



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 418 (as enacted)
Senate Bills 425 and 426 (as enacted)
Senate Bills 612, 613, and 614 (as enacted)
Sponsor: Senator Wayne Schmidt (S.B. 418, 425, 426, 612, & 614)
Senator Goeff Hansen (S.B. 613)
Senate Committee: Commerce
House Committee: Transportation and Infrastructure

PUBLIC ACT 260 of 2015
PUBLIC ACTS 258 & 259 of 2015
PUBLIC ACTS 261-263 of 2015

Date Completed: 3-20-17

CONTENT

The bills amended various statutes to earmark a portion of sales tax revenue from the retail sale of aviation fuel, and a portion of use tax revenue from the use, storage, and consumption of aviation fuel, to the State Aeronautics Fund and a new "Qualified Airport Fund"; require money in the Qualified Airport Fund to be distributed to a qualified airport or qualified airports; and require the operator of a qualified airport to use the funds for purposes related to capital improvements to landing areas.

Senate Bill 418 amended the Aeronautics Code to make a requirement for a refund of the tax on aviation fuel specific to that tax.

Senate Bill 426 amended the Aeronautics Code to do the following:

- Create the Qualified Airport Fund.
- Require the portion of sales and use taxes, as well as certain money from the Qualified Airport Fund, that must be deposited into the State Aeronautics Fund to be paid into the State Treasury and credited to that Fund.
- Require the sales and use tax required to be deposited into the Qualified Airport Fund to be paid to the State Treasury and credited to the Fund.

Senate Bill 425 amended the Aeronautics Code to:

- Require all money in and credited to the State Aeronautics Fund to be appropriated for carrying out the provisions of Code, except as otherwise specified by the bill.
- Require the State Treasurer to disburse from the Qualified Airport Fund to the operator of a qualified airport an amount equal to the amount deposited into the Fund.
- Require an operator of a qualified airport to use money disbursed from the Fund for deposit in a bond and interest redemption account to pay for revenue bonds issued to finance, or to otherwise defray costs of, capital improvements to landing areas at the qualified airport; and to defray those costs.
- Specify that if the Federal Aviation Administration (FAA) or a Federal court finds that a deposit or credit of money to, or disbursement from, the Qualified Airport

Fund does not comply with Federal airport revenue use requirements, the State Treasurer must transfer money to the State Aeronautics Fund, as necessary.

- Require all money transferred from the Qualified Airport Fund to the State Aeronautics Fund to be disbursed to the operator of a qualified airport in the same manner and in the same priority as disbursements from the Qualified Airport Fund.
- Require the operator of a qualified airport to file an annual report with the Department of Transportation detailing how the money disbursed to the operator was spent during the preceding calendar year.

Senate Bill 612 amended the Aeronautics Code to include in the section that defines terms used in the Code an existing definition of "qualified airport" (an airport, other than a military airport, that has 10.0 million or more enplanements in any 12-month period).

Senate Bill 613 amended the General Sales Tax Act to do the following:

- Require an amount equal to the collections of the 2% sales tax from the retail sale of aviation fuel to be distributed to the State Aeronautics Fund and the Qualified Airport Fund, as described by the bill, beginning October 1, 2016, and then quarterly.
- Require the Department of Treasury, on an annual basis, to reconcile the amounts distributed during each fiscal year, and provide an annual reconciliation report to the operator of each qualified airport.
- Require each taxpayer making retail sales of aviation fuel to file a quarterly report with the Department.
- Prescribe penalties for failure or refusal to file the report within the time and in the manner specified.

Senate Bill 614 amended the Use Tax Act to do the following:

- Require an amount equal to the collections of the 2% use tax from the use, storage, or consumption of aviation fuel to be distributed to the State Aeronautics Fund and the Qualified Airport Fund, as described by the bill beginning October 1, 2016, and then quarterly.
- Require the Department of Treasury, on an annual basis, to reconcile the amounts distributed during each fiscal year, and provide an annual reconciliation report to the operator of each qualified airport.
- Require each person storing, using, or consuming aviation fuel, and each seller collecting the tax from the purchaser from sales of aviation fuel, to file a quarterly report with the Department.
- Prescribe penalties for failure or refusal to file the report as specified.

All of the bills took effect on March 22, 2016. A more detailed description of the bills, except Senate Bill 612, follows.

Senate Bill 418

Section 203(1) of the Aeronautics Code imposes a privilege tax at the rate of 3 cents per gallon on all fuel sold or used in producing or generating power for propelling aircraft using the aeronautical facilities on the land and water of the State. The Code requires a refund of 1.5 cents per gallon to be made to airline operators who show proof within six months after purchase that they are operating interstate on scheduled operations. The bill requires this refund "[f]or the tax imposed under this subsection".

Senate Bill 426

The Aeronautics Code establishes the State Aeronautics Fund and requires all money received

from aviation fuel taxes, licensing of schools of aviation, airports, landing fields, airport managers, registration of aircraft and airmen, and from the operation of State-operated airports, landing fields, and other aeronautical facilities to be paid into the State Treasury and credited to the Fund. The bill requires the portion of sales and use taxes to be deposited into the Fund under Section 25 of the General Sales Tax Act and Section 21 of the Use Tax Act, and any money required to be deposited into the Fund under Section 35(3) of the Code to be paid to the State Treasury and credited to the Fund. (Those sections were amended by Senate Bills 613, 614, and 425, respectively).

The bill also created the Qualified Airport Fund. All money to be deposited into the Qualified Airport Fund under Section 25 of the General Sales Tax Act and Section 21 of the Use Tax Act must be paid into the State Treasury and credited to the Fund.

Senate Bill 425

Under the Aeronautics Code, all money in and credited to the State Aeronautics Fund is appropriated for carrying out the purposes of the Code, and meeting the expenses of the Department of Transportation. Under the bill, this applies except as provided below.

All money in and credited to the Qualified Airport Fund is appropriated for carrying out the purposes described in the bill. On a quarterly basis, the State Treasurer must disburse from the Fund to the operator of a qualified airport an amount equal to the amount deposited into the Fund. If there is more than one qualified airport, the State Treasurer must disburse the amount deposited into the Fund to each operator in the same proportion as the amount of taxable gallons of fuel sold at the qualified airport during the preceding fiscal year bears to the total amount of taxable gallons of fuel sold at all qualified airports during the preceding fiscal year.

An operator of a qualified airport must use money disbursed to it in the following order of priority: a) for deposit in a bond and interest redemption account created by ordinance of the qualified airport solely to pay the next scheduled payments for revenue bonds issued by the operator of the qualified airport pursuant to an ordinance under the Revenue Bond Act to refinance capital improvements to landing areas at the qualified airport; and b) to defray the cost of capital improvements to landing areas of the airport. The capital improvements to landing areas may include runway and taxiway design, construction, repair, or rehabilitation, lighting, drainage systems, land acquisition, airfield roadways, noise mitigation systems, deicing pads, and surveillance systems at the qualified airport.

If the FAA or a Federal court of competent jurisdiction issues a final decision, decision and order, or order in a proceeding finding that a deposit or credit of money to the Fund, or a disbursement of money from the Fund, does not comply with the Federal airport revenue use requirements under 49 USC 47107(b) or 49 USC 47133 (discussed in **BACKGROUND**, below), the State Treasurer must transfer money in the Fund to the State Aeronautics Fund as necessary to comply with the decision, decision and order, or order, provided it is in effect and binding on the State. (These provisions are found in Section 35(3), referred to above in the description of Senate Bill 426.)

On a quarterly basis, the Department must disburse to the operator of a qualified airport all money transferred from the Qualified Airport Fund to the State Aeronautics Fund. The Department may not disburse money if the disbursement would violate the terms of a final decision, decision and order, or order of the FAA or a Federal court. If there is more than one qualified airport, the Department must disburse the money in the same manner as quarterly disbursements from the Qualified Airport Fund. Disbursements from the State Aeronautics Fund must be used for the same purposes and in the same order of priority as Qualified Airport Fund disbursements.

