenger capacity limitation of 30 and payload carrying capacity weight limitation of 7,500 pounds. The amendments adopted herein reflect this determination.

In substance, the new rule will require air taxi aircraft to meet both the 30-seat and the 7,500-pound payload test; i.e., aircraft having a seating capacity of more than 30 passengers or a payload capacity in excess of 7,500 pounds will not qualify under the revised exemption. Consistent with the present scheme of Part 298, we have included the seat/payload capacity standard in the definition of "Large aircraft" which, as modified herein, shall mean aircraft having a maximum passenger capacity of more than 30 seats or a maximum payload capacity of more than 7,500 pounds (except in Alaska and Hawaii). In addition, we have (1) added a new definition of "Maximum payload capacity," namely, the maximum weight of that portion of an aircraft's useful load which actually or potentially produces revenues and (2) redefined "Maximum passenger capacity" as the number of passenger seats for which an aircraft is configured, instead of the maximum passenger capacity listed in the applicable Federal Aviation Administration (FAA) type certificate data sheet, as presently provided.

There is presently included in §298.21 a provision under which air taxi operators which engage in air transportation with turbojet aircraft whose maximum take-off weight is over 12,500 pounds are required to file with the Board's Bureau of Accounts and Statistics quarterly reports showing certain operating statistics with respect to each charter flight performed with such aircraft during the period covered by the report. To assure compliance with the new seat/payload capacity standard for air taxi equipment, the Board has modified this provision to require said quarterly reports to be filed with

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Economic Regulations
Amendment No. 13 to Part 298
Effective: September 17, 1972
Adopted: July 18, 1972

PART 298 - CLASSIFICATION AND EXEMPTION
OF AIR TAXI OPERATORS

IMPLEMENTING AMENDMENTS

Part 298 of the Board's Economic Regulations (14 CFR Part 298) provides for the classification and exemption of air taxi operators. At the present time, the exemption authority provided to air taxi operators by said part extends to the direct air transportation of passengers, property and mail (subject to certain limitations) in aircraft having a maximum certificated take-off weight of 12,500 pounds or less. The rules also permit air taxi operators to perform plane-load charter flights (except in Alaska and Hawaii) with turbojet aircraft whose maximum take-off weight and passenger capacity do not exceed 27,000 pounds and 12 persons, respectively. In the Part 298 Weight Limitation Investigation, Order 72-7-61, issued contemporaneously, the Board determined that the maximum weight limitation on equipment used by air taxi operators should be liberalized to permit air taxis to operate, in both scheduled and charter service, aircraft of larger capacity than is presently permitted except in Alaska and Hawaii.^{1/} Specifically, the Board determined that the maximum gross weight limitation of

^{1/} The Board found that the Part 298 exemption should not be liberalized with respect to intra-Hawaii operations, and deferred any decision with respect to intra-Alaska operations pending determination of the bush route issues in the Alaska Service Investigation, Docket 20826. Accordingly, the existing 12,500-pound maximum weight standard in Part 298 will continue to apply to aircraft employed by air taxis in operations conducted within the States of Alaska or Hawaii.

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§298.2 Definitions

As used in this part:

* * * * *

"Large aircraft" - means an aircraft having a maximum passenger capacity of more than 30 seats or a maximum payload capacity of more than 7,500 pounds; except that in connection with operations conducted within the State of Alaska or Hawaii large aircraft shall mean an aircraft whose maximum certificated take-off weight is more than 12,500 pounds.^{2/}

* * * * *

"Maximum passenger capacity" - means the maximum number of passenger seats for which an aircraft is configured.

"Maximum payload capacity" - means the maximum weight of that portion of an aircraft's useful load which, actually or potentially, produces revenues.

2. Amend paragraph (a) (1) of §298.3 to read as follows:

§298.3 Classification

(a) There is hereby established a classification of air carriers, designated "air taxi operators" which engage in the direct air transportation of passengers and/or property, and/or in the transportation within the 48 contiguous States, Alaska or Hawaii^{3/} of mail by aircraft and which:

(1) Do not, directly or indirectly, utilize large aircraft in air transportation;

* * * * *

3. Amend §298.21 by revising paragraphs (a) and (i), the section as amended to read in pertinent part as follows:

^{2/} See footnote (4) *infra*.

^{3/} The authority of air taxis to carry mail in Alaska is limited to the markets where regular service may be provided under this part.

respect to operations conducted with aircraft having a maximum passenger capacity of more than 20 seats or a maximum payload capacity of more than 5,000 pounds. Form 298-A (Registration under Part 298 of the Economic Regulations) has also been revised to require disclosure of the serial and model numbers of each aircraft operated by an air taxi which has a maximum payload or passenger capacity within the aforementioned limitations. In addition, every air taxi operator which acquires (for use in taxi operations) an aircraft within said seat/payload capacity limitations will be required to file with the Board within 30 days after each such aircraft acquisition an amended Form 298-A, reflecting the fact of such acquisition.

We have also deleted the provision in §298.21(a) which allows air taxi operators to perform planeload charter operations (except in Alaska and Hawaii) with 27,000-pound/12-passenger turbojet aircraft, since the 30-seat/7,500-pound payload capacity limitation, to which the Part 298 exemption now extends will necessarily include operations with such turbojet equipment. With this revision, the definition of "Charter flight" in §298.21(a) has been deleted as superfluous.

Since the amendments contained herein merely codify the changes to Part 298 made by the Board in the Weight Limitation case, supra, the Board finds that the amendments may be made effective without further notice and public procedure.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 298 of the Economic Regulations (14 CFR Part 298) effective September 17, 1972, as follows:

1. Amend §298.2 by inserting, in its alphabetical order, a new definition of "Maximum payload capacity," and by revising the definitions of "Large aircraft" and "Maximum passenger capacity," to read as follows:

§298.22 Operation of large aircraft.

(a) Prohibition of operation of large aircraft in air transportation.

Nothing in this part shall be construed as authorizing the operation of aircraft having a maximum passenger capacity of more than 30 seats or a maximum payload capacity of more than 7,500 pounds.

* * * * *

(c) Reporting of operations with large aircraft. Any air taxi operator

which operates or intends to operate large aircraft for compensation or hire shall file with the Board a description of the method or proposed method of operations and state why such operations are believed not to constitute air transportation. Such reports shall state, among other pertinent matters, whether State lines or the boundaries of the United States will be crossed; the ultimate origin and destination (not only the places between which carriage is provided) of the persons or property carried; and the persons with whom contracts for transportation have been made or are expected to be made. In case operations not falling within the description on file with the Board are to be undertaken, a report containing the same data shall be filed within three days after the particulars of such operations have been decided upon. These reports shall be submitted in duplicate, by airmail if mailed more than 200 miles from Washington, D.C., addressed to the Civil Aeronautics Board, Washington, D.C. 20428, Attention of the Bureau of Operating Rights.

4. Amend paragraph (c) of §298.50 by revising subparagraph (1) and adding new subparagraph (1-1), the paragraph as amended to read as follows:

§298.50 Filing for registration by air taxi operators.

* * * * *

(b) Any person ***

§298.21 Scope of service authorized; geographical, equipment and mail service limitations, insurance and reporting requirements.

(a) General scope. Subject to the prohibitions of paragraphs (b), (c), (d), (f), and (g) of this section, the exemption authority provided to air taxi operators by this part shall extend to the direct air transportation of persons, property and mail (subject to the limitations imposed in §§ 298.3(a) and 298.13) in aircraft having a maximum passenger capacity of 30 seats or less and a maximum payload capacity of 7,500 pounds or less: Provided, however, That, with respect to operations conducted within Alaska or Hawaii said exemption authority shall be limited to aircraft having a maximum take-off weight of 12,500 pounds or less.^{4/}

* * * * *

(i) Filing of reports. Air taxi operators which engage in air transportation with aircraft having a maximum passenger capacity of more than 20 seats or a maximum payload capacity of more than 5,000 pounds shall file with the Board's Bureau of Accounts and Statistics, not later than 15 days after the end of each calendar quarter, a report setting forth the points between which each flight performed with such aircraft is operated during such quarter and, with respect to each flight, the number of passengers and/or pounds of cargo transported, the number of pounds of mail transported, the fares or rates charged or the charter price, and the model aircraft used.

3. Amend paragraphs (a) and (c) §298.22 to read as follows:

^{4/} The carriers are cautioned that safety regulations of the FAA applicable to air taxi aircraft in excess of 12,500 pounds may be different from those applicable to aircraft weighing 12,500 pounds or less and that, as in the case of all operations conducted under this part, the operations with aircraft in excess of 12,500 pounds must be conducted pursuant to applicable safety regulations.

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is within the limitations enumerated in clause (vii) of subparagraph (1) hereinabove shall file with the Board, within 30 days after each such aircraft acquisition, an amended CAB Form 298-A, reflecting the fact of such acquisition.

[Sections 204 and 416 of the Federal Aviation Act of 1958 (72 Stat. 743, 771; 49 U.S.C. 1324, 1386).]

By the Civil Aeronautics Board:

HARRY J. ZINK

Secretary

(SEAL)

NOTE: This is amendment 13 to Part 298 effective July 1, 1969.

(c) Registration shall be accomplished by filing the following with the Board's Bureau of Operating Rights, Washington, D.C. 20428:

(1) A "Registration under Part 298 of the Economic Regulations of the Civil Aeronautics Board" (CAB Form 298-A) executed in duplicate.^{5/} This form shall be certified by a responsible official of such carrier and shall include the following information: (i) name in which the FAA certificate is issued; (ii) the carrier's Federal Aviation Administration certificate number and the name in which the insurance policy is issued; (iii) address of its principal place of business and its mailing address; (iv) whether the carrier is currently performing at least five round trips per week pursuant to published schedules; (v) whether the carrier has currently effective insurance which complies with Subpart D of this part; (vi) whether the carrier is performing passenger, cargo and/or mail service; (vii) the serial number and model number of each aircraft operated which has a maximum passenger capacity between 20 and 30 seats or a maximum payload capacity between 5,000 and 7,500 pounds; and (viii) whether the carrier has performed passenger service between a point in the United States and a point outside thereof during the past 12 months.

(1-1) Every registered air taxi operator who acquires for use in his air taxi operations an aircraft whose maximum passenger and payload capacity

^{5/} CAB Form 298-A (revised 7-72) is attached hereto and can be obtained from the Publications Services Section, Civil Aeronautics Board, Washington, D.C. 20428.

CAB FORM 298-A-2

9. AIRCRAFT WITH PASSENGER CAPACITY BETWEEN 20 AND 30 OR WEIGHT CAPACITY BETWEEN 5000 AND 7500 POUNDS:

	<u>Aircraft</u>	<u>Type</u>	<u>Serial Number</u>	<u>Passenger Capacity</u>	<u>Weight Capacity</u>
1.					
2.					
3.					
4.					
5.					

(Add additional sheets if necessary)

10. HAS REGISTRANT CARRIED PASSENGERS IN AIR TRANSPORTATION BETWEEN ANY POINT IN THE UNITED STATES AND ANY POINT OUTSIDE THEREOF DURING THE PAST 12 MONTHS?

YES

NO

11. CERTIFICATION:

I certify that the information contained in this application, and in the attachments hereto, is complete and accurate to the best of my knowledge.

Date: _____ Place (City and State) _____

Signature: _____ Title: _____

(see note)

Note: Application must be signed by a responsible officer, such as the President, Vice President, Secretary, or Treasurer of a corporation or association, or partner or owner of other applicants.

CAB FORM 298-A
(Rev. 7-72)

FOR USE BY CAB ONLY
Date Registration Received:

REGISTRATION UNDER
PART 298 OF THE ECONOMIC REGULATIONS
OF THE CIVIL AERONAUTICS BOARD

INSTRUCTIONS: Submit this form in duplicate and accompanied by a ten (10) dollar registration fee in the form of a check, draft, or postal money order payable to the Civil Aeronautics Board. File with the Civil Aeronautics Board, Washington, D. C. 20428, Attention: Director, Bureau of Operating Rights.

DUE DATE OF NEXT REGISTRATION:

1. Name of Registrant (name in which FAA's ATCO Certificate is issued):

2. Name in which Insurance Policy is written:

3. Federal Aviation Administration Certificate Number:

4. Address of Principal Place of Business:

5. Mailing Address (if different)

6. DOES THE REGISTRANT CURRENTLY HAVE IN EFFECT LIABILITY INSURANCE IN COMPLIANCE WITH PART 298 (SUBPART D) OF THE ECONOMIC REGULATIONS OF THE CIVIL AERONAUTICS BOARD?
 YES NO
(attach currently effective certificate of liability insurance)

7. CHECK TYPE OR TYPES OF SERVICE REGISTRANT IS CURRENTLY PERFORMING:
 Passenger Cargo Mail

8. DOES REGISTRANT PERFORM SCHEDULED SERVICE, PURSUANT TO PUBLISHED SCHEDULES, OF AT LEAST 5 ROUND TRIPS PER WEEK BETWEEN TWO OR MORE POINTS?
 YES NO

Note: Unless current schedules have been previously filed with the Board, a copy of such schedules should be enclosed with this registration.

Official File Copy

SB 240 Exhibit C
Economic Development
S. EC. DEVELOPMENT C 01 of 61
OREGON STATE ARCHIVES

PUBLIC UTILITY COMMISSIONER OF OREGON

INTER-OFFICE CORRESPONDENCE

(NOT FOR MAILING)

John —
Did the P.U.C.
Follow through
this & will the
amendment be
OK w/you
Bob Knipe

Date: February 16, 1973
From: Russell W. Humphreys
To: Richard W. Sabin
Subject: Senate Bill 240

I discussed SB 240 with Robert Knipe to ascertain his concern about the subject bill.

In Section 1 (2), "air commerce" is defined and included in this definition is the transportation of persons or property by modes of transportation other than air. This definition when applied to other sections of the bill appears to bring motor carrier transportation, when used incidental to air transportation within the scope of SB 240 instead of ORS chapter 767.

