HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 595 Air Carriers
SPONSOR(S): Economic Affairs Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Affairs Committee		Lukis	Creamer

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 bill 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 bill also reduces the aviation fuel, kerosene, and aviation gasoline tax rates, as provided in s. 206.9825, F.S., from 6.9 cents per gallon to 5.4 cents per gallon.

In addition, the bill directs the Department of Economic Opportunity (department) to conduct a study of intrastate commercial air service and flight training and education and develop recommendations for policies that are likely to improve the quality of such service, training, and education. The study must include an analysis of trends in intrastate commercial air service and must identify factors that have affected prices and the frequency of flights between destinations in this state. The study must also compare the incentives provided by this state to the commercial airline industry, generally, and to specific air carriers with similar incentives that have been provided by other states and must evaluate the effect that these incentives have had on commercial air service in this state and other states. The department must submit a report on the study to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 13, 2015.

See FISCAL COMMENTS.

The bill provides an effective date of July 1, 2015; however, the abovementioned removal of the aviation fuel tax credit and reduction in the aviation fuel, kerosene, and aviation gasoline tax rates would not be effective until July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Aviation Fuel Tax

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.[1] 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.[2]

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.[3] 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.[4]

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.[5] 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.[6]

The Legislature first established the aviation fuel tax credit in 1996[7] 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.[8]

The following chart illustrates data relating to the aviation fuel tax from June 2013, through July 2014.[9]

Sales of Aviation Fuel to Commercial Air Carriers

[1] Section 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.)
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] *See* s. 206.9825(1)(a), F.S.
[7] Section 21, Ch. 96-323, L.O.F.
[8] *See* s. 5, Ch. 2002-2, L.O.F.
[9] The data in the chart was provided by the Department of Revenue to the Economic Development and Tourism Subcommittee via e-mail on Feb. 26, 2015 (e-mail on file with staff). 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.

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[10]
Delta Airlines	137,858,527.00	15.17%	$9,512,238.36
JetBlue Airways	116,415,416.00	12.81%	$8,032,663.70[11]
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[12]
AirTran Airways	40,516,854.00	4.46%	$2,795,662.93[13]
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**

Florida Kerosene and Aviation Gasoline Tax

Section 206.9825, F.S., also imposes an excise tax of 6.9 cents per gallon of kerosene and aviation gasoline sold, removed or brought into the state under certain circumstances. Certain blends and certain amounts of kerosene sold are exempt from the tax.

[10] Section 206.9825, F.S. exempts Southwest Airlines from these taxes.
[11] Section 206.9825, F.S. exempts JetBlue Airways from these taxes.
[12] Section 206.9825, F.S. exempts Spirit Airlines these taxes.
[13] Section 206.9825, F.S. exempts AirTran Airways from these taxes.

Federal Policy Regarding Aviation Fuel Tax Usage

The federal government imposes on airport "sponsors" restrictions on the uses of certain airport revenues.[14] Airport sponsors include any public agency that submits to the United States Department of Transportation an application for financial assistance.[15] The term "sponsor" also includes a private owner of a public use airport.[16]

The federal government first placed restrictions on the use of airport revenue in the Airport and Airway Improvement Act of 1982.[17] However, it was not until the passage of The Airport and Airway Safety and Capacity Expansion Act of 1987 (Act) that the federal government subjected revenue from state and local taxes on aviation fuel to such restrictions. Currently, revenues from state and local taxes on aviation fuel may generally only be used for certain aviation-related purposes such as airport operating costs, or in the case of state taxes, a "state aviation program."[18] The revenue from state and local taxes on aviation fuel, which were in effect prior to the Act, is eligible for use for otherwise impermissible expenditures.[19] Such taxes are considered "grandfathered."[20]

The Federal Aviation Administration (FAA) is the agency within the United States Department of Transportation (USDOT) that, among other things, regulates the air transportation system in the United States.[21] On November 7, 2014, the FAA adopted an amendment to the FAA *Policy and Procedures Concerning the Use of Airport Revenue*, which was published in the Federal Register at 64 FR 7696 on February 16, 1999. The amendment provides certain clarifications to FAA's interpretation of the Federal Requirements for the use of revenue derived from taxes on aviation fuel.[22] The amendment applies prospectively to the use of proceeds from both new taxes and to existing taxes that do not qualify for grandfathering[23] from revenue use requirements.[24] For existing taxes that do not qualify for grandfathering, the FAA will allow for a transition period of up to three years from the amendment's effective date.[25]

Effect of Proposed Changes

The bill amends s. 206.9825, F.S., repealing the abovementioned 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 bill also reduces the aviation fuel, kerosene, and aviation gasoline tax rates, as provided in s. 206.9825, F.S., from 6.9 cents per gallon to 5.4 cents per gallon.

In addition, the bill directs the Department of Economic Opportunity (department) to conduct a study of intrastate commercial air service and flight training and education and develop recommendations for policies that are likely to improve the quality of such service, training, and education. The study must

---

[14] 49 U.S.C. §§ 47107(b) and 47133.
[15] *Id.*
[16] *Id.*
[17] Public Law No. 97-248.
[18] 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 6, 2015).
[19] 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.
[20] *Id.*
[21] USDOT, Administrations, available at: http://www.dot.gov/administrations (last visited April 6, 2015).
[22] *See* 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 6, 2015).
[23] Certain state or local taxes on aviation fuel in effect prior to December 30, 1987, qualify for grandfathering.
[24] 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 6, 2015).
[25] 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 6, 2015).

include an analysis of historic trends in intrastate commercial air service and must identify factors that have affected prices and the frequency of flights between destinations in this state. The study must also compare the incentives provided by this state to the commercial airline industry, generally, and to specific air carriers with similar incentives that have been provided by other states and must evaluate the effect that these incentives have had on commercial air service in this state and other states. The department must submit a report on the study to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 13, 2015.

The bill provides an effective date of July 1, 2015; however, the repeal of the aviation fuel tax credit and reduction of the aviation fuel, kerosene, and aviation gasoline tax rates would not be effective until July 1, 2017.

B. SECTION DIRECTORY:

Section 1: Amends s. 206.9825, F.S., removing an exemption from the aviation fuel tax and reducing the aviation fuel, kerosene, and aviation gasoline tax rates from 6.9 cents per gallon to 5.4 cents per gallon.

Section 2: Directs the department to conduct and study and submit a report on the study.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS.

2. Expenditures:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill's repeal of the aviation fuel tax credit and reduction of the aviation fuel, kerosene, and aviation gasoline tax rates will increase the expenditures of air carriers that benefit from the tax credit and reduce the expenditures of air carriers that do not benefit from the tax credit.

D. FISCAL COMMENTS:

The bill has not been scored by the Revenue Estimating Conference.

The Department of Revenue (DOR) determined the originally filed bill would have an insignificant negative fiscal impact to DOR's expenditures.[26]

[26] DOR, Agency Bill Analysis of HB 595 (February 23, 2015).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES