

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 595 Air Carriers

SPONSOR(S): Finance & Tax Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee	13 Y, 4 N, As CS	Dugan	Langston

SUMMARY ANALYSIS

Florida law imposes an excise tax of 6.9 cents on every gallon of aviation fuel sold in the state or brought into the state for use. Florida law also imposes an excise tax of 6.9 cents on each gallon of kerosene and aviation gasoline sold in the state in certain circumstances.

The committee substitute amends s. 206.9825, F.S., repealing an aviation fuel tax credit for “any licensed wholesaler or terminal supplier that delivers aviation fuel to an air carrier offering transcontinental jet service and that, after January 1, 1996, increases the air carrier’s Florida workforce by more than 1000 percent and by 250 or more full-time equivalent employee positions.”

The committee substitute also creates s. 288.1259, F.S., providing a commercial aviation incentive program for qualified air carriers that demonstrate to the Department of Economic Opportunity (DEO) certain levels of commercial aviation activity in Florida. Each year, Florida commercial air carriers may apply to the DEO for an incentive award. The DEO will evaluate passenger enplanement and destination data reported by program applicants to the U.S. Department of Transportation (USDOT). Based on this information, the annual total amount of awards to be distributed to qualified air carriers beginning in fiscal year 2018-2019 (\$17.6 million) will be allocated by the DEO as follows:

- 28 percent (\$4.93 million) to the applicant with the most passenger enplanements in Florida in the prior calendar year;
- 22 percent (\$3.87 million) to the applicant with the second most passenger enplanements in Florida in the prior calendar year;
- 20 percent (\$3.52 million) to the applicant with the third most passenger enplanements in Florida in the prior calendar year;
- 10 percent (\$1.76 million) to each of the top three applicants serving the most destinations in Florida in the prior calendar year.

The committee substitute creates s. 206.9850, F.S., to provide a mechanism for the Department of Revenue (DOR) to distribute the incentive awards from the Fuel Tax Collections Trust Fund. Distributions will be made in 12 equal monthly amounts during the state fiscal year.

The Revenue Estimating Conference on March 30, 2015 estimated the committee substitute will result in no net impact to state or local revenues.

The committee substitute is effective July 1, 2017, except the repeal of the aviation fuel tax credit is effective June 1, 2018, reflecting the timing of the beginning of the first set of award payments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Aviation Fuel Tax

Florida first enacted an aviation fuel tax in 1985, which imposed an excise tax of 5.7 cents per gallon.¹ Current law imposes an excise tax of 6.9 cents on every gallon of aviation fuel sold in the state or brought into the state for use.² However, Florida law also provides for a refund or credit of the aviation fuel tax paid as follows:

Any licensed wholesaler or terminal supplier that delivers aviation fuel to an air carrier offering transcontinental jet service and that, after January 1, 1996, increases the air carrier's Florida workforce by more than 1000 percent and by 250 or more full-time equivalent employee positions may receive a credit or refund as the ultimate vendor of the aviation fuel for the 6.9 cents excise tax previously paid.³

Any employees that existed before January 1, 1996 are not counted toward reaching the employment threshold, and the wholesaler or terminal supplier can only receive the credit or refund if the air carrier has no facility for fueling highway vehicles from the tank in which the aviation fuel is stored.⁴ Further, if before July 1, 2001, the number of full-time equivalent employee positions created or added to the air carrier's Florida workforce fell below the additional 250, the exemption granted would cease to apply as long as the number of employees remains below the additional 250.⁵

Accordingly, in practice, any air carrier offering transcontinental jet service that is able to meet the employment and other criteria described above, can purchase aviation fuel from a wholesaler or terminal supplier without having to pay the wholesaler or terminal supplier tax on the fuel.⁶ The wholesaler or terminal supplier, in turn, receives a credit or refund on the tax amount that it would otherwise have passed along to the air carrier as a result of its tax payment due on the sale of the fuel or tax amount previously paid.⁷

The Legislature first established the aviation fuel tax credit in 1996⁸ to attract new airlines to Florida. The provisions of the original fuel tax credit expired on July 1, 2001; however, following the events of September 11, 2001, the 2002 Legislature decided to reenact the tax credit policy and did so without providing for an expiration date.⁹

The following chart illustrates data relating to the aviation fuel tax from June 2013, through July 2014.¹⁰

¹ Ch. 1985,348, Laws of Fla. All proceeds were deposited into the General Revenue Fund; however, in 1986, the proceeds were redirected for distribution to the State Transportation Trust Fund, less service charges and refunds. *See* Ch. 1986-152, Laws of Fla.