Mr. Knipe advises that if the words "and all transportation of persons or property for compensation by other modes incidental to or in conjunction with such carriage" were deleted from Section 1 (2), he would have no concern about SB 240.

In fact, if this amendment were made, he would not appear in opposition to the bill.

I assured Mr. Knipe that SB 240 would be amended so as to delete motor carrier transportation from the bill and continue motor carrier regulation under ORS 767.

RWH:ps

cc: Robert Knipe
Lon Topaz
Robin Wallace

Non-budget bills considered by Subcommittee and now before Full Committee:

Senate Bill 240--Relating to regulation of air commerce; creating new provisions; amending ORS 756.010, 756.040, 756.070, 756.075, 756.090, 756.105, 756.115, 756.160, 756.180, 756.185, 756.200, 756.515, 756.572 and 756.990; appropriating money; providing penalties; and declaring an emergency.

Senator Newbry explained that this bill was introduced at the request of the Public Utility Commissioner, and would give him authority to regulate third level air carriers. No one in the state currently has this authority. There is a great deal of interest at the present time in the so-called third level carriers because of recent changes in Federal Aviation Authority rules, permitting the use of larger aircraft, which will make it an economically sound program. When the two major airlines complete their conversion to jets, there will be only six communities served with regularly scheduled air transportation because facilities in others will not accommodate jets. Two airlines are currently being formed using third level air carriers and both intend to establish transportation on the same route. The Task Force on Transportation was concerned that competitive activities of this kind would insure failure of these carriers but at the same time felt there was a desperate need for this kind of intrastate air service. The bill was referred to the Ways and Means Committee because of the General Fund appropriation required. It was estimated by the Public Utility Commissioner that \$92,000 is needed to administer the law, but Subcommittee No. 3 felt by integrating this activity with some of his other activities \$50,000 should be sufficient. Normally costs such as these would be paid for by the carriers themselves but initially revenues of the carriers would not cover costs. A proposed new section would require the airlines to pay an application fee and this was a way of recovering some of the costs.

Senator Newbry moved that Engrossed Senate Bill 240 be amended as set out on the printed agenda.

In response to Senator Holmstrom's questions, Senator Newbry said this function would require one regulating officer, similar to the type of person regulating railroads, power or telephone companies, etc., and a part-time secretary, together with travel, rent and other expenses.

Representative Akeson stated that if the state does not do something in this area, there will be no integrated intrastate service. This will provide an opportunity to get some type of coordinated service within the state. It was the feeling of the Subcommittee that this can be self-supporting in the future once the lines are established. In the meantime it will take some General Fund money to coordinate as well as regulate the service. A second benefit of this program is the state will be in a position to recommend where airlines might be needed. Testimony before the Subcommittee showed it is almost impossible to travel from one point to another in this state with the current service. He felt the money would be well spent but there is the possibility and opportunity in the future for the program to be self-supporting.

In response to Representative Ingalls' inquiries, Senator Newbry said there are two airlines presently planning to operate under this program, and he thought eventually there would be others. Representative Ingalls said he is in favor of the plan, if indications are that the program would eventually become self-supporting. Senator Newbry thought ultimately the program would be but did not expect that the amount of money provided for the next biennium could be recovered as it is not possible to set a fee sufficient to recover such an amount.

Senator Newbry's motion to amend carried unanimously.

Senator Newbry moved that Engrossed Senate Bill 240 be reported out "Do pass as amended." Motion carried, with Senator Fadeley not present for roll call vote.

House Bill 2151--Relating to certain unlawful activities; creating new provisions; amending ORS 161.015 and 161.085; and providing penalties.

Representative Akeson noted that this bill was heard by a substantive committee. Subcommittee No. 3 reviewed the bill and found it had very little, if any, fiscal impact. It would prohibit a person from throwing objects or discharging firearms at railroad trains or commodities being transported upon the railroads and provides some penalties. Based on testimony received, the Subcommittee recommends its passage.

Representative Akeson moved that House Bill 2151 be reported out "Do pass." Motion carried unanimously on roll call vote.

Request for authority to submit federal grant applications:

Workmen's Compensation Board

Representative Akeson reported that Subcommittee No. 3 recommends approval of the Workmen's Compensation Board requests for authority to submit two federal grant applications. The first would extend the duration of a federal grant to the Board under a 90/10 percent match for a Management Information System under the Federal Occupational Safety and Health Administration. This grant was approved by the Emergency Board and was scheduled to expire on March 31, 1973. A revision of the expiration date to June 30 is requested because of delays encountered at the federal level. No additional funding or limitation is needed. Testimony indicated that the money is available and can be expended as soon as approved by the Ways and Means Committee.

The second request is for authority to apply for a one-year federal grant, for the period April 1, 1973, to March 31, 1974, totaling \$44,551. This grant is to develop and implement a Management Information System for support of the Occupational Safety and Health Act activities. The total federal share is \$44,551, or 89.1 percent, and the state's in-kind share is \$5,445, or about 10.9 percent. The grant will supplement and complement previous grants which have been in operation, and will include a feasibility

9/4/73
10/19

JOINT WAYS & MEANS COM.

ANALYST: Batties/Jacobson

DATE COMPLETED: March 15, 1973

1. Number of Measure SB 240	2. Status Engrossed Bill (inc. Senate Amendments of March 14)	3. Class of Bill Fiscal <input checked="" type="checkbox"/> Non-Fiscal <input type="checkbox"/> Organizational <input type="checkbox"/>		
4. Subject Confers jurisdiction on Public Utility Commissioner to regulate intrastate air commerce				
5. Government Unit or Program Affected Public Utility Commissioner				

6. Fiscal Impact

Effect on Revenue

None

Effect on Expenditures

Appropriates \$92,000 from the General Fund to the Public Utility Commissioner for the 1973-75 biennium.

This General Fund expenditure is not included in the 1973-75 Governor's Recommended Budget.

Discussion

It is estimated that only \$90,610 would be required to administer this program. A staffing increase of one transportation specialist and one secretary would be required. Estimated expenditures for 1973-75 are as follows:

Personal Services	\$77,610
Services and Supplies	12,000
Capital Outlay	<u>1,000</u>
Total	\$90,610

RB:sc

Comments of Legislative Fiscal Office: Depending on the amount of activity to add or delete air carrier routes, this program may be administered by existing personnel after the initial program development stage is completed.

Analyst: Stinson
Date: March 20, 1973



JOHN D. BURNS

MAR 23 1973
LEGISLATIVE FISCAL
COMMITTEEOREGON STATE SENATE
STATE CAPITOL
SALEM, OREGON 97310

March 23, 1973

Mr. Dan Simmons
Legislative Fiscal Analyst
Room 115 - State Capitol
Salem, Oregon 97310

Re: Senate Bill 240

Dear Dan:

Senate Bill 240, which regulates intrastate air commerce, has been sent to Ways and Means by prior reference from the Senate Economic Development Committee. I understand it will be considered by Subcommittee "6".

When a hearing is scheduled, I wish to testify on behalf of the bill. Would you please notify my office of the time and date?

Also, Senator Lynn Newbry, sponsor, had recommended to Economic Development that an exemption of charter flights be included in section 1 of the measure. This was inadvertently omitted in the committee's amendments. Perhaps you could consider this exemption in any amendments the subcommittee may propose.

Sincerely,


JOHN D. BURNS

JDB:pc

cc: Senator Lynn Newbry
Room 12, State Capitol
Salem, Oregon 97310

Lon Topaz
Public Utility Commission
200 Public Service Building
Salem, Oregon 97310

57th LEGISLATIVE ASSEMBLY - 1973

JOINT WAYS AND MEANS COMMITTEE

756.010 - SB 324 - House State +
Dsd.
641 - State + Dsd.
756.160 - SB 436 - subcom. + m

Record of Subcommittee Proceedings

Bill No: SB 240

Agency Name or Bill Description: Confers jurisdiction on Public Utility

Commissioner to regulate intrastate air commerce.

Analysts: Legislative Fiscal _____ Executive _____

Date of Hearing

Comments and Action

Mar 29 Heard No. topaz PUC.

Adopted amendments adding new "F" and "G" on
pg 2 line 18

Mar 30 Adopted amendments raising fees

Mar 30 change appear to 50,000
change to standard Ems down
passed bill out

Subcommittee Chairman _____

Designated to Carry: House McCoy Senate Newby Full Com. Newby

SENATE BILL 240

This bill would establish a third level air carrier regulatory program under the Public Utility Commissioner. This program is necessary to insure the orderly development of third level air carrier service within the state of Oregon. The ~~sub~~committee reduced the appropriation from \$92,000 to \$50,000 reflecting lower estimates of staff requirements. Further ammendments by the ~~sub~~committee excluded charter service and aerial logging operation from regulation and provided an emergency clause effective upon passage.

ENGROSSED

Senate Bill 240

Ordered by the Senate March 14
(Including Amendments by Senate March 14)

Sponsored by Senators NEWBRY, J. BURNS (at the
request of the Public Utility Commissioner of Oregon)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Confers jurisdiction on Public Utility Commissioner to regulate intrastate air commerce. Requires certificates of public convenience and necessity to engage in intrastate air commerce. Permits Public Utility Commissioner to establish rates and routes for air carriers. [*Imposes tax on gross revenues derived from air commerce within this state for designated purpose.*] Prohibits certain acts by air carriers. Provides penalties.

Appropriates \$92,000 from General Fund to Public Utility Commissioner, for biennium beginning July 1, 1973, to finance administration of this Act.

Declares emergency. Takes effect July 1, 1973.

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION**.

7

Eng. SB 240

[2]

1 A BILL FOR AN ACT

2 Relating to regulation of air commerce; creating new provisions; amend-
3 ing ORS 756.010, 756.040, 756.070, 756.075, 756.090, 756.105, 756.115,
4 756.160, 756.180, 756.185, 756.200, 756.515, 756.572 and 756.990; appropriat-
5 ing money; providing penalties; and declaring an emergency.

6 **Be It Enacted by the People of the State of Oregon:**

7 **SECTION 1.** Unless the context otherwise requires, the definitions in
8 this section and ORS 756.010 shall govern the construction of this Act.

9 (1) "Aircraft" means any contrivance now or hereafter invented, used
10 or designed for navigation of or flight in the air.

11 (2) "Air commerce" means all transportation by aircraft of persons or
12 property for compensation between points in this state; but "air commerce"
13 does not include transportation performed solely in connection with:

- 14 (a) Transportation of U.S. mail,
- 15 (b) Instruction,
- 16 (c) Aerial application of agricultural chemicals,
- 17 (d) Air ambulance services,
- 18 (e) Aerial fire-fighting services, or

19 ^{insert} (f) Transportation authorized by a certificate of public convenience
20 and necessity issued prior to January 1, 1973, pursuant to section 401 of the
21 Federal Aviation Act of 1958 as amended.

22 (3) "Air carrier" means any person owning, controlling or operating
23 aircraft engaged in air commerce.

24 **SECTION 2.** The purpose of this chapter is to provide regulation of
25 air commerce in order that an orderly, efficient, economical and healthy
26 network of air transportation may be established to the benefit of the
27 people of this state, its communities, and the state itself.

28 **SECTION 3.** The commissioner is vested with authority and respon-
29 sibility to regulate air commerce and air carriers. He shall administer this
30 chapter in accordance with its stated purposes.

31 **SECTION 4.** The State of Oregon recognizes the powers of the Federal

- (f) Air taxi or charter services,
- (g) Aerial logging operations, or".

1 Government over air carriers and air commerce. Within the limits of
2 powers reserved to the state:

3 (1) The commissioner shall fix reasonable rates and routes of air car-
4 riers.

5 (2) The commissioner may:

6 (a) Require any air carrier to procure and maintain insurance and per-
7 formance bonds in any amount;

8 (b) Authorize such through routes, joint rates and divisions of revenue
9 for persons engaged in air commerce as he determines to be in the public
10 interest; and

11 (c) Exercise any power expressly or impliedly conferred by this Act
12 and ORS chapter 756.

13 **SECTION 5.** The commissioner shall award certificates of public con-
14 venience and necessity, whenever the public convenience and necessity
15 require, taking into consideration the business experience of the applicant,
16 the applicant's financial ability and insurance coverage, the type of aircraft
17 the applicant would employ, the proposed routes and minimum schedules
18 to be established, whether the carrier could economically and adequately
19 serve the communities involved, the need for service and any other fac-
20 tors which may affect the public interest. Such certificates may be award-
21 ed subject to whatever terms and conditions the commissioner prescribes.

22 **SECTION 6.** The commissioner may suspend or revoke any of the
23 rights conferred by a certificate of public convenience and necessity after
24 notice and opportunity for hearing only upon a finding that the holder:

25 (1) Has abandoned such rights,

26 (2) Is no longer willing or able to perform all of part of the certifi-
27 cated services,

28 (3) Has violated any provision of this Act or any rule, regulation or
29 order of the commissioner, or

30 (4) Has violated any federal or state safety law or regulation.

31 **SECTION 7.** (1) No person shall perform any act which constitutes
32 air commerce, unless that act is authorized by a valid and effective cer-
33 tificate of public convenience and necessity issued by the commissioner or
34 otherwise by the commissioner's rule or order.

1 (2) Each separate act in violation of this section is a separate viola-
2 tion, whether the prohibited acts occur within the same or different days
3 or relate to the same or different aircraft.

4 **SECTION 8.** (1) It is unlawful, unless authorized by order of the
5 commissioner as provided in this section:

6 (a) For two or more air carriers, or for any air carrier and any other
7 common carrier to consolidate or merge their properties or any part there-
8 of into one person for the ownership, management or operation of the
9 properties theretofore in separate ownerships,

10 (b) For any air carrier or any person controlling an air carrier or any
11 other common carrier to purchase, lease, or contract to operate the prop-
12 erties, or a substantial part thereof, of any air carrier, or

13 (c) For any air carrier or any person controlling an air carrier or any
14 other common carrier to acquire control of any air carrier in any manner
15 whatsoever.

