

EARMARKS FOR AERONAUTIC PROGRAMS BASED ON TAXES ON AVIATION FUEL

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Senate Bill 418 (reported from House committee w/o amendment)

Senate Bill 425 (reported from House committee)

Senate Bill 426 (reported from House committee)

Senate Bill 612 (reported from House committee)

Senate Bill 614 (reported from House committee)

Sponsor: Sen. Wayne Schmidt

Senate Bill 613 (reported from House committee)

Sponsor: Sen. Goeff Hansen

Senate Committee: Commerce

House Committee: Transportation

Complete to 12-8-15

BACKGROUND INFORMATION:

Representatives of the Michigan Department of Transportation (MDOT) have testified that the state is currently not in compliance with Federal Aviation Administration (FAA) Revenue Use Policy, published in the Federal Register on February 16, 1999, which states that state taxes on aviation fuel "are subject to use either for a state aviation program or for airport-related purposes." This policy was recently confirmed by an amendment to the policy published in the Federal Register on November 7, 2014.

<http://federalregister.gov/a/2013-27860>

MDOT representatives indicated that only the tax collected at 2%, first established in 1994, is subject to the FAA policy; the FAA policy does not affect the state sales tax collected at 4%. Representatives of MDOT indicated that the redirection of revenue equal to 2% of sales and use taxes attributable to aviation fuel sales to aviation programs would satisfy FAA policy requirements. MDOT also testified that failure to comply with the policy could jeopardize state access to AIP funds.

SUMMARY:

Senate Bill 613 would amend the General Sales Tax Act (1933 PA 167) to earmark an amount equal to the collection of sales tax imposed at a rate of 2% attributable to retail sales of aviation fuel for distribution to specific aeronautics programs described below. The bill provides for this earmark to begin on October 1, 2016, and to continue on the first day of each calendar quarter thereafter.

The quarterly deposits would be based on the sales tax collections attributable to retail sales of aviation fuel during the calendar quarter two calendar quarters preceding the "current" calendar quarter. As a result, the initial earmark would be based on the sales of aviation

fuel during the period April 1, 2016, through June 30, 2016; the second earmark made January 1, 2017, would be based sales of aviation fuel for the quarter ending July 31, 2016, and so on.

The bill would distribute the earmark as follows:

- An amount equal to 35% of the collection of sales tax imposed at a rate of 2% attributable to retail sales of aviation fuel for credit to the State Aeronautics Fund established in State Aeronautics Code (1945 PA 327).
- An amount equal to 65% of the collection of sales tax imposed at a rate of 2% attributable to retail sales of aviation fuel for credit to a new Qualified Airport Fund established in the State Aeronautics Code through Senate Bill 426. (The term "qualified airport" would be defined so as to apply only to Detroit Metropolitan Wayne County Airport.)

The bill requires the Michigan Department of Treasury to annually reconcile the amounts distributed during each fiscal year with the actual amounts collected [from the sales tax imposed at a rate of 2% attributable to retail sales of aviation fuel] for a particular fiscal year. The bill also requires the Department to provide a report of the reconciliation to each operator of a *qualified airport*.

Senate Bill 613 would also require each taxpayer making retail sales of aviation fuel to file an informational report with the Michigan Department of Treasury on "the entire amount" of the taxpayer's taxable retail sales of aviation fuel; the gross proceeds from the taxpayer's retail sales of aviation fuel; the amount of tax for which the taxpayer is liable from retail sales of aviation fuel; the number of taxable gallons of aviation fuel sold by the taxpayer at each airport and the gross proceeds from the sales of those gallons; and any other information the Department considers necessary for the administration of the act.

The bill provides penalties for non-compliance with the reporting requirement. The bill also cross-references definitions of "aviation fuel," "qualified airport," "Qualified Airport Fund," and "State Aeronautics Fund," to mean what those terms mean in the State Aeronautics Code.

Senate Bill 614 would make identical changes to the Use Tax Act (1937 PA 94), i.e. to earmark an amount equal to the collection of use tax from the tax imposed at a rate of 2% attributable to the storage, use, or consumption of aviation fuel for the specific aeronautics programs as described above; to require taxpayers to provide an informational report to the Department of Treasury; to require the Department to perform a reconciliation of the distribution with the amounts collected; and to require the Department to provide the a report of the reconciliation to each operator of a *qualified airport*.

Senate Bill 426 would amend Section 34 of the State Aeronautics Code to include revenue from the earmarks made in Senate Bills 613 and 614, respectively, in the list of revenue

sources for credit to the State Aeronautics Fund – in addition to the current revenue sources of aviation fuel taxes, aircraft registration taxes, and other aviation licensing fees.

The bill would also create a new Qualified Airport Fund. The fund would receive the earmarks made in Senate Bills 613 and 614.

Senate Bill 425 would amend Section 35 of the State Aeronautics Code to define the uses of revenue in the Qualified Airport Fund. Specifically, the bill directs the State Treasurer to, on a quarterly basis, disburse to the operator of a *qualified airport*, an amount equal to the amount deposited into the Qualified Airport Fund. The bill provides for the proration between *qualified airports* if there is more than one qualified airport. [As noted below, there is currently only one airport in Michigan meeting the definition of "qualified airport."]