² s. 206.9825, F.S. (Such fuel is not subject to taxes imposed by ss. 206.41(1)(d), (e), and (f) or 206.87(1)(b), (c), and (d), F.S., relating to motor fuel and diesel fuel, respectively.)

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *See* s. 206.9825(1)(a), F.S.

⁸ Ch. 96-323, s. 21, Law of Fla.

⁹ *See* Ch. 2002-2, s. 5, Laws of Fla.

¹⁰ Department of Revenue (DOR), Collections Data, on file with Finance & Tax Committee. The data does not include sales from fixed based operators or jobbers to commercial air carriers. Further, all returns have not been processed through July 2014. Sales reported on unworked returns are not included and the data does not contemplate any potential airline mergers currently in progress. Lastly, tax due does not include reduction due to collection allowance.

Sales of Aviation Fuel to Commercial Air Carriers
June 2013-July 2014

Carrier	Sum of Gallons	% of Total Sales	Tax Due (Includes Tax Exempt Disbursements)
American Airlines	202,050,355.00	22.24%	\$13,941,474.50
Southwest Airlines	142,227,745.00	15.66%	\$9,813,714.41 ¹¹
Delta Airlines	137,858,527.00	15.17%	\$9,512,238.36
JetBlue Airways	116,415,416.00	12.81%	\$8,032,663.70 ¹²
Continental Airlines	77,802,200.00	8.56%	\$5,368,351.80
US Airways	52,751,086.00	5.81%	\$3,639,824.93
Allegiant Air	49,826,891.00	5.48%	\$3,438,055.48
Spirit Airlines	43,622,669.00	4.80%	\$3,009,964.16 ¹³
AirTran Airways	40,516,854.00	4.46%	\$2,795,662.93 ¹⁴
Federal Express Corporation	19,010,670.00	2.09%	\$1,311,736.23
United Airlines	5,009,154.00	0.55%	\$345,631.63
Air Berlin PLC & CO	4,370,595.00	0.48%	\$301,571.06
Virgin America	3,327,819.00	0.37%	\$229,619.51
Frontier Airlines	3,029,215.00	0.33%	\$209,015.84
National Jets	2,933,507.00	0.32%	\$202,411.98
United Parcel Service	2,138,690.00	0.24%	\$147,569.61
Envoy Air	1,967,678.00	0.22%	\$135,769.78
Silver Airways	1,653,121.00	0.18%	\$114,065.35
Miami Air International	1,329,196.00	0.15%	\$91,714.52
Atlas Air	473,891.00	0.05%	\$32,698.48
Amerijet International	75,931.00	0.01%	\$5,239.24
Hyannis Air Service	23,621.00	0.00%	\$1,629.85
Aero Jet International	16,943.00	0.00%	\$1,169.07
Presidential Aviation	13,509.00	0.00%	\$932.12
ABX Air	11,982.00	0.00%	\$826.76
Professional Flight Transport	11,002.00	0.00%	\$759.14
Air Transport International	3,446.00	0.00%	\$237.77
Grand Total	908,471,713.00	100.00	\$62,684,548.20

Commercial Aviation in Florida

¹¹ Section 206.9825, F.S. exempts Southwest Airlines from these taxes.

¹² Section 206.9825, F.S. exempts JetBlue Airways from these taxes.

¹³ Section 206.9825, F.S. exempts Spirit Airlines these taxes.

¹⁴ Section 206.9825, F.S. exempts AirTran Airways from these taxes.