16 (2) The commissioner may by order authorize such consolidation, mer-
17 ger, purchase, lease, operating control or acquisition of control upon such
18 terms and conditions as he shall deem to be in the public interest. The
19 commissioner shall determine whether a hearing is required under this
20 section.

21 **SECTION 9.** No air carrier shall discontinue any certificated service
22 without authority of the commissioner, unless such service is unprofitable.
23 Unprofitable services may be discontinued upon 90 days' notice to the
24 commissioner, and to such other persons as the commissioner may require,
25 unless within such 90-day period the commissioner finds that such serv-
26 ices are not unprofitable and orders their continuance.

27 **SECTION 10.** The commissioner may, following a determination of
28 necessity, exempt any air carrier from the certificate provisions of this
29 Act upon a finding that such provisions impose an undue burden upon
30 the carrier, a community or area because of the immediate need for serv-
31 ices including, but not limited to, conditions of national emergency, na-
32 tional disaster or cessation of existing service by another carrier, except
33 the cessation of existing service caused by a labor dispute, and that enforce-
34 ment of such provisions would be contrary to the public interest. Exemp-

1 tions issued pursuant to this section may be issued for a maximum of 90
2 days and may be renewed for the same or a lesser period.

3 **SECTION 11.** (1) To the extent necessary to prevent overlap or con-
4 flict between provisions of this Act and those of any other statute, the
5 provisions of this Act shall exclusively prevail unless subsection (2) of this
6 section applies.

7 (2) The commissioner may by rule exempt any activity from any or
8 all of the requirements of this Act if the commissioner is satisfied that
9 such exemption would not be contrary to the public interest.

insert
10 **SECTION 12.** (1) In addition to all other penalties provided by law,
11 every person who violates or who procures, aids or abets in the violation
12 of this Act or any order, rule, regulation or decision of the commissioner
13 relating to air commerce shall incur a penalty of \$1,000 for every such
14 violation.

15 (2) Each such violation shall be a separate offense and in case of a
16 continuing violation every day's continuance is a separate violation. Every
17 act of commission or omission which procures, aids or abets the violation
18 is a violation under this section and subject to the penalty provided in
19 this section.

20 (3) Such penalty shall not be imposed except by order following com-
21 plaint as provided in ORS 756.500 to 756.610. Such proceeding may only
22 be commenced within two years following the date of the violation.

23 (4) The commissioner may negotiate any settlement or mitigate any
24 penalty provided for in this section on such terms as he considers proper.

25 (5) If the amount of such penalty is not paid to the commissioner, the
26 Attorney General shall bring an action in the name of the State of Oregon
27 in the Circuit Court of Marion County to recover such penalty. The action
28 shall not be commenced until after the time has expired for an appeal
29 from the findings, conclusions and order of the commissioner. In all such
30 actions the procedure and rules of evidence shall be the same as an ordi-
31 nary civil action except as otherwise provided in this Act.

32 **SECTION 13.** (1) To finance the administration of this Act and sub-
33 section (3) of ORS 756.040 there is appropriated from the General Fund

Section 11a. Every person applying for a certificate under
section 5 of this Act shall pay to the Commissioner with his
application a fee of \$150. A like fee shall accompany an
application for transfer of such certificates. The fees
collected under this section are not refundable.

Eng. SB 240

[6]

~~\$92,000~~ ^{\$50,000} to the Public Utility Commissioner for the biennium beginning July 1, 1973.

(2) Funds generated under this section shall be used only in the administration of this chapter and subsection (3) of ORS 756.040 as it relates to matters affecting air transportation.

SECTION 14. Notwithstanding any other provision in this Act, the commissioner shall issue a certificate of public convenience and necessity to any air carrier as to the points in this state between which it was actually operating in good faith and doing business as of January 1, 1973, and continuously thereafter, with or without hearing, provided application therefor shall have been filed with the commissioner on or before January 1, 1974. The air carrier may continue such operation until its application is either granted or denied by the commissioner.

Section 15. ORS 756.010 is amended to read:

756.010. As used in ORS chapters 756, 757, 758, 760, 761, 763, 764, **this 1973 Act** and 767, except as otherwise specifically provided or unless the context requires otherwise:

(1) "Commissioner" means the Public Utility Commissioner of Oregon.

(2) "Customer" includes the patrons, passengers, shippers, subscribers, users of the service and consumers of the product of a railroad, motor carrier or public utility.

(3) "Motor carrier" has the meaning given that term in ORS 767.005.

(4) "Municipality" means any city, municipal corporation or quasi-municipal corporation.

(5) "Person" includes individuals, joint ventures, partnerships, corporations and associations or their officers, employes, agents, lessees, assignees, trustees or receivers.

(6) "Public utility" has the meaning given that term in ORS 757.005.

(7) "Railroad" has the meaning given that term in ORS 760.005.

(8) "Rate" means any fare, charge, joint rate, schedule or groups of rates or other remuneration or compensation for service.

(9) "Service" is used in its broadest and most inclusive sense and includes equipment and facilities related to providing the service or the product served.

[7]

Eng. SB 240

756.

the meaning given that term in this 1973 Act.

is amended to read:

to the powers and duties now or hereafter the commissioner, he shall represent the custom- road , air or motor carrier, and the public gen- erally, respecting rates, valuations, service and all matters there- in. In respect thereof he shall make use of the powers of his office to protect such customers, and the public from unjust and unreasonable exactions and practices and to insure adequate service at fair and reasonable rates.

is vested with power and jurisdiction to super- vise the operation of any public utility, railroad , air and motor carrier in this state and to do all things necessary and convenient in the exercise of

may participate in any proceeding before any court or body of the United States or any state for the purpose of representing the public generally and the customers of the utility, railroad, water, air or motor carrier operat- ing in or within this state.

may make joint investigations, hold joint hear- ings and issue concurrent orders in conjunc- tion with any other official, board, commission or agency of any other state.

0 is amended to read:

may inquire into the management of the operations of public utilities, air and motor carriers and railroads, and the manner and method in which they are con- ducted, and may require the production of all records and documents to obtain from any public utility, air or motor carrier the necessary information to enable him to perform his

5 is amended to read:

he co mmissioner or his authorized representatives may inspect any equipment, rolling stock or facilities op- erating on any public utility, railroad , air or motor carrier for

resent

he co

50,000

Eng. SB 240 [6]

1 \$92,000 to the Public Utility Commissioner for the biennium beginning
2 July 1, 1973.

3 (2) Funds generated under this section shall be used only in the ad-
4 ministration of this chapter and subsection (3) of ORS 756.040 as it re-
5 lates to matters affecting air transportation.

6 **SECTION 14.** Notwithstanding any other provision in this Act, the
7 commissioner shall issue a certificate of public convenience and necessity
8 to any air carrier as to the points in this state between which it was
9 actually operating in good faith and doing business as of January 1, 1973,
10 and continuously thereafter, with or without hearing, provided application
11 therefor shall have been filed with the commissioner on or before January
12 1, 1974. The air carrier may continue such operation until its application
13 is either granted or denied by the commissioner.

14 Section 15. ORS 756.010 is amended to read:
15 756.010. As used in ORS chapters 756, 757, 758, 760, 761, 763, 764, this
16 1973 Act and 767, except as otherwise specifically provided or unless the
17 context requires otherwise:

18 (1) "Commissioner" means the Public Utility Commissioner of Oregon.

19 (2) "Customer" includes the patrons, passengers, shippers, subscribers,
20 users of the service and consumers of the product of a railroad, motor car-
21 rier or public utility.

22 (3) "Motor carrier" has the meaning given that term in ORS 767.005.

23 (4) "Municipality" means any city, municipal corporation or quasi-
24 municipal corporation.

25 (5) "Person" includes individuals, joint ventures, partnerships, cor-
26 porations and associations or their officers, employees, agents, lessees, as-
27 signees, trustees or receivers.

28 (6) "Public utility" has the meaning given that term in ORS 757.005.

29 (7) "Railroad" has the meaning given that term in ORS 760.005.

30 (8) "Rate" means any fare, charge, joint rate, schedule or groups of
31 rates or other remuneration or compensation for service.

32 (9) "Service" is used in its broadest and most inclusive sense and in-
33 cludes equipment and facilities related to providing the service or the
34 product served.

1 (10) "Air carrier" has the meaning given that term in this 1973 Act.

2 Section 16. ORS 756.040 is amended to read:

3 756.040. (1) In addition to the powers and duties now or hereafter
4 transferred to or vested in the commissioner, he shall represent the custom-
5 ers of any public utility, railroad, air or motor carrier, and the public gen-
6 eral in all controversies respecting rates, valuations, service and all matters
7 of which he has jurisdiction. In respect thereof he shall make use of the
8 jurisdiction and powers of his office to protect such customers, and the
9 public generally, from unjust and unreasonable exactions and practices
10 and to obtain for them adequate service at fair and reasonable rates.

11 (2) The commissioner is vested with power and jurisdiction to super-
12 vise and regulate every public utility, railroad, air and motor carrier in
13 this state, and to do all things necessary and convenient in the exercise of
14 such power and jurisdiction.

15 (3) The commissioner may participate in any proceeding before any
16 public officer, commission or body of the United States or any state for
17 the purpose of representing the public generally and the customers of the
18 services of any public utility, railroad, water, air or motor carrier operat-
19 ing or providing service to or within this state.

20 (4) The commissioner may make joint investigations, hold joint hear-
21 ings within or without this state and issue concurrent orders in conjunc-
22 tion or concurrence with any official, board, commission or agency of any
23 state or of the United States.

24 Section 17. ORS 756.070 is amended to read:

25 756.070. The commissioner may inquire into the management of the
26 business of all public utilities, air and motor carriers and railroads, and
27 shall keep informed as to the manner and method in which they are con-
28 ducted and has the right to obtain from any public utility, air or motor
29 carrier or railroad all necessary information to enable him to perform his
30 duties.

31 Section 18. ORS 756.075 is amended to read:

32 756.075. (1) The commissioner or his authorized representatives may
33 enter upon any premises, or any equipment, rolling stock or facilities op-
34 erated or occupied by any public utility, railroad, air or motor carrier for

1 the purpose of making any inspection, examination or test reasonably re-
2 quired in the administration of ORS chapters 756, 757, 758, 760, 761, 763,
3 764, **this 1973 Act** or 767 and to set up and use on such premises equip-
4 ment, rolling stock or facilities any apparatus and appliances and occupy
5 reasonable space therefor.

6 (2) The commissioner or his authorized representatives shall, upon
7 demand, have the right to inspect the books, accounts, papers, records and
8 memoranda of any public utility, railroad, **air** or motor carrier and to ex-
9 amine under oath any officer, agent or employe of such public utility,
10 railroad, **air** or motor carrier in relation to its business and affairs.

11 (3) Any person who on behalf of the commissioner makes demand of
12 a public utility, railroad, **air** or motor carrier for an examination, inspec-
13 tion or test shall, upon request therefor, produce a certificate under the
14 seal of the commissioner showing his authority to make such examination,
15 inspection or test.

16 (4) Nothing in this section authorizes the commissioner to use any in-
17 formation developed thereunder for any purpose inconsistent with any
18 statute administered by him or to make a disclosure thereof for other than
19 regulatory purposes.

20 Section 19. ORS 756.090 is amended to read:

21 756.090. (1) The commissioner may require by rule, or by order or sub-
22 pena to be served on any public utility, railroad, **air** or motor carrier, the
23 maintaining within this state or the production within this state at such
24 time and place as he may designate, of any books, accounts, papers or
25 records kept by such public utility, railroad, **air** or motor carrier in any
26 office or place within or without this state, or verified copies in lieu
27 thereof, if the commissioner so orders, in order that an examination there-
28 of may be made by the commissioner or under his direction.

29 (2) When a public utility, railroad, **air** or motor carrier keeps and
30 maintains its books, accounts, papers or records outside the state, the com-
31 missioner may examine such documents and shall be reimbursed by the
32 public utility, railroad, **air** or motor carrier for all expenses incurred in
33 making such out-of-state examination.

1 Section 20. ORS 756.105 is amended to read:

2 756.105. (1) Every public utility, railroad, air and motor carrier shall
3 furnish to the commissioner all information required by him to carry into
4 effect the provisions of ORS chapters 756, 757, 758, 760, 761, 763, 764, this
5 1973 Act and 767, and shall make specific answers to all questions sub-
6 mitted by the commissioner.

7 (2) If a public utility, railroad, air or motor carrier is unable to furnish
8 any information required under subsection (1) of this section for any rea-
9 son beyond its control, it is a good and sufficient reason for such failure.
10 The answer or information shall be verified under oath and returned to
11 the commissioner at his office within the period fixed by the commis-
12 sioner.

13 Section 21. ORS 756.115 is amended to read:

14 756.115. No officer, agent or employe of any public utility, railroad, air
15 or motor carrier shall:

16 (1) Fail or refuse to fill out and return any forms required by the
17 commissioner;

18 (2) Fail or refuse to answer any question therein propounded;

19 (3) Knowingly or wilfully give a false answer to any such question
20 or evade the answer to any such question where the fact inquired of is
21 within his knowledge;

22 (4) Upon proper demand, fail or refuse to exhibit to the commissioner
23 or any person authorized to examine the same, any book, paper, account,
24 record or memorandum of such public utility, railroad, air or motor carrier
25 which is in his possession or under his control;

26 (5) Fail to properly use and keep his system of accounting or any part
27 thereof, as prescribed by the commissioner; or

28 (6) Refuse to do any act or thing in connection with such system of
29 accounting when so directed by the commissioner or his authorized repre-
30 sentative.

31 Section 22. ORS 756.160 is amended to read:

32 756.160. (1) The commissioner shall inquire into any neglect or viola-
33 tion of any law of this state or any law or ordinance of any municipality
34 thereof relating to public utilities, railroad, air or motor carriers by any

1 public utility, railroad , air or motor carrier doing business therein, its offi-
 2 cers, agents or employes, and shall enforce all laws of this state relating
 3 to public utilities, railroads , air and motor carriers and may enforce all
 4 such laws and ordinances of a municipality. The commissioner shall report
 5 all violations of any such laws or ordinances to the Attorney General.