The bill directs the operator of a *qualified airport* to use the money disbursed from the Qualified Airport Fund: 1) for deposit in a bond or interest redemption account to pay the next scheduled payments for revenue bonds issued by the operator of the qualified airport to finance certain defined capital improvements at the qualified airport; 2) to defray the cost of certain defined improvements to landing areas at the qualified airport.

Senate Bill 612 would amend Section 7 of the State Aeronautics Code to define the term "Qualified Airport" to mean what that term means in Section 109 of the State Aeronautics Code, i.e. "an airport, other than a military airport, that has 10.0 million or more enplanements in any 12-month period." The Detroit Metropolitan Wayne County Airport is currently the only state airport meeting this definition.

Senate Bill 418 would amend Section 203 of the State Aeronautics Code, the section that establishes the current 3-cents per gallon aviation fuel tax and the offsetting 1 ½ cent per gallon tax refund available to airlines operating interstate scheduled operations. The bill appears to make only technical changes to this section.

All six bills are tie-barred to each other, meaning that no bill could take effect unless all bills in the package were enacted.

FISCAL IMPACT:

Based on current prices for aviation fuel and estimated purchases, Senate Bill 613 and Senate Bill 614 would redirect an estimated \$27.7 million of state General Fund/General Purpose (GF/GP) revenue. Roughly \$9.7 million would be earmarked to the State Aeronautics Fund and the remaining \$18.0 million would be earmarked to the Qualified Airport Fund.

As noted above, **Senate Bill 613** would amend the General Sales Tax Act (1933 PA 167) to earmark *an amount equal to* collections of sales tax from the tax imposed at a rate of 2% attributable to retail sales of aviation fuel. The bill provides for this earmark to begin on October 1, 2016, and continue on the first day of each calendar quarter thereafter. **Senate Bill 614** would make identical changes to the Use Tax Act (1937 PA 94), i.e. to earmark

an amount equal to collections of use tax from the tax imposed at a rate of 2% attributable to the storage, use, or consumption of aviation fuel. The earmarks made in each bill would be for aeronautics programs, specifically, 35% for credit to the State Aeronautics Fund established in State Aeronautics Code (1945 PA 327), and 65% to a new Qualified Airport Fund established in the State Aeronautics Code through Senate Bill 426.

Because the bills earmark *an amount equal to*, and do not directly earmark Sales Tax Act or Use Tax Act revenue, the revenue directed to aeronautics programs would effectively come from the state General Fund. The bills would not directly alter the current constitutional and statutory earmarks of Sales Tax Act or Use Tax Act revenue.

As noted above, we estimate that the bills would increase revenue to the State Aeronautics Fund by \$9.7 million, and reduce state General Fund revenue by a like amount. This is effectively a redirection from one state fund to another – from the state General Fund to a state restricted fund. However, the State Aeronautics Fund is used primarily to provide matching funds for federal Airport Improvement Program (AIP) grants to public airports owned by local units of government. For additional information on the Airport Improvement Program, see *State Support of Aeronautics Programs* on the House Fiscal Agency website:

<http://www.house.mi.gov/hfa/PDF/Transportation/AeronauticsProgramsMemo.pdf>

Senate Bills 613 and 614 bills would also provide \$18 million to the new restricted Qualified Airport Fund created in Senate Bill 426 and reduce state General Fund revenue by a like amount.

The total reduction in state General Fund revenue resulting from the earmarks made in Senate Bills 613 and 614 would be \$27.7 million.

Senate Bill 425 would restrict Qualified Airport Fund revenue for use by a *qualified airport*, defined in the State Aeronautics Code as "an airport, other than a military airport, that has 10.0 million or more enplanements in any 12-month period." Detroit Metropolitan Wayne County, a local unit of government, is only airport currently meeting the definition of qualified airport. Detroit Metropolitan Wayne County is the state's busiest airport with 15.8 million 2014 enplanements. The Gerald R. Ford International Airport is the second busiest in the state with 1.2 million enplanements in 2014.

Senate Bill 425 also directs the operator of a *qualified airport* to use the money disbursed from the Qualified Airport Fund: 1) for deposit in a bond or interest redemption account to pay the next scheduled payments for revenue bonds issued by the operator of the qualified airport to finance certain defined capital improvements at the qualified airport; 2) to defray the cost of certain defined improvements to landing areas at the qualified airport.

Detroit Metropolitan Wayne County has issued revenue bonds for various airport capital improvement projects, most recently, \$520.1 million in revenue and refunding bonds issued in September, 2015. The official statement associated with the bond issue, dated September 23, 2015, includes a description of the bonds being refunded, the capital projects

funded from the revenue bonds, anticipated sources of funding, and other financial information. According to the official statement, Detroit Wayne County Airport had \$2.3 billion in outstanding bonds (principal amount) as of October 15, 2015, including the bonds issued in September 2015.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.