There are 19 commercial airports located throughout the state. In 2012, there were over 55 million passengers that flew out of Florida's 19 commercial airports.¹⁵ In 2013, Florida's commercial airports served 127 different locations in 2013.¹⁶ The following chart illustrates domestic airport activity in Florida's 19 commercial airports in 2013:¹⁷

Domestic Airport Activity – Florida Airports As of Summer 2013			
Airport	Destinations Served	Weekly Departures	Air Carriers Offering Flights
Ft. Lauderdale-Hollywood International Airport (FLL)	68	1,538	16
Miami International Airport (MIA)	54	1,585	8
Palm Beach International Airport (PBI)	19	382	8
Key West International Airport (EYW)	7	168	6
Orlando International Airport (MCO)	89	2,479	15
Melbourne International Airport (MLB)	2	48	2
Daytona Beach International Airport (DAB)	2	59	2
Orlando Sanford Airport (SFB)	46	129	3
Tampa International Airport (TPA)	63	1,428	11
Sarasota-Bradenton International Airport (SRQ)	10	103	5
St. Pete-Clearwater International Airport (PIE)	30	76	3
Jacksonville International Airport	28	620	9
Gainesville Regional Airport (GNV)	5	116	5
Southwest Florida International Airport (RSW)	29	481	14
Punta Gorda Airport (PGD)	13	25	2
Pensacola International Airport (PNS)	11	253	7
Tallahassee Regional Airport (TLH)	7	139	5
Northwest Florida Regional Airport (VPS)	23	180	5
Northwest Florida International Airport (ECP)	7	113	2

United States Department of Transportation

The Bureau of Transportation Statistics (BTS) was established within the USDOT to perform federally mandated data collection on all modes of transportation.¹⁸ United States air carriers are required to report traffic and operational data to the BTS on a monthly basis using Form 41, Schedule T100, including information on the origin and destination of passengers and the number of passengers traveling by air between any two points.¹⁹

The following chart illustrates collection data on Form 41, Schedule T100, from selected air carriers²⁰ in Florida in 2014 (note: it is not an exhaustive list):²¹

Selected Air Carriers	Destinations Served in FL	Number of Passenger Enplanements ²² in FL
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¹⁵ Florida Department of Transportation (FDOT), Analysis of Scheduled Commercial Air Service in Florida, Update 2014, page 11, table 6.

¹⁶ FDOT, Analysis of Scheduled Commercial Air Service in Florida, Update 2014, page 16, table 8.

¹⁷ FDOT, Analysis of Scheduled Commercial Air Service in Florida, Update 2014.

¹⁸ 49 U.S.C. § 111

¹⁹ FDOT, BTS, Form 41, Schedules T100 and T100(f) Air Carrier Data.

²⁰ The chart is provided for illustrative purposes, and does not include all air carriers.

²¹ FDOT, BTS, Air Carriers: T-100 Domestic Segment (U.S. Carriers), available at:

http://www.transtats.bts.gov/DL_SelectFields.asp?Table_ID=259&DB_Short_Name=Air%20Carriers (last visited March 27, 2015).

AirTran Airways Corp.	8	1,274,923
Allegiant Air	13	1,934,032
American Airlines Inc.	10	9,937,987
American Eagle Airlines Inc.	11	271,931
Delta Air Lines Inc.	19	10,625,970
Frontier Airlines Inc.	8	618,855
JetBlue Airways	11	6,230,957
Silver Airways	10	423,018
Southwest Airlines Co.	12	11,280,043
Spirit Air Lines	7	2,854,873
United Air Lines Inc.	9	4,422,747
US Airways Inc.	9	4,741,401
Virgin America	2	216,562

Federal Policy Regarding Aviation Fuel Tax Usage

The Federal Aviation Administration (FAA) is an agency within the USDOT that, among other things, regulates the air transportation system in the United States.²³ The regulation of airport development and commerce in the United States is codified in 49 U.S.C. §47101, et seq. The federal government first placed restrictions on the use of airport revenue in the Airport and Airway Improvement Act of 1982 (AAIA).²⁴ The AAIA established the basic rules for using airport revenue, which are still largely in effect today.²⁵ On November 7, 2014, the FAA amended its requirements for use of airport revenues derived from taxes on aviation fuel.²⁶