6 (2) The Attorney General, district attorney of each county, and all
 7 state, county and city police officers shall assist the commissioner in the
 8 administration and enforcement of all laws administered by the commis-
 9 sioner, and they, as well as his assistants and employes, shall inform
 10 against and diligently prosecute all persons whom they have reasonable
 11 cause to believe guilty of violation of any such laws or of the rules, regu-
 12 lations, orders, decisions or requirements of the commissioner made pur-
 13 suant thereto.

14 (3) Upon the request of the commissioner, the Attorney General or
 15 the district attorney of the proper county shall aid in any investigation,
 16 hearing or trial, and shall institute and prosecute all necessary suits, actions
 17 or proceedings for the enforcement of those laws and ordinances referred
 18 to in subsection (1) of this section.

19 (4) Any forfeiture or penalty provided for in any law administered
 20 by the commissioner shall be recovered by an action brought thereon in
 21 the name of the State of Oregon in any court of appropriate jurisdiction.

22 Section 23. ORS 756.180 is amended to read:

23 756.180. (1) Whenever it appears to the commissioner that any public
 24 utility, railroad , air or motor carrier is engaged or about to engage in any
 25 acts or practices which constitute a violation of any statute administered by
 26 the commissioner, or any rule, regulation, requirement, order, term or con-
 27 dition issued thereunder, he may apply to any circuit court of the state
 28 where such public utility, railroad , air or motor carrier operates for the en-
 29 forcement of such statute, rule, regulation, requirement, order, term or
 30 condition.

31 (2) Such court, without bond, has jurisdiction to enforce obedience
 32 thereto by injunction, or by other processes, mandatory or otherwise, re-
 33 straining such public utility, railroad , air or motor carrier, or its officers,
 34 agents, employes and representatives from further violations of such

1 statute, rule, regulation, requirement, order, term or condition, and en-
2 joining upon them obedience thereto.

3 (3) The provisions of this section are in addition to and not in lieu of
4 any other enforcement provisions contained in any statute administered
5 by the commissioner.

6 Section 24. ORS 756.185 is amended to read:

7 756.185. (1) Any public utility, railroad, air or motor carrier which
8 does, or causes or permits to be done, any matter, act or thing prohibited
9 by ORS chapters 756, 757, 758, 760, 761, 763, 764, this 1973 Act or 767 or
10 omits to do any act, matter or thing required to be done by such statutes,
11 is liable to the person injured thereby in treble the amount of damages
12 sustained in consequence of such violation together with a reasonable
13 counsel's or attorney's fee, to be fixed by the court in every case of recov-
14 ery. Such attorney's fee shall be taxed and collected as part of the costs
15 in the case.

16 (2) Any recovery under this section does not affect recovery by the
17 state of the penalty, forfeiture or fine prescribed for such violation.

18 (3) This section does not apply with respect to the liability of any
19 public utility, railroad, air or motor carrier for personal injury or property
20 damage.

21 Section 25. ORS 756.200 is amended to read:

22 756.200. (1) The remedies and enforcement procedures provided in
23 ORS chapters 756, 757, 758, 760, 761, 763, 764, this 1973 Act and 767 do not
24 release or waive any right of action by the state or by any person for any
25 right, penalty or forfeiture which may arise under any law of this state
26 or under an ordinance of any municipality thereof.

27 (2) All penalties and forfeiture accruing under said statutes and ordi-
28 nances are cumulative and a suit for and recovery of one, shall not be a
29 bar to the recovery of any other penalty.

30 (3) The duties and liabilities of the public utilities, railroads, air and
31 motor carriers shall be the same as are prescribed by the common law,
32 and the remedies against them the same, except where otherwise pro-
33 vided by the Constitution or statutes of this state, and the provisions of

17

1 ORS chapters 756, 757, 758, 760, 761, 763, 764, **this 1973 Act** and 767 are
2 cumulative thereto.

3 Section 26. ORS 756.515 is amended to read:

4 756.515. (1) Whenever the commissioner believes that any rate may
5 be unreasonable or unjustly discriminatory, or that any service is unsafe
6 or inadequate, or is not afforded, or that an investigation of any matter
7 relating to any public utility, railroad, **air or motor carrier** or other per-
8 son should be made, or relating to any person to determine if such person is
9 subject to the commissioner's regulatory jurisdiction, he may on his own
10 motion summarily investigate any such matter, with or without notice.

11 (2) If after making such investigation he is satisfied that sufficient
12 grounds exist to warrant a hearing being ordered upon any such matter,
13 he shall furnish any public utility, railroad, **air or motor carrier** or other
14 person interested a statement notifying it of the matters under investiga-
15 tion, which statement shall be accompanied by a notice fixing the time
16 and place for hearing upon such matters in the manner provided in ORS
17 756.512 for notice of complaint.

18 (3) Thereafter proceedings shall be had and conducted in reference
19 to the matters investigated in like manner as though complaint had been
20 filed with the commissioner relative thereto, and the same orders may be
21 made in reference thereto as if such investigation had been made on com-
22 plaint.

23 (4) However, the commissioner may, after he has made an investiga-
24 tion on his motion, but without notice or hearing, make such findings and
25 orders as he deems justified or required by the results of such investiga-
26 tion. Except as provided in subsections (5) and (6) of this section such
27 findings and orders have the same legal force and effect as any other
28 finding or order of the commissioner.

29 (5) In addition to any other remedy provided by law, any party
30 aggrieved by an order entered pursuant to subsection (4) of this section
31 may request the commissioner to hold a hearing to determine whether the
32 order should continue in effect. Any such request for hearing shall be sub-
33 mitted to the commissioner not later than 15 days after the date of serv-
34 ice of the order, and the commissioner shall hold the hearing not later

1 than 60 days after receipt of such a request for hearing.

2 (6) If the commissioner receives a request for hearing pursuant to
3 subsection (5) of this section, the order is suspended pending the outcome
4 of the hearing unless the commissioner finds that the order is necessary
5 for the public health or safety or to prevent the dissipation of assets of a
6 business or activity subject to the commissioner's regulatory jurisdiction.

7 Section 27. ORS 756.572 is amended to read:

8 756.572. (1) An order of the commissioner issued in accordance with
9 the provisions of ORS chapters 756, 757, 758, 760, 761, 763, 764, **this 1973 Act**
10 and 767 is binding upon the successors in interest of each person affected
11 thereby, until set aside, rescinded, suspended or modified as provided by
12 law.

13 (2) Any investigation, hearing or other proceeding involving the issu-
14 ance of an order of the commissioner that has not been finally determined
15 when a transfer of any interests of a person is effected may be continued
16 and finally determined, notwithstanding any such transfer of interest.
17 Any order issued in such investigation, hearing or other proceeding is bind-
18 ing upon the successors in interest.

19 Section 28. ORS 756.990 is amended to read:

20 756.990. (1) Any public utility, railroad, **air** or motor carrier that
21 fails to comply with an order or subpoena issued pursuant to ORS 756.090
22 shall forfeit, for each day it so fails, a sum of not less than \$50 nor more
23 than \$500.

24 (2) Any public utility, railroad, **air** or motor carrier that violates any
25 statute administered by the commissioner, or does any act prohibited, or
26 fails to perform any duty enjoined upon it, for which a penalty has not
27 been provided, or fails to obey any lawful requirement or order made by
28 the commissioner, or any judgment or decree made by any court upon
29 the application of the commissioner, shall forfeit a sum of not less than
30 \$100 nor more than \$10,000 for each such offense.

31 (3) Violation of ORS 756.115 is punishable, upon conviction, by a fine
32 of not less than \$1,000 for each offense. A penalty of not less than \$500 nor
33 more than \$1,000 shall be recovered from the public utility, railroad, **air** or
34 motor carrier for each such offense when such officer, agent or employe

19 of 19

1 acted in obedience to the direction, instruction or request of the public
2 utility, railroad, air or motor carrier, or any general officer thereof.

3 (4) Violation of ORS 756.125 is punishable, upon conviction, by a fine
4 of not more than \$100 or imprisonment for not more than 30 days, or both.
5 Any public utility, railroad, air or motor carrier that knowingly permits
6 the violation of ORS 756.125 shall forfeit, upon conviction, not more than
7 \$1,000 for each offense.

8 (5) Violation of subsection (1) of ORS 756.543 is punishable, upon con-
9 viction, by a fine of not less than \$100 nor more than \$1,000, or by im-
10 prisonment in the county jail for not more than one year, or both.

11 (6) In construing and enforcing this section, the act, omission or fail-
12 ure of any officer, agent or other person acting for or employed by any
13 public utility, railroad, air or motor carrier acting within the scope of his
14 employment shall in every case be deemed to be the act, omission or fail-
15 ure of such public utility, railroad, air or motor carrier. With respect to
16 any violation of any statute administered by the commissioner, any pen-
17 alty provision applying to such a violation by a public utility, railroad, air
18 or motor carrier shall apply to such a violation by any other person.

19 (7) All penalties, fines or forfeitures or other sums collected or paid
20 under the provisions of any law administered by the commissioner shall
21 be paid into the General Fund except where it is provided that the same
22 shall be paid to the aggrieved party.

23 **SECTION 29.** This Act being necessary for the immediate preservation
24 of the public peace, health and safety, an emergency is declared to exist,
25 and this Act takes effect ^{on its passage} ~~July 1, 1973.~~

Standard E. Clam

proposed to page three. The amendment directs the department of commerce to compile all conflicts in any building code, or speciality code of any kind and make a report to the governor by March 4, 1974. He asked that the committee give this special consideration.

502 WORK SESSION

SB 240--Regulation of air commerce

LON TOPAZ, Public Utilities Commission, explained that the May 9 amendments were made at the request of the sponsors due to objections raised on the Senate Floor pertaining to the form of the bill not the substance of the bill (see Exhibit #2 & #3).

BOB LUNDY, Legislative Council, explained the amendments drafted by them dated June 6, corrects any conflicts with other related bills (see Exhibit #4).

REP. GRANNELL, referred to the paste up copy of the bill (see Exhibit #3) which incorporates the May 9 amendments and asked that the committee consider on page 3, line 3 after "commissioner" delete "shall" and insert "may". He stated this would give the commissioner more flexibility not having to fix rates.

REP. GRANNELL, moved that the committee adopt the amendments of May 9, to include the amendment changing "shall" to "may". Motion carried unanimously (excused: Bazett, Hanneman, Sumner).

REP. GRANNELL, moved that the committee adopt the amendments of June 6. Motion carried unanimously (excused: Bazett, Hanneman, Sumner).

CHRIS THOMAS, Pacific Northern Airlines, presented amendments to the committee (see Exhibit #5).

He suggested an amendment on page 4, line 22 after "unprofitable" insert "or unless the certificate provides otherwise" be incorporated in the bill. This would still give the commissioner control but he could put a provision for earlier discontinuance in the certificate if necessary.

REP. GRANNELL, moved that the committee adopt the above amendment. Motion carried unanimously (excused: Bazett, Hanneman, Sumner).

REP. GRANNELL, moved that the committee send SB 240 as amended to the Floor with a "do pass" recommendation. Motion carried (voting aye: AuCoin, Blumenauer, Fadeley, Grannell, Kinsey, Lindquist; excused: Bazett, Hanneman, Sumner).

SB 660--Relating to certain retirement systems

JANET MERRILL, Legislative Counsel, described and spoke briefly to the amendments dated June 15 (see Exhibit #6).

May 9, 1973

Exhibit #2

SB 240

H. ST. FED. AFF.

H. ST. & FED. AFF. COM.

OREGON STATE ARCHIVES

10550

PROPOSED HOUSE AMENDMENTS TO RE-ENGROSSED SENATE BILL 240

On page 2 of the printed re-engrossed bill, line 3, after "756.040," insert "756.060, 756.062, 756.064,".

In line 4, after "756.200," insert "756.360," and in the same line after "756.515," insert "756.568," and in the same line after "756.572" insert ", 756.575".

Delete lines 7 and 8 and insert:

"Section 1. As used in sections 1 to 13 of this Act, unless the context requires otherwise:".

In line 9, delete "now or hereafter invented,".

In line 12, delete "; but" and insert ". However,".

In line 15, after "Instruction." insert "in the operation of aircraft".

In line 26, delete "this chapter" and insert "sections 1 to 13 of this Act."

In line 29, delete the first comma and insert a period and delete the rest of the line.

Delete lines 30 through 33.

On page 3, line 1, delete "Government over air carriers and air commerce" and insert:

"Section 3.".

In line 2, after "state" insert "for the regulation of air carriers and air commerce".

In line 7, after the semicolon insert "and".

In line 10, delete ";and" and insert a period.

Delete lines 11 and 12 and insert:

"Section 4. (1) No person shall perform any act which constitutes air commerce, unless that act is authorized by a valid and effective certificate of public convenience and necessity issued by the commissioner or the act is otherwise authorized by the commissioner's rule or order.

"(2) Each separate act in violation of this section is a separate violation, whether the prohibited acts occur within the same or different days or relate to the same or different aircraft.

"Section 5. A person who desires to obtain a certificate of public convenience and necessity to perform an act of air commerce shall make application therefor in such form as the commissioner prescribes. The application shall contain such information as the commissioner may require.

"Section 6. Every person applying for a certificate of public convenience and necessity to perform an act of air commerce shall pay to the commissioner with his application a fee of \$150. A like fee shall accompany an application for transfer of such certificates. The fees collected under this section are not refundable.

"Section 7. Notwithstanding any other provision of sections 1 to 13 of this Act, the commissioner shall issue a certificate of public convenience and necessity to any air carrier for the points in this state between which it was actually operating in good faith and doing business as of January 1, 1973, and continuously thereafter, if application, therefor has been filed with the commissioner on or before January 1, 1974. The air carrier may continue such operation until its application is either granted or denied by the commissioner.

"Section 8. The commissioner may exempt any air carrier from the certificate requirements of section 4 of this Act if he finds that such requirements are contrary to the public interest or would impose an undue burden upon the carrier or a community or area because of the immediate need for service. Such need may include, but is not limited to, conditions of national emergency, national disaster or cessation of existing service by another carrier, except for cessation of service caused by a labor dispute. Exemptions issued pursuant to this section may be issued for a maximum period of 90 days and may be renewed for the same or for a lesser period."

In line 13, delete "5" and insert "9".

In line 14, delete the comma.

In line 22, delete "6" and insert "10".

Committee Amendments

In line 28, after "of" insert "sections 4, 11 or 12 of".

In line 30, after "state" insert "aircraft or air commerce".

Delete lines 31 through 34.

On page 4, delete lines 1 through 3.

In line 4, delete "8" and insert "11".

In line 18, delete "The".

Delete lines 19 and 20.

In line 21, delete "9" and insert "12".

In line 23, delete "upon" and in the same line delete "days'" and insert "days after the carrier gives".

Delete lines 27 through 34.

Delete page 5.

On page 6, delete lines 1 through 17 and insert:

"Section 13. Violation of any provision of sections 4, 11 or 12 of this Act is punishable, upon conviction, by a fine of not more than \$1,000 for each such violation."

In line 18, delete "15" and insert "14".

In line 19, delete "this".

In line 20, delete "1973 Act and" and in the same line after "767" insert "and sections 1 to 13 of this 1973 Act".

On page 7, line 6, after "in" insert "section 1 of".

In line 7, delete "16" and insert "15".

In line 10, after "air" insert "carrier".

In line 17, after "air" insert "carrier".

In line 23, after "air" insert "carrier".

After line 28 insert:

"Section 16. ORS 756.060 is amended to read:

"756.060. The commissioner may adopt and amend reasonable and proper rules and regulations relative to all statutes administered by him and may adopt and publish reasonable and proper rules to govern his proceedings and to regulate the mode and manner of all investigations and hearings of public utilities, railroads, air carriers, motor carriers and other parties before him.

"Section 17. ORS 756.062 is amended to read:

"756.062. (1) A substantial compliance with the requirements of the laws administered by the commissioner is sufficient to give effect to all the rules, orders, acts and regulations of the commissioner and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

"(2) The provisions of such laws shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice between customers and public utilities, railroads, air carriers and motor carriers.

Committee Amendments

SB 240

5/9/73 page 5

"Section 18. ORS 756.064 is amended to read:

"756.064. (1) The commissioner shall report to the Governor annually on the administration of the office of the commissioner during the preceding year relating to the operation of the public utility, railroad, air carrier and motor carrier systems within this state. The commissioner shall make such additional reports as the Governor or the Legislative Assembly may direct.

"(2) The reports required by subsection (1) of this section shall be in such form and contain such information and recommendations as the commissioner determines appropriate, and shall contain such other information as the Governor and the Legislative Assembly may require."

In line 29, delete "17" and insert "19".

In line 31, delete the first "and" and insert "carriers,".

In line 33, delete "or" and insert "carrier,".

On page 8, line 3, delete "18" and insert "20".

In line 6, after "air" insert "carrier".

In line 9, delete "this 1973 Act or" and in the same line after "767" insert "or sections 1 to 13 of this 1973 Act".

In line 14, after "air" insert "carrier".

In line 16, after "air" insert "carrier".

In line 18, after "air" insert "carrier".

In line 26, delete "19" and insert "21".

In line 28, after "air" insert "carrier".

In line 31, after "air" insert "carrier".

On page 9, line 1, after "air" insert "carrier".

In line 4, after "air" insert "carrier".

In line 6, delete "20" and insert "22".

In line 7, after "air" insert "carrier".

In line 9, delete "this".

In line 10, delete "1973 Act and" and in the same line after "767" insert "and sections 1 to 13 of this 1973 Act".

In line 12, after "air" insert "carrier".

In line 18, delete "21" and insert "23".

In line 19, after "air" insert "carrier".

In line 29, after "air" insert "carrier".

On page 10, line 3, delete "22" and insert "24".

In line 6, after "air" insert "carrier".

In line 7, after "air" insert "carrier".

In line 9, after "air" insert "carrier".

In line 28, delete "23" and insert "25".

In line 30, after "air" insert "carrier".

In line 34, after "air" insert "carrier".

On page 11, line 5, after "air" insert "carrier".

In line 12, delete "24" and insert "26".

In line 13, after "air" insert "carrier".

In line 15, delete "this 1973 Act or" and in the same line after "767" insert "or sections 1 to 13 of this 1973 Act".

In line 25, after "air" insert "carrier".

In line 27, delete "25" and insert "27".

In line 29, delete "this 1973 Act and" and in the same line after "767" insert "and sections 1 to 13 of this 1973 Act".

On page 12, line 3, after "air" insert "carriers".

In line 7, delete "this 1973 Act and" and in the same line after "767" insert "and sections 1 to 13 of this 1973 Act".

After line 8 insert:

"Section 28. ORS 756.360 is amended to read:

"756.360. All fees, fines, penalties and other moneys collected by the commissioner under ORS 756.310, 756.320, 756.350, 758.015 and 758.400 to 758.475 shall be paid by the commissioner into the State Treasury within 30 days after the collection thereof, and shall be placed by the State Treasurer to the credit of the Public Utility Commissioner Account and the fees, fines, penalties and other moneys collected from:

"(1) Railroads shall be used only for the purpose of paying the expenses of the commissioner in performing the duties imposed by law upon the commissioner in respect to railroads.

"(2) Utilities shall be used only for the purpose of paying the expenses of the commissioner in performing the duties imposed by law upon the commissioner in respect to utilities.

"(3) Air carriers shall be used only for the purpose of paying the expenses of the commissioner in performing the duties imposed by law upon the commissioner in respect to air carriers."

In line 9, delete "26" and insert "29".

In line 13, after "air" insert "carrier".

In line 19, after "air" insert "carrier".

On page 13, after line 12 insert:

"Section 30. ORS 756.568 is amended to read:

"756.568. The commissioner may at any time, upon notice to the public utility, railroad, air carrier or motor carrier and after opportunity to be heard as provided in ORS 756.500 to 756.610, rescind, suspend or amend any order made by him. Copies of the same shall be served and take effect as provided in ORS 756.558 for original orders."

In line 13, delete "27" and insert "31".

In line 15, delete "this 1973 Act".

In line 16, delete "and" and in the same line after "767" insert "and sections 1 to 13 of this 1973 Act".

After line 24 insert:

"Section 32. ORS 756.575 is amended to read:

"756.575. The commissioner may provide by rule that any public utility, railroad, air carrier or motor carrier affected by any order shall within a time to be fixed by the commissioner, notify the commissioner whether the terms of the order are accepted and will be obeyed."

In line 25, delete "28" and insert "33".

In line 26, after "air" insert "carrier".

In line 30, after "air" insert "carrier".

On page 14, line 5, after "air" insert "carrier".

In line 8, after "air" insert "carrier".

In line 11, after "air" insert "carrier".

In line 19, after "air" insert "carrier".

In line 21, after "air" insert "carrier".

In line 23, after "air" insert "carrier".

After line 28, insert:

"Section 34. In addition to and not in lieu of any other appropriations or moneys made available by law or from other sources, there is appropriated to the Public Utility Commissioner, for the biennium beginning July 1, 1973, out of the General Fund, the sum of \$50,000. Such moneys may be used only for paying the expenses of the Public Utility Commissioner in carrying out the duties, functions and powers imposed upon him by law regarding the regulation of air carriers and air commerce."

In line 29, delete "29" and insert "35".

PROPOSED AMENDMENTS TO
RE-ENGROSSED SENATE BILL 240

RE-ENGROSSED
Senate Bill 240

Ordered by the Senate April 9
(Including Amendments by Senate March 14 and April 9)

Sponsored by Senators NEWBRY, J. BURNS (at the
request of the Public Utility Commissioner of Oregon)

Confers jurisdiction on Public Utility Commissioner to regulate intra-state air commerce. Requires certificate of public convenience and necessity to engage in intrastate air commerce. Specifies application and transfer fees for such certificates and provides that such fees are not refundable. Permits Public Utility Commissioner to establish rates and routes for air carriers. Prohibits certain acts by air carriers. Provides penalties.

Appropriates [\$92,000] \$50,000 from General Fund to Public Utility Commissioner, for biennium beginning July 1, 1973, to finance administration of this Act.

Declares emergency. [Takes effect July 1, 1973.]

Re-Eng. SB 240

[2]

A BILL FOR AN ACT

1
2 Relating to regulation of air commerce; creating new provisions; amend-
3 ing ORS 756.010, 756.040, 756.070, 756.075, 756.090, 756.105, 756.115,
4 756.160, 756.180, 756.185, 756.200, 756.515, 756.572 and 756.990; appropriat-
5 ing money; providing penalties; and declaring an emergency.

6 Be It Enacted by the People of the State of Oregon:

7 [SECTION 1. Unless the context otherwise requires, the definitions in

8 this section and ORS 756.010 shall govern the construction of this Act.] *Section 1. As used in*
sections 1 to 13 of this Act, unless the context requires otherwise:

9 (1) "Aircraft" means any contrivance now or hereafter invented used
10 or designed for navigation of or flight in the air.

11 (2) "Air commerce" means all transportation by aircraft of persons or
12 property for compensation between points in this state; but "air commerce"
13 does not include transportation performed solely in connection with:

- 14 (a) Transportation of U.S. mail,
- 15 (b) Instruction, *in the operation of aircraft*
- 16 (c) Aerial application of agricultural chemicals,
- 17 (d) Air ambulance services,
- 18 (e) Aerial fire-fighting services,
- 19 (f) Air taxi or charter services,
- 20 (g) Aerial logging operations, or
- 21 (h) Transportation authorized by a certificate of public convenience
22 and necessity issued prior to January 1, 1973, pursuant to section 401 of the
23 Federal Aviation Act of 1958 as amended.

24 (3) "Air carrier" means any person owning, controlling or operating
25 aircraft engaged in air commerce.

26 SECTION 2. The purpose of this chapter *sections 1 to 13*
of this Act is to provide regulation of
27 air commerce in order that an orderly, efficient, economical and healthy
28 network of air transportation may be established to the benefit of the
29 people of this state, its communities, and the state itself.

30 [SECTION 3. The commissioner is vested with authority and respon-
31 sibility to regulate air commerce and air carriers. He shall administer this
32 chapter in accordance with its stated purposes.]

33 [SECTION 4. The State of Oregon recognizes the powers of the Federal

[3]

Re-Eng. SB 240

- 1 Government over air carriers and air commerce. ^{Section 3.} Within the limits of
 2 powers reserved to the state: ^{for the regulation of air carriers} and air commerce
- 3 (1) The commissioner shall ^{fix} reasonable rates and routes of air car-
 4 riers.
- 5 (2) The commissioner may:
- 6 (a) Require any air carrier to procure and maintain insurance and per-
 7 formance bonds in any amount, ^{and}
- 8 (b) Authorize such through routes, joint rates and divisions of revenue
 9 for persons engaged in air commerce as he determines to be in the public
 10 interest; ^{and} •
- 11 [(c) Exercise any power expressly or impliedly conferred by this Act
 12 and ORS chapter 756.]

Section 4. (1) No person shall perform any act which constitutes air commerce, unless that act is authorized by a valid and effective certificate of public convenience and necessity issued by the commissioner or the act is otherwise authorized by the commissioner's rule or order.

(2) Each separate act in violation of this section is a separate violation, whether the prohibited acts occur within the same or different days or relate to the same or different aircraft.

Section 5. A person who desires to obtain a certificate of public convenience and necessity to perform an act of air commerce shall make application therefor in such form as the commissioner prescribes. The application shall contain such information as the commissioner may require.

Section 6. Every person applying for a certificate of public convenience and necessity to perform an act of air commerce shall pay to the commissioner with his application a fee of \$150. A like fee shall accompany an application for transfer of such certificates. The fees collected under this section are not refundable.

Section 7. Notwithstanding any other provision of sections 1 to 13 of this Act, the commissioner shall issue a certificate of public convenience and necessity to any air carrier for the points in this state between which it was actually operating in good faith and doing business as of January 1, 1973, and continuously thereafter, if application, therefor has been filed with the commissioner on or before January 1, 1974. The air carrier may continue such operation until its application is either granted or denied by the commissioner.

Section 8. The commissioner may exempt any air carrier from the certificate requirements of section 4 of this Act if he finds that such requirements are contrary to the public interest or would impose an undue burden upon the carrier or a community or area because of the immediate need for service. Such need may include, but is not limited to, conditions of national emergency, national disaster or cessation of

existing service by another carrier, except for
cessation of service caused by a labor dispute.

Exemptions issued pursuant to this section may be
issued for a maximum period of 90 days and may be
renewed for the same or for a lesser period.

13 SECTION ⁹ 5. The commissioner shall award certificates of public con-
14 venience and necessity whenever the public convenience and necessity
15 require, taking into consideration the business experience of the applicant,
16 the applicant's financial ability and insurance coverage, the type of aircraft
17 the applicant would employ, the proposed routes and minimum schedules
18 to be established, whether the carrier could economically and adequately
19 serve the communities involved, the need for service and any other fac-
20 tors which may affect the public interest. Such certificates may be award-
21 ed subject to whatever terms and conditions the commissioner prescribes.

22 SECTION ¹⁰ 6. The commissioner may suspend or revoke any of the
23 rights conferred by a certificate of public convenience and necessity after
24 notice and opportunity for hearing only upon a finding that the holder:

25 (1) Has abandoned such rights,

26 (2) Is no longer willing or able to perform all or part of the certifi-
27 cated services,

28 (3) Has violated any provision of ^{sections 4, 11 or 12 of} this Act or any rule, regulation or
29 order of the commissioner, or

30 (4) Has violated any federal or state ^{aircraft or air commerce} safety law or regulation.

31 [SECTION 7. (1) No person shall perform any act which constitutes
32 air commerce, unless that act is authorized by a valid and effective cer-
33 tificate of public convenience and necessity issued by the commissioner or
34 otherwise by the commissioner's rule or order.]