Specifically, federal regulations generally restrict the use of airport revenues by an airport sponsor²⁷ that accepted Federal assistance to airport-related purposes.²⁸ The revenue use requirements apply to the proceeds from certain state and local government taxes on aviation fuel, as well as to revenues received directly by an airport sponsor; state taxes on aviation fuel may only be used for either a state aviation program²⁹ or airport-related purposes.³⁰ Generally, the FAA prohibits the use of airport revenue for purposes other than airport capital or operating costs.³¹ For example, prohibited uses of airport revenue include general economic development and direct subsidy of air carriers.³²

Certain airports may use airport revenue for otherwise impermissible expenditures if qualified as “grandfathered.” Grandfathered arrangements also include state and local taxes on aviation fuel that were in effect before the 1987 Airport Act (i.e., fuel taxes in effect on December 30, 1987).³³ An example of a grandfathered state tax on aviation fuel is a 1955 state statute assessing a five percent

²² “Passenger enplanements” means the number of persons who board an aircraft in this state for the purpose of air transportation for which compensation is received by the carrier.

²³ USDOT, Administrations, available at: <http://www.dot.gov/administrations> (last visited April 2, 2015).

²⁴ Public Law No. 97-248.

²⁵ See 49 U.S.C. §§ 47107(b) and 47133.

²⁶ FAA, Policy and Procedures Concerning the use of Airport Revenue: Proceeds from Taxes on Aviation Fuel, 79 FR 66282, available at: https://www.faa.gov/airports/resources/publications/federal_register_notices/ (last visited April 1, 2014).

²⁷ A “sponsor” is any public agency that submits to the USDOT an application for financial assistance. The term “sponsor” also includes a private owner of a public use airport. 49 U.S.C. § 47102(26).

²⁸ 49 U.S.C. § 47107(b) and 47133.

²⁹ “State aviation program” is not defined, but generally refers to state programs that support capital improvements or operating costs of airports.

³⁰ FAA, Policy and Procedures Concerning the use of Airport Revenue: Proceeds from Taxes on Aviation Fuel, 79 FR 66282, available at: https://www.faa.gov/airports/resources/publications/federal_register_notices/ (last visited April 1, 2014).

³¹ FAA, Order 5190.6B FAA Airport Compliance Manual, available at: <https://www.faa.gov/airports/resources/publications/orders/> (last visited April 1, 2014).

³² FAA, Order 5190.6B FAA Airport Compliance Manual, available at: <https://www.faa.gov/airports/resources/publications/orders/> (last visited April 1, 2014).

³³ December 30, 1987, is the “grandfather” deadline because The Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100–223, passed on that date, which first required state and local taxes on aviation fuel to be spent on airport-related purposes.

surcharge on all receipts and deposits in an airport revenue fund to defray central service expenses of the state.³⁴

The recent amendment of the FAA's revenue use policy applies prospectively to the use of proceeds from both new taxes and to existing taxes that do not qualify for grandfathering³⁵ from revenue use requirements.³⁶ For existing taxes that do not qualify for grandfathering, the FAA will allow for a transition period of up to three years from the effective date (November 7, 2014).³⁷

Effect of Proposed Changes

The committee substitute amends s. 206.9825, F.S., and repeals, effective June 1, 2018, the above mentioned aviation fuel tax credit for "any licensed wholesaler or terminal supplier that delivers aviation fuel to an air carrier offering transcontinental jet service and that, after January 1, 1996, increases the air carrier's Florida workforce by more than 1000 percent and by 250 or more full-time equivalent employee positions."

The committee substitute also creates s. 288.1259, F.S., to create the Florida Aviation Race to the Sky Program. The program provides awards to qualified air carriers that demonstrate to the DEO certain thresholds of commercial aviation activity in Florida.

An air carrier may apply for an award by submitting an application to the DEO after January 1 but no later than April 1 of each year. The applicant must include on the application any required information as determined by DEO. Upon receipt of such application, the DEO will review the application for completeness, and notify the applicant within 15 business days of receipt if the application needs further information. The applicant may respond within 15 business days of notification with additional information necessary to complete the application.

After April 1 but no later than June 1 of each year, the DEO shall review all timely filed and complete applications, determine which qualified applicants will receive an award, and issue a letter of certification to each applicant, which includes:

- the justification for the DEO's decision to approve or deny an award for the applicant;
- the total amount of funds, if any, awarded to the applicant;
- the schedule of payments of any award; and
- authorization to receive the scheduled payments, if any, from the DOR pursuant to s. 206.9850, F.S.