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[4]

1 (2) Each separate act in violation of this section is a separate viola-
 2 tion, whether the prohibited acts occur within the same or different days
 3 or relate to the same or different aircraft.]

4 ~~SECTION 8~~¹¹ (1) It is unlawful, unless authorized by order of the
 5 commissioner as provided in this section:

6 (a) For two or more air carriers, or for any air carrier and any other
 7 common carrier to consolidate or merge their properties or any part there-
 8 of into one person for the ownership, management or operation of the
 9 properties theretofore in separate ownerships,

10 (b) For any air carrier or any person controlling an air carrier or any
 11 other common carrier to purchase, lease, or contract to operate the prop-
 12 erties, or a substantial part thereof, of any air carrier, or

13 (c) For any air carrier or any person controlling an air carrier or any
 14 other common carrier to acquire control of any air carrier in any manner
 15 whatsoever.

16 (2) The commissioner may by order authorize such consolidation, mer-
 17 ger, purchase, lease, operating control or acquisition of control upon such
 18 terms and conditions as he shall deem to be in the public interest. [The
 19 commissioner shall determine whether a hearing is required under this
 20 section.]

21 ~~SECTION 9~~¹² No air carrier shall discontinue any certificated service
 22 without authority of the commissioner, unless such service is unprofitable.
 23 Unprofitable services may be discontinued [upon] 90 [days] ^{days after the} notice to the ^{carrier gives}
 24 commissioner, and to such other persons as the commissioner may require,
 25 unless within such 90-day period the commissioner finds that such serv-
 26 ices are not unprofitable and orders their continuance.

27 [SECTION 10. The commissioner may, following a determination of
 28 necessity, exempt any air carrier from the certificate provisions of this
 29 Act upon a finding that such provisions impose an undue burden upon
 30 the carrier, a community or area because of the immediate need for serv-
 31 ices including, but not limited to, conditions of national emergency, na-
 32 tional disaster or cessation of existing service by another carrier, except
 33 the cessation of existing service caused by a labor dispute, and that enforce-
 34 ment of such provisions would be contrary to the public interest. Exemp-]

1 tions issued pursuant to this section may be issued for a maximum of 90
2 days and may be renewed for the same or a lesser period.

3 **SECTION 11.** (1) To the extent necessary to prevent overlap or con-
4 flict between provisions of this Act and those of any other statute, the
5 provisions of this Act shall exclusively prevail unless subsection (2) of this
6 section applies.

7 (2) The commissioner may by rule exempt any activity from any or
8 all of the requirements of this Act if the commissioner is satisfied that
9 such exemption would not be contrary to the public interest.

10 **SECTION 11a.** Every person applying for a certificate under section 5
11 of this Act shall pay to the commissioner with his application a fee of
12 \$150. A like fee shall accompany an application for transfer of such cer-
13 tificates. The fees collected under this section are not refundable.

14 **SECTION 12.** (1) In addition to all other penalties provided by law,
15 every person who violates or who procures, aids or abets in the violation
16 of this Act or any order, rule, regulation or decision of the commissioner
17 relating to air commerce shall incur a penalty of \$1,000 for every such
18 violation.

19 (2) Each such violation shall be a separate offense and in case of a
20 continuing violation every day's continuance is a separate violation. Every
21 act of commission or omission which procures, aids or abets the violation
22 is a violation under this section and subject to the penalty provided in
23 this section.

24 (3) Such penalty shall not be imposed except by order following com-
25 plaint as provided in ORS 756.500 to 756.610. Such proceeding may only
26 be commenced within two years following the date of the violation.

27 (4) The commissioner may negotiate any settlement or mitigate any
28 penalty provided for in this section on such terms as he considers proper.

29 (5) If the amount of such penalty is not paid to the commissioner, the
30 Attorney General shall bring an action in the name of the State of Oregon
31 in the Circuit Court of Marion County to recover such penalty. The action
32 shall not be commenced until after the time has expired for an appeal
33 from the findings, conclusions and order of the commissioner. In all such

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1 actions the procedure and rules of evidence shall be the same as an ordi-
2 nary civil action except as otherwise provided in this Act.

3 SECTION 13. (1) To finance the administration of this Act and sub-
4 section (3) of ORS 756.040 there is appropriated from the General Fund
5 \$50,000 to the Public Utility Commissioner for the biennium beginning
6 July 1, 1973.

7 (2) Funds generated under this section shall be used only in the ad-
8 ministration of this chapter and subsection (3) of ORS 756.040 as it re-
9 lates to matters affecting air transportation.

10 SECTION 14. Notwithstanding any other provision in this Act, the
11 commissioner shall issue a certificate of public convenience and necessity
12 to any air carrier as to the points in this state between which it was
13 actually operating in good faith and doing business as of January 1, 1973,
14 and continuously thereafter, with or without hearing, provided application
15 therefor shall have been filed with the commissioner on or before January
16 1, 1974. The air carrier may continue such operation until its application
17 is either granted or denied by the commissioner.

Section 13. Violation of any provision of
sections 4, 11 or 12 of this Act is punishable, upon
conviction, by a fine of not more than \$1,000 for each
such violation.

18 Section 15¹⁴ ORS 756.010 is amended to read:

19 756.010. As used in ORS chapters 756, 757, 758, 760, 761, 763, 764, [this
20 1973 Act and] ^{and sections 1 to 13 of the 1973 Act} 767~~2~~, except as otherwise specifically provided or unless the
21 context requires otherwise:

22 (1) "Commissioner" means the Public Utility Commissioner of Oregon.

23 (2) "Customer" includes the patrons, passengers, shippers, subscribers,
24 users of the service and consumers of the product of a railroad, motor car-
25 rier or public utility.

26 (3) "Motor carrier" has the meaning given that term in ORS 767.005.

27 (4) "Municipality" means any city, municipal corporation or quasi-
28 municipal corporation.

29 (5) "Person" includes individuals, joint ventures, partnerships, cor-
30 porations and associations or their officers, employes, agents, lessees, as-
31 signees, trustees or receivers.

32 (6) "Public utility" has the meaning given that term in ORS 757.005.

33 (7) "Railroad" has the meaning given that term in ORS 760.005.

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1 (8) "Rate" means any fare, charge, joint rate, schedule or groups of
2 rates or other remuneration or compensation for service.

3 (9) "Service" is used in its broadest and most inclusive sense and in-
4 cludes equipment and facilities related to providing the service or the
5 product served.

6 (10) "Air carrier" has the meaning given that term in ^{section 1 of} this 1973 Act.

7 Section ¹⁵ 16, ORS 756.040 is amended to read:

8 756.040. (1) In addition to the powers and duties now or hereafter
9 transferred to or vested in the commissioner, he shall represent the custom-
10 ers of any public utility, railroad, ^{carrier} air or motor carrier, and the public gen-
11 erally in all controversies respecting rates, valuations, service and all mat-
12 ters of which he has jurisdiction. In respect thereof he shall make use of the
13 jurisdiction and powers of his office to protect such customers, and the
14 public generally, from unjust and unreasonable exactions and practices
15 and to obtain for them adequate service at fair and reasonable rates.

16 (2) The commissioner is vested with power and jurisdiction to super-
17 vise and regulate every public utility, railroad, ^{carrier} air and motor carrier in
18 this state, and to do all things necessary and convenient in the exercise of
19 such power and jurisdiction.

20 (3) The commissioner may participate in any proceeding before any
21 public officer, commission or body of the United States or any state for
22 the purpose of representing the public generally and the customers of the
23 services of any public utility, railroad, water, ^{carrier} air or motor carrier operat-
24 ing or providing service to or within this state.

25 (4) The commissioner may make joint investigations, hold joint hear-
26 ings within or without this state and issue concurrent orders in conjunc-
27 tion or concurrence with any official, board, commission or agency of any
28 state or of the United States.

Section 16. ORS 756.060 is amended to read:

756.060. The commissioner may adopt and amend reasonable and proper rules and regulations relative to all statutes administered by him and may adopt and publish reasonable and proper rules to govern his proceedings and to regulate the mode and manner of all investigations and hearings of public utilities, railroads, air carriers, motor carriers and other parties before him.

Section 17. ORS 756.062 is amended to read:

756.062. (1) A substantial compliance with the requirements of the laws administered by the commissioner is sufficient to give effect to all the rules, orders, acts and regulations of the commissioner and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

(2) The provisions of such laws shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice between customers and public utilities, railroads, air carriers and motor carriers.

Section 18. ORS 756.064 is amended to read:

756.064. (1) The commissioner shall report to the Governor annually on the administration of the office of the commissioner during the preceding year relating to the operation of the public utility, railroad, air carrier and motor carrier systems within this state. The commissioner shall make such additional reports as the Governor or the Legislative Assembly may direct.

(2) The reports required by subsection (1) of this section shall be in such form and contain such information and recommendations as the commissioner determines appropriate, and shall contain such other information as the Governor and the Legislative Assembly may require.

¹⁹
29 Section ~~17~~ ORS 756.070 is amended to read:

30 756.070. The commissioner may inquire into the management of the
31 business of all public utilities, air ~~and~~ ^{carrier} motor carriers and railroads, and
32 shall keep informed as to the manner and method in which they are con-
33 ducted and has the right to obtain from any public utility, air ~~or~~ ^{carrier} motor

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1 carrier or railroad all necessary information to enable him to perform his
2 duties.

²⁰
3 Section ~~18~~ ORS 756.075 is amended to read:

4 756.075. (1) The commissioner or his authorized representatives may
5 enter upon any premises, or any equipment, rolling stock or facilities op-
6 erated or occupied by any public utility, railroad, ^{carrier} air ~~or~~ motor carrier for

7 the purpose of making any inspection, examination or test reasonably re-
8 quired in the administration of ORS chapters 756, 757, 758, 760, 761, 763,
9 764, [this 1973 Act or] ^{or sections 1 to 13 of this 1973 Act} 767 and to set up and use on such premises equip-
10 ment, rolling stock or facilities any apparatus and appliances and occupy
11 reasonable space therefor.

12 (2) The commissioner or his authorized representatives shall, upon
13 demand, have the right to inspect the books, accounts, papers, records and
14 memoranda of any public utility, railroad, ^{carrier} air or motor carrier and to ex-
15 amine under oath any officer, agent or employe of such public utility,
16 railroad, ^{carrier} air or motor carrier in relation to its business and affairs.

17 (3) Any person who on behalf of the commissioner makes demand of
18 a public utility, railroad, ^{carrier} air or motor carrier for an examination, inspec-
19 tion or test shall, upon request therefor, produce a certificate under the
20 seal of the commissioner showing his authority to make such examination,
21 inspection or test.

22 (4) Nothing in this section authorizes the commissioner to use any in-
23 formation developed thereunder for any purpose inconsistent with any
24 statute administered by him or to make a disclosure thereof for other than
25 regulatory purposes.

26 Section ²¹ 19 ORS 756.090 is amended to read:

27 756.090. (1) The commissioner may require by rule, or by order or sub-
28 pena to be served on any public utility, railroad, ^{carrier} air or motor carrier, the
29 maintaining within this state or the production within this state at such
30 time and place as he may designate, of any books, accounts, papers or
31 records kept by such public utility, railroad, ^{carrier} air or motor carrier in any
32 office or place within or without this state, or verified copies in lieu
33 thereof, if the commissioner so orders, in order that an examination there-
34 of may be made by the commissioner or under his direction.

1 (2) When a public utility, railroad, air^{carrier} or motor carrier keeps and
2 maintains its books, accounts, papers or records outside the state, the com-
3 missioner may examine such documents and shall be reimbursed by the
4 public utility, railroad, air^{carrier} or motor carrier for all expenses incurred in
5 making such out-of-state examination.

6 Section ~~20~~²² ORS 756.105 is amended to read:

7 756.105. (1) Every public utility, railroad, air^{carrier} and motor carrier shall
8 furnish to the commissioner all information required by him to carry into
9 effect the provisions of ORS chapters 756, 757, 758, 760, 761, 763, 764, ^{[this}
10 1973 Act and ^{and sections 1 to 13 of this 1973 Act} 767, and shall make specific answers to all questions sub-
11 mitted by the commissioner.

12 (2) If a public utility, railroad, air^{carrier} or motor carrier is unable to furnish
13 any information required under subsection (1) of this section for any rea-
14 son beyond its control, it is a good and sufficient reason for such failure.
15 The answer or information shall be verified under oath and returned to
16 the commissioner at his office within the period fixed by the commis-
17 sioner.

18 Section ~~21~~²³ ORS 756.115 is amended to read:

19 756.115. No officer, agent or employe of any public utility, railroad, air ^{carrier}
20 or motor carrier shall:

21 (1) Fail or refuse to fill out and return any forms required by the
22 commissioner;

23 (2) Fail or refuse to answer any question therein propounded;

24 (3) Knowingly or wilfully give a false answer to any such question
25 or evade the answer to any such question where the fact inquired of is
26 within his knowledge;

27 (4) Upon proper demand, fail or refuse to exhibit to the commissioner
28 or any person authorized to examine the same, any book, paper, account,
29 record or memorandum of such public utility, railroad, air^{carrier} or motor carrier
30 which is in his possession or under his control;

31 (5) Fail to properly use and keep his system of accounting or any part
32 thereof, as prescribed by the commissioner; or

33 (6) Refuse to do any act or thing in connection with such system of

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1 accounting when so directed by the commissioner or his authorized repre-
2 sentative.

3 Section ~~22~~²⁴ ORS 756.160 is amended to read:

4 756.160. (1) The commissioner shall inquire into any neglect or viola-
5 tion of any law of this state or any law or ordinance of any municipality
6 thereof relating to public utilities, railroad, ^{carrier} air or motor carriers by any
7 public utility, railroad, ^{carrier} air or motor carrier doing business therein, its offi-
8 cers, agents or employes, and shall enforce all laws of this state relating
9 to public utilities, railroads, ^{carrier} air and motor carriers and may enforce all
10 such laws and ordinances of a municipality. The commissioner shall report
11 all violations of any such laws or ordinances to the Attorney General.

12 (2) The Attorney General, district attorney of each county, and all
13 state, county and city police officers shall assist the commissioner in the
14 administration and enforcement of all laws administered by the commis-
15 sioner, and they, as well as his assistants and employes, shall inform
16 against and diligently prosecute all persons whom they have reasonable
17 cause to believe guilty of violation of any such laws or of the rules, regu-
18 lations, orders, decisions or requirements of the commissioner made pur-
19 suant thereto.

20 (3) Upon the request of the commissioner, the Attorney General or
21 the district attorney of the proper county shall aid in any investigation,
22 hearing or trial, and shall institute and prosecute all necessary suits, actions
23 or proceedings for the enforcement of those laws and ordinances referred
24 to in subsection (1) of this section.

25 (4) Any forfeiture or penalty provided for in any law administered
26 by the commissioner shall be recovered by an action brought thereon in
27 the name of the State of Oregon in any court of appropriate jurisdiction.

28 Section ~~23~~²⁵ ORS 756.180 is amended to read:

29 756.180. (1) Whenever it appears to the commissioner that any public
30 utility, railroad, ^{carrier} air or motor carrier is engaged or about to engage in any
31 acts or practices which constitute a violation of any statute administered by
32 the commissioner, or any rule, regulation, requirement, order, term or con-
33 dition issued thereunder, he may apply to any circuit court of the state
34 where such public utility, railroad, ^{carrier} air or motor carrier operates for the en-

1 enforcement of such statute, rule, regulation, requirement, order, term or
2 condition.

3 (2) Such court, without bond, has jurisdiction to enforce obedience
4 thereto by injunction, or by other processes, mandatory or otherwise, re-
5 straining such public utility, railroad, air ^{carrier} or motor carrier, or its officers,
6 agents, employes and representatives from further violations of such
7 statute, rule, regulation, requirement, order, term or condition, and en-
8 joining upon them obedience thereto.

9 (3) The provisions of this section are in addition to and not in lieu of
10 any other enforcement provisions contained in any statute administered
11 by the commissioner.

12 Section ²⁶ 24, ORS 756.185 is amended to read:

13 756.185. (1) Any public utility, railroad, air ^{carrier} or motor carrier which
14 does, or causes or permits to be done, any matter, act or thing prohibited
15 by ORS chapters 756, 757, 758, 760, 761, 763, 764, [this 1973 Act or] 767 ^{or}
16 omits to do any act, matter or thing required to be done by such statutes,
17 is liable to the person injured thereby in treble the amount of damages
18 sustained in consequence of such violation together with a reasonable
19 counsel's or attorney's fee, to be fixed by the court in every case of recov-
20 ery. Such attorney's fee shall be taxed and collected as part of the costs
21 in the case.

sections 1 to 13 of
this 1973 Act

22 (2) Any recovery under this section does not affect recovery by the
23 state of the penalty, forfeiture or fine prescribed for such violation.

24 (3) This section does not apply with respect to the liability of any
25 public utility, railroad, air ^{carrier} or motor carrier for personal injury or property
26 damage.

27 Section ²⁷ 25, ORS 756.200 is amended to read:

28 756.200. (1) The remedies and enforcement procedures provided in
29 ORS chapters 756, 757, 758, 760, 761, 763, 764, [this 1973 Act and] 767 ^{and sections 1 to 13 of} do not
30 release or waive any right of action by the state or by any person for any
31 right, penalty or forfeiture which may arise under any law of this state
32 or under an ordinance of any municipality thereof.

this 1973 Act

33 (2) All penalties and forfeiture accruing under said statutes and ordi-

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1 nances are cumulative and a suit for and recovery of one, shall not be a
2 bar to the recovery of any other penalty.

3 (3) The duties and liabilities of the public utilities, railroads, ^{carriers} air and
4 motor carriers shall be the same as are prescribed by the common law,
5 and the remedies against them the same, except where otherwise pro-
6 vided by the Constitution or statutes of this state, and the provisions of
7 ORS chapters 756, 757, 758, 760, 761, 763, 764, [this 1973 Act and] 767 ^{and sections 1 to 11} are
8 cumulative thereto. ^{of this 1973 Act}

Section 28. ORS 756.360 is amended to read:

756.360. All fees, fines, penalties and other moneys collected by the commissioner under ORS 756.310, 756.320, 756.350, 758.015 and 758.400 to 758.475 shall be paid by the commissioner into the State Treasury within 30 days after the collection thereof, and shall be placed by the State Treasurer to the credit of the Public Utility Commissioner Account and the fees, fines, penalties and other moneys collected from:

(1) Railroads shall be used only for the purpose of paying the expenses of the commissioner in performing the duties imposed by law upon the commissioner in respect to railroads.

(2) Utilities shall be used only for the purpose of paying the expenses of the commissioner in performing the duties imposed by law upon the commissioner in respect to utilities.

(3) Air carriers shall be used only for the purpose of paying the expenses of the commissioner in performing the duties imposed by law upon the commissioner in respect to air carriers.

29
9 Section ~~26~~ ORS 756.515 is amended to read:
10 756.515. (1) Whenever the commissioner believes that any rate may
11 be unreasonable or unjustly discriminatory, or that any service is unsafe
12 or inadequate, or is not afforded, or that an investigation of any matter
13 relating to any public utility, railroad, ^{carrier} air or motor carrier or other per-
14 son should be made, or relating to any person to determine if such person is
15 subject to the commissioner's regulatory jurisdiction, he may on his own
16 motion summarily investigate any such matter, with or without notice.
17 (2) If after making such investigation he is satisfied that sufficient
18 grounds exist to warrant a hearing being ordered upon any such matter,
19 he shall furnish any public utility, railroad, ^{carrier} air or motor carrier or other
20 person interested a statement notifying it of the matters under investiga-
21 tion, which statement shall be accompanied by a notice fixing the time
22 and place for hearing upon such matters in the manner provided in ORS
23 756.512 for notice of complaint.
24 (3) Thereafter proceedings shall be had and conducted in reference
25 to the matters investigated in like manner as though complaint had been
26 filed with the commissioner relative thereto, and the same orders may be
27 made in reference thereto as if such investigation had been made on com-
28 plaint.
29 (4) However, the commissioner may, after he has made an investiga-
30 tion on his motion, but without notice or hearing, make such findings and
31 orders as he deems justified or required by the results of such investiga-
32 tion. Except as provided in subsections (5) and (6) of this section such
33 findings and orders have the same legal force and effect as any other
34 finding or order of the commissioner.

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1 (5) In addition to any other remedy provided by law, any party
2 aggrieved by an order entered pursuant to subsection (4) of this section
3 may request the commissioner to hold a hearing to determine whether the
4 order should continue in effect. Any such request for hearing shall be sub-
5 mitted to the commissioner not later than 15 days after the date of serv-
6 ice of the order, and the commissioner shall hold the hearing not later
7 than 60 days after receipt of such a request for hearing.

8 (6) If the commissioner receives a request for hearing pursuant to
9 subsection (5) of this section, the order is suspended pending the outcome
10 of the hearing unless the commissioner finds that the order is necessary
11 for the public health or safety or to prevent the dissipation of assets of a
12 business or activity subject to the commissioner's regulatory jurisdiction.

Section 30. ORS 756.568 is amended to read:

756.568. The commissioner may at any time, upon
notice to the public utility, railroad, air carrier
or motor carrier and after opportunity to be heard as
provided in ORS 756.500 to 756.610, rescind, suspend
or amend any order made by him. Copies of the same shall
be served and take effect as provided in ORS 756.558
for original orders.

31
13 Section ~~27~~ ORS 756.572 is amended to read:

14 756.572. (1) An order of the commissioner issued in accordance with
15 the provisions of ORS chapters 756, 757, 758, 760, 761, 763, 764, [this 1973 Act
16 and] ^{and sections 1 to 13 of this 1973 Act} 767 is binding upon the successors in interest of each person affected
17 thereby, until set aside, rescinded, suspended or modified as provided by
18 law.

19 (2) Any investigation, hearing or other proceeding involving the issu-
20 ance of an order of the commissioner that has not been finally determined
21 when a transfer of any interests of a person is effected may be continued

22 and finally determined, notwithstanding any such transfer of interest.
23 Any order issued in such investigation, hearing or other proceeding is bind-
24 ing upon the successors in interest.

Section 32. ORS 756.575 is amended to read:

756.575. The commissioner may provide by rule that any public utility, railroad, air carrier or motor carrier affected by any order shall within a time to be fixed by the commissioner, notify the commissioner whether the terms of the order are accepted and will be obeyed.

33

25 Section 28, ORS 756.990 is amended to read:

26 756.990. (1) Any public utility, railroad, air or motor carrier that
27 fails to comply with an order or subpoena issued pursuant to ORS 756.090
28 shall forfeit, for each day it so fails, a sum of not less than \$50 nor more
29 than \$500.

30 (2) Any public utility, railroad, air or motor carrier that violates any
31 statute administered by the commissioner, or does any act prohibited, or
32 fails to perform any duty enjoined upon it, for which a penalty has not
33 been provided, or fails to obey any lawful requirement or order made by
34 the commissioner, or any judgment or decree made by any court upon

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1 the application of the commissioner, shall forfeit a sum of not less than
2 \$100 nor more than \$10,000 for each such offense.

3 (3) Violation of ORS 756.115 is punishable, upon conviction, by a fine
4 of not less than \$1,000 for each offense. A penalty of not less than \$500 nor
5 more than \$1,000 shall be recovered from the public utility, railroad, air or
6 motor carrier for each such offense when such officer, agent or employe
7 acted in obedience to the direction, instruction or request of the public
8 utility, railroad, air or motor carrier, or any general officer thereof.

9 (4) Violation of ORS 756.125 is punishable, upon conviction, by a fine
10 of not more than \$100 or imprisonment for not more than 30 days, or both.
11 Any public utility, railroad, air^{carrier} or motor carrier that knowingly permits
12 the violation of ORS 756.125 shall forfeit, upon conviction, not more than
13 \$1,000 for each offense.

14 (5) Violation of subsection (1) of ORS 756.543 is punishable, upon con-
15 viction, by a fine of not less than \$100 nor more than \$1,000, or by im-
16 prisonment in the county jail for not more than one year, or both.

17 (6) In construing and enforcing this section, the act, omission or fail-
18 ure of any officer, agent or other person acting for or employed by any
19 public utility, railroad, air^{carrier} or motor carrier acting within the scope of his
20 employment shall in every case be deemed to be the act, omission or fail-
21 ure of such public utility, railroad, air^{carrier} or motor carrier. With respect to
22 any violation of any statute administered by the commissioner, any pen-
23 alty provision applying to such a violation by a public utility, railroad, air^{carrier}
24 or motor carrier shall apply to such a violation by any other person.

25 (7) All penalties, fines or forfeitures or other sums collected or paid
26 under the provisions of any law administered by the commissioner shall
27 be paid into the General Fund except where it is provided that the same
28 shall be paid to the aggrieved party.

Section 34. In addition to and not in lieu of any other appropriations or moneys made available by law or from other sources, there is appropriated to the Public Utility Commissioner, for the biennium beginning July 1, 1973, out of the General Fund, the sum of \$50,000. Such moneys may be used only for paying the expenses of the Public Utility Commissioner in carrying out the duties, functions and powers imposed upon him by law regarding the regulation of air carriers and air commerce.

35

29 SECTION 29, This Act being necessary for the immediate preservation
30 of the public peace, health and safety, an emergency is declared to exist,
31 and this Act takes effect on its passage.



LC Office

6/6/73

OREGON STATE ARCHIVES

PROPOSED AMENDMENTS TO RE-ENGROSSED SENATE BILL 240

On page 7 of the printed re-engrossed bill, after line 6, insert:

"Section 14a. If Senate Bill 324 (1973) becomes law, on the effective date of chapter ____, Oregon Laws 1973 (Enrolled Senate Bill 324), section 14 of this Act is repealed and ORS 756.010, as amended by section 5, chapter ____, Oregon Laws 1973 (Enrolled Senate Bill 324), is amended to read:

"756.010. As used in ORS chapters 756, 757, 758, 760, 761, 763, 764 and 767 and sections 1 to 13 of this 1973 Act, except as otherwise specifically provided or unless the context requires otherwise:

"(1) 'Commission' means the Public Service Commission of Oregon.

"(2) 'Commissioner' means a member of the Public Service Commission of Oregon.

"(3) 'Customer' includes the patrons, passengers, shippers, subscribers, users of the service and consumers of the product of a railroad, motor carrier or public utility.

"(4) 'Motor carrier' has the meaning given that term in ORS 767.005.

"(5) 'Municipality' means any city, municipal corporation or quasi-municipal corporation.

"(6) 'Person' includes individuals, joint ventures, partnerships, corporations and associations or their officers, employes, agents, lessees, assignees, trustees or receivers.

"(7) 'Public utility' has the meaning given that term in ORS 757.005.

"(8) 'Railroad' has the meaning given that term in ORS 760.005.

"(9) 'Rate' means any fare, charge, joint rate, schedule or groups of rates or other remuneration or compensation for service.

"(10) 'Service' is used in its broadest and most inclusive sense and includes equipment and facilities related to providing the service or the product served.

"(11) 'Air carrier' has the meaning given that term in section 1 of this 1973 Act."

On page 10, line 28, after "756.180" insert ", as amended by section 5, chapter _____, Oregon Laws 1973 (Enrolled House Bill 2128),".

In line 30, after "air" delete "or" and insert "carrier," and in the same line after "motor carrier" insert "or any other person subject to the jurisdiction of the commissioner".

In line 34, delete "or" and insert "carrier," and in the same line after "motor carrier" insert "or any other person subject to the jurisdiction of the commissioner".

On page 11, line 5, after "air" delete "or" and insert "carrier," and in the same line after "motor carrier" insert "or any other person subject to the jurisdiction of the commissioner".

On page 13, line 25, after "756.990" insert ", as amended by section 4, chapter _____, Oregon Laws 1973 (Enrolled House Bill 2128)",

In line 30, delete "or" and insert "carrier," and in the same line after "motor carrier" insert "or any other person subject to the jurisdiction of the commissioner".