The total annual award amount to be allocated to qualified air carriers beginning in fiscal year 2018-2019 is \$17.6 million, and the awards will be allocated in various percentages in two different categories.

- Capacity Development Incentive – The DEO will use the data reported to the USDOT on Form 41, Schedule T100 Air Carrier Data, to determine the total passenger enplanements³⁸ in this state in the prior calendar year for each qualified applicant, and allocate a percent of the total annual award as follows:
 - 28 percent to the qualified air carrier with the most passenger enplanements;
 - 22 percent to the qualified air carrier with the second most passenger enplanements;
 - and

³⁴ FAA, Order 5190.6B FAA Airport Compliance Manual, Chapter 15.10, available at: <https://www.faa.gov/airports/resources/publications/orders/> (last visited April 1, 2014).

³⁵ Certain state or local taxes on aviation fuel in effect prior to December 30, 1987, qualify for grandfathering.

³⁶ FAA, Policy and Procedures Concerning the use of Airport Revenue: Proceeds from Taxes on Aviation Fuel, 79 FR 66282, available at: https://www.faa.gov/airports/resources/publications/federal_register_notices/ (last visited April 1, 2014).

³⁷ FAA, Policy and Procedures Concerning the use of Airport Revenue: Proceeds from Taxes on Aviation Fuel, 79 FR 66282, available at: https://www.faa.gov/airports/resources/publications/federal_register_notices/ (last visited April 1, 2014).

³⁸ "Passenger enplanements" means the number of persons who board an aircraft in this state for the purpose of air transportation for which compensation is received by the carrier.

- 20 percent to the qualified air carrier with the third most passenger enplanements.
- Destination Variety Incentive – The DEO will use the data reported to the USDOT on Form 41, Schedule T100 Air Carrier Data, to determine the total number of destinations in this state that each qualified applicant provided air transportation to in the prior calendar year. Ten percent of the total annual award will be allocated to each of the top three qualified applicants serving the highest number of destinations in Florida.

The committee substitute creates s. 206.9850, F.S., to provide a mechanism for the DOR to distribute the incentive awards from the Fuel Tax Collections Trust Fund. Distributions will be made in 12 equal monthly amounts during the state fiscal year. Also, the committee substitute provided for a sales tax distribution to the State Transportation Trust Fund to accomplish revenue neutrality for the state.

The DEO may adopt rules and develop policies and procedures to implement and administer this section, and must develop an application form for qualifying an applicant as a qualified air carrier.

The DOR may adopt rules to administer this act.

B. SECTION DIRECTORY:

- Section 1. Amends s. 206.9825, F.S., to remove an exemption from the aviation fuel tax; provides applicability;
- Section 2. Creates s. 206.9850, F.S., to authorize distributions from state funds;
- Section 3. Creates s. 288.1259, F.S., to provide a commercial aviation incentive program;
- Section 4. Amends s. 212.20, F.S., to provide a sales tax distribution to the State Transportation Trust Fund; provides applicability;
- Section 5. Provides an effective date of July 1, 2017, unless otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference on March 30, 2015 estimated the committee substitute will result in no net impact to state or local revenues.

2. Expenditures:

The DOR determined the originally filed bill and would have an insignificant negative fiscal impact to DOR's expenditures.³⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

³⁹ DOR, Agency Bill Analysis of HB 595 (February 23, 2015).
STORAGE NAME: pcs0595a.FTC
DATE: 4/2/2015

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Licensed wholesalers and terminal suppliers that currently receive the abovementioned credit may not claim the credit; however, air carriers may receive incentive awards under the newly created program.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The committee substitute does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The committee substitute does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The committee substitute does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The DEO and the DOR may adopt rules to implement this act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 31, 2015, the Finance & Tax Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment updates the total amount of awards available to air carriers each year from \$17 million to \$17.6 million; further, the amendment provided for a sales tax distribution to the State Transportation Trust Fund to accomplish revenue neutrality for the state. The analysis is drafted to reflect these changes.