On page 14, line 19, delete "or" and insert "carrier," and in the same line after "motor carrier" insert "or any other person subject to the jurisdiction of the commissioner".

In line 21, delete "or" and insert "carrier," and in the same line after "motor carrier" insert "or any other person subject to the jurisdiction of the commissioner".

PACIFIC NORTHERN AIRLINES
PROPOSED AMENDMENTS TO RE-ENGROSSED

SENATE BILL 240

On page 3 of the printed re-engrossed bill,
line 2, after "state" insert "the commissioner may:"

Delete lines 3 through 5

In line 6, delete "(a)" and insert "(1)".

In line 8, delete "(b)" and insert "(2)".

In line 10, delete "and".

In line 11, delete "(c)" and insert "(3)".

In line 12, delete the period and insert
"; and".

After line 12, insert "(4) Fix routes of
air carriers."

In line 20, after "interest." delete the
rest of the line and delete line 21.

In line 33, after "or" insert "The act is
authorized pursuant to section 10 of this Act."

On page 4, delete lines 23 through 26.

On page 6, line 13, delete "January" and
insert "October".

In line 15, delete "January" and insert
"October."

In line 16, after "1974." delete the rest
of the line and delete line 17.

PROPOSED HOUSE AMENDMENTS TO RE-ENGROSSED SENATE BILL 240

On page 2 of the printed re-engrossed bill, line 3, after "756.040," insert "756.060, 756.062, 756.064,".

In line 4, after "756.200," insert "756.360," and in the same line after "756.515," insert "756.568," and in the same line after "756.572" insert ", 756.575".

Delete lines 7 and 8 and insert:

"Section 1. As used in sections 1 to 13 of this Act, unless the context requires otherwise:".

In line 9, delete "now or hereafter invented,".

In line 12, delete "; but" and insert ". However,".

In line 15, after "Instruction" insert "in the operation of aircraft".

In line 26, delete "this chapter" and insert "sections 1 to 13 of this Act".

In line 29, delete the first comma and insert a period and delete the rest of the line.

Delete lines 30 through 33.

On page 3, line 1, delete "Government over air carriers and air commerce." and insert:

"Section 3.".

In line 2, after "state" insert "for the regulation of air carriers and air commerce, the commissioner may".

In line 3, delete "The commissioner shall".

In line 4, delete the period and insert a semicolon.

Delete line 5.

In line 6, delete "(a)" and insert "(2)".

In line 7, after the semicolon insert "and".

In line 8, delete "(b)" and insert "(3)".

In line 10, delete "; and" and insert a period.

Delete lines 11 and 12 and insert:

"Section 4. (1) No person shall perform any act which constitutes air commerce, unless that act is authorized by a valid and effective certificate of public convenience and necessity issued by the commissioner or the act is otherwise authorized by the commissioner's rule or order.

"(2) Each separate act in violation of this section is a separate violation, whether the prohibited acts occur within the same or different days or relate to the same or different aircraft.

"Section 5. A person who desires to obtain a certificate of public convenience and necessity to perform an act of air commerce shall make application therefor in such form as the commissioner prescribes. The application shall contain such information as the commissioner may require.

"Section 6. Every person applying for a certificate of public convenience and necessity to perform an act of air commerce shall pay to the commissioner with his application a fee of \$150. A like fee shall accompany an application for transfer of such certificates. The fees collected under this section are not refundable.

"Section 7. Notwithstanding any other provision of sections 1 to 13 of this Act, the commissioner shall issue a certificate of public convenience and necessity to any air carrier for the points in this state between which it was actually operating in good faith and doing business as of January 1, 1973, and continuously thereafter, if application, therefor has been filed with the commissioner on or before January 1, 1974. The air carrier may continue such operation until its application is either granted or denied by the commissioner.

"Section 8. The commissioner may exempt any air carrier from the certificate requirements of section 4 of this Act if he finds that such requirements are contrary to the public interest or would impose an undue burden upon the carrier or a community or area because of the immediate need for service. Such need may include, but is not limited to, conditions of

national emergency, national disaster or cessation of existing service by another carrier, except for cessation of service caused by a labor dispute. Exemptions issued pursuant to this section may be issued for a maximum period of 90 days and may be renewed for the same or for a lesser period."

In line 13, delete "5" and insert "9".

In line 14, delete the comma.

In line 22, delete "6" and insert "10".

In line 28, after "of" insert "section 4, 11 or 12 of".

In line 30, after "state" insert "aircraft or air commerce".

Delete lines 31 through 34.

On page 4, delete lines 1 through 3.

In line 4, delete "8" and insert "11".

In line 18, delete "The".

Delete lines 19 and 20.

In line 21, delete "9" and insert "12".

In line 23, delete "Unprofitable" and insert "Except as otherwise may be provided in the certificate awarded by the commissioner, unprofitable" and in the same line delete "upon 90 days'" and insert "90 days after the carrier gives".

Delete lines 27 through 34.

Delete page 5.

On page 6, delete lines 1 through 17 and insert:

"Section 13. Violation of any provision of section 4, 11

or 12 of this Act is punishable, upon conviction, by a fine of not more than \$1,000 for each such violation."

In line 18, delete "15" and insert "14".

In line 19, delete ",this".

In line 20, delete "1973 Act and" and in the same line after "767" insert "and sections 1 to 13 of this 1973 Act".

On page 7, line 6, after "in" insert "section 1 of".

After line 6, insert:

"Section 14a. If Senate Bill 324 (1973) becomes law, on the effective date of chapter ____, Oregon Laws 1973 (Enrolled Senate Bill 324), section 14 of this Act is repealed and ORS 756.010, as amended by section 5, chapter ____, Oregon Laws 1973 (Enrolled Senate Bill 324), is amended to read:

"756.010. As used in ORS chapters 756, 757, 758, 760, 761, 763, 764 and 767 and sections 1 to 13 of this 1973 Act, except as otherwise specifically provided or unless the context requires otherwise:

"(1) 'Commission' means the Public Service Commission of Oregon.

"(2) 'Commissioner' means a member of the Public Service Commission of Oregon.

"(3) 'Customer' includes the patrons, passengers, shippers, subscribers, users of the service and consumers of the product of a railroad, motor carrier or public utility.

"(4) 'Motor carrier' has the meaning given that term in ORS 767.005.

"(5) 'Municipality' means any city, municipal corporation or quasi-municipal corporation.

"(6) 'Person' includes individuals, joint ventures, partnerships, corporations and associations or their officers, employes, agents, lessees, assignees, trustees or receivers.

"(7) 'Public utility' has the meaning given that term in ORS 757.005.

"(8) 'Railroad' has the meaning given that term in ORS 760.005.

"(9) 'Rate' means any fare, charge, joint rate, schedule or groups of rates or other remuneration or compensation for service.

"(10) 'Service' is used in its broadest and most inclusive sense and includes equipment and facilities related to providing the service or the product served.

"(11) 'Air carrier' has the meaning given that term in section 1 of this 1973 Act."

In line 7, delete "16" and insert "15".

In line 10, after "air" insert "carrier".

In line 17, after "air" insert "carrier".

In line 23, after "air" insert "carrier".

After line 28 insert:

"Section 16. ORS 756.060 is amended to read:

"756.060. The commissioner may adopt and amend reasonable and proper rules and regulations relative to all statutes administered by him and may adopt and publish reasonable and proper rules to govern his proceedings and to regulate the mode and manner of all investigations and hearings of public utilities, railroads, air carriers, motor carriers and other parties before him.

"Section 17. ORS 756.062 is amended to read:

"756.062. (1) A substantial compliance with the requirements of the laws administered by the commissioner is sufficient to give effect to all the rules, orders, acts and regulations of the commissioner and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

"(2) The provisions of such laws shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice between customers and public utilities, railroads, air carriers and motor carriers.

"Section 18. ORS 756.064 is amended to read:

"756.064. (1) The commissioner shall report to the Governor annually on the administration of the office of the commissioner during the preceding year relating to the operation of the public utility, railroad, air carrier and motor carrier systems within this state. The commissioner shall make such additional reports as the Governor or the Legislative Assembly may direct.

"(2) The reports required by subsection (1) of this section shall be in such form and contain such information and recommendations as the commissioner determines appropriate, and shall contain such other information as the Governor and the Legislative Assembly may require."

In line 29, delete "17" and insert "19".

In line 31, delete the first "and" and insert "carriers,".

In line 33, delete "or" and insert "carrier,".

On page 8, line 3, delete "18" and insert "20".

In line 6, after "air" insert "carrier".

In line 9, delete "this 1973 Act or" and in the same line after "767" insert "or sections 1 to 13 of this 1973 Act".

In line 14, after "air" insert "carrier".

In line 16, after "air" insert "carrier".

In line 18, after "air" insert "carrier".

In line 26, delete "19" and insert "21".

In line 28, after "air" insert "carrier".

In line 31, after "air" insert "carrier".

On page 9, line 1, after "air" insert "carrier".

In line 4, after "air" insert "carrier".

In line 6, delete "20" and insert "22".

In line 7, after "air" insert "carrier".

In line 9, delete "this".

In line 10, delete "1973 Act and" and in the same line after "767" insert "and sections 1 to 13 of this 1973 Act".

In line 12, after "air" insert "carrier".

In line 18, delete "21" and insert "23".

In line 19, after "air" insert "carrier".

In line 29, after "air" insert "carrier".

On page 10, line 3, delete "22" and insert "24".

In line 6, delete "railroad" and insert "railroads" and in the same line after "air" insert "carriers".

In line 7, after "air" insert "carrier".

In line 9, after "air" insert "carriers".

In line 28, delete "23" and insert "25" and in the same line after "756.180" insert ", as amended by section 5, chapter ____, Oregon Laws 1973 (Enrolled House Bill 2128),".

In line 30, after "air" delete "or" and insert "carrier," and in the same line after "motor carrier" insert "or any other person subject to the jurisdiction of the commissioner".

In line 34, delete "or" and insert "carrier," and in the same line after "motor carrier" insert "or any other person subject to the jurisdiction of the commissioner".

On page 11, line 5, after "air" delete "or" and insert "carrier," and in the same line after "motor carrier" insert "or any other person subject to the jurisdiction of the commissioner".

In line 12, delete "24" and insert "26".

In line 13, after "air" insert "carrier".

In line 15, delete "this 1973 Act or" and in the same line after "767" insert "or sections 1 to 13 of this 1973 Act".

In line 25, after "air" insert "carrier".

In line 27, delete "25" and insert "27".

In line 29, delete "this 1973 Act and" and in the same line after "767" insert "and sections 1 to 13 of this 1973 Act".

On page 12, line 3, after "air" insert "carriers".

In line 7, delete "this 1973 Act and" and in the same line after "767" insert "and sections 1 to 13 of this 1973 Act".

After line 8 insert:

"Section 28. ORS 756.360 is amended to read:

"756.360. All fees, fines, penalties and other moneys collected by the commissioner under ORS 756.310, 756.320, 756.350, 758.015 and 758.400 to 758.475 and section 6 of this 1973 Act shall be paid by the commissioner into the State Treasury within 30 days after the collection thereof, and shall be placed by the State Treasurer to the credit of the Public Utility Commissioner Account and the fees, fines, penalties and other moneys collected from:

"(1) Railroads shall be used only for the purpose of paying the expenses of the commissioner in performing the duties imposed by law upon the commissioner in respect to railroads.

"(2) Utilities shall be used only for the purpose of paying the expenses of the commissioner in performing the duties imposed by law upon the commissioner in respect to utilities.

"(3) Air carriers shall be used only for the purpose of paying the expenses of the commissioner in performing the duties imposed by law upon the commissioner in respect to air carriers."

In line 9, delete "26" and insert "29".

In line 13, after "air" delete "or" and insert "carrier,".

In line 19, after "air" delete "or" and insert "carrier,".

On page 13, after line 12 insert:

"Section 30. ORS 756.568 is amended to read:

"756.568. The commissioner may at any time, upon notice to the public utility, railroad, air carrier or motor carrier and after opportunity to be heard as provided in ORS 756.500 to 756.610, rescind, suspend or amend any order made by him. Copies of the same shall be served and take effect as provided in ORS 756.558 for original orders."

In line 13, delete "27" and insert "31".

In line 15, delete "this 1973 Act".

In line 16, delete "and" and in the same line after "767" insert "and sections 1 to 13 of this 1973 Act".

After line 24 insert:

"Section 32. ORS 756.575 is amended to read:

"756.575. The commissioner may provide by rule that any public utility, railroad, air carrier or motor carrier affected by any order shall within a time to be fixed by the commissioner, notify the commissioner whether the terms of the order are accepted and will be obeyed."

In line 25, delete "28" and insert "33" and in the same line after "756.990" insert ", as amended by section 4, chapter ___, Oregon Laws 1973 (Enrolled House Bill 2128),".

In line 26, after "air" insert "carrier".

In line 30, delete "or" and insert "carrier," and in the same line after "motor carrier" insert "or any other person subject to the jurisdiction of the commissioner".

On page 14, line 5, after "air" insert "carrier".

In line 8, after "air" insert "carrier".

In line 11, after "air" insert "carrier".

In line 19, delete "or" and insert "carrier," and in the same line after "motor carrier" insert "or any other person subject to the jurisdiction of the commissioner".

In line 21, delete "or" and insert "carrier," and in the same line after "motor carrier" insert "or any other person subject to the jurisdiction of the commissioner".

In line 23, after "air" insert "carrier".

After line 28, insert:

"Section 34. In addition to and not in lieu of any other appropriations or moneys made available by law or from other sources, there is appropriated to the Public Utility Commissioner, for the biennium beginning

July 1, 1973, out of the General Fund, the sum of \$50,000. Such moneys may be used only for paying the expenses of the Public Utility Commissioner in carrying out the duties, functions and powers imposed upon him by law regarding the regulation of air carriers and air commerce."

In line 29, delete "29" and insert "35".