By April 1, 2017, and then annually by April 1, the operator of a qualified airport must file with the Department a report describing how money disbursed to the operator was spent during the preceding calendar year. The report must be on a form or in a format prescribed or approved by the Department.

Senate Bill 613

Distribution of Sales Tax Collected on Retail Sales of Aviation Fuel

Section 25 of the General Sales Tax Act requires all money received and collected under the Act to be deposited in the State Treasury to the credit of the General Fund, except as otherwise provided.

Under the bill, beginning October 1, 2016, and the first day of each calendar quarter thereafter, an amount equal to the collections for the calendar quarter that is two calendar quarters immediately before the current calendar quarter of the tax imposed under the Act at the additional rate of 2% approved by the electors on March 15, 1994, from the retail sale of aviation fuel must be distributed as follows: a) an amount equal to 35% of those collections must be deposited in the State Aeronautics Fund and spent, on appropriation, only for the purposes authorized under the Aeronautics Code, and b) an amount equal to 65% of those collections must be deposited in the Qualified Airport Fund and spent, on appropriation, only for those purposes authorized under Section 35 of the Code (as provided by Senate Bill 425).

Annually, the Department of Treasury must reconcile the amounts distributed under the bill during each fiscal year with the amounts actually collected for a particular fiscal year and make any necessary adjustments, positive or negative, to the amounts to be distributed for the next calendar quarter beginning January 1. The State Treasurer or his or her designee must provide an annual report of the reconciliation to the operator of each qualified airport. The reconciliation report is subject to the confidentiality restrictions and penalties provided in Section 28(1)(f) of the revenue Act. (That Act establishes the revenue collection duties of the Department. Section 28(1)(f) generally prohibits a current or former employee or authorized representative of the Department, or anyone connected with the Department, from divulging facts or information obtained in connection with the administration of a tax.)

"Qualified airport" means that term as defined in the Aeronautics Code.

Informational Report & Penalties

Beginning April 1, 2016, and each calendar quarter thereafter, the bill requires each taxpayer making retail sales of aviation fuel to file an informational report with the Department by the last day of the month immediately following the end of the calendar quarter. The report must be filed on a form prescribed by the Department and must show all of the following for the previous calendar quarter:

- The entire amount of the taxpayer's taxable retail sales of aviation fuel.
- The gross proceeds of the taxpayer's business from taxable retail sales of aviation fuel.
- The amount of tax for which the person 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 of aviation fuel.
- Any other information the Department considers necessary for the proper administration of the General Sales Tax Act.

("Aviation fuel" means fuel as that term is defined in Section 4 of the Aeronautics Code: any gasoline, distillate, benzine, naphtha, benzol, or other volatile and inflammable liquid produced, compounded, and used for propelling aircraft.)

The report may not include any remittance for tax and does not constitute a return or otherwise alleviate the taxpayer's obligations under Section 6 of the Act. (Section 6 requires each taxpayer to file a monthly sales tax return and to transmit the return with a remittance for the amount of the tax due to the Department.)

A taxpayer required to file the informational report that fails or refuses to do so within the time and in the manner specified is liable for a penalty of \$10 per day for each day for each separate failure or refusal, up to a maximum penalty of \$500 for each separate violation. The Department may waive the penalty if the taxpayer demonstrates to the Department's satisfaction that the failure to file is due to reasonable cause.

Senate Bill 614

Distribution of Use Tax Collected on Aviation Fuel

Under Section 21 of the Use Tax Act, except as otherwise provided, all money received and collected under the Act must be deposited in the State Treasury to the credit of the General Fund, to be disbursed only by appropriations by the Legislature.

Under the bill, beginning October 1, 2016, and the first day of each calendar quarter thereafter, from the money received and collected under the Act for the State share, an amount equal to the collections for the calendar quarter that is two calendar quarters immediately before the current calendar quarter of the tax imposed under the Act at the additional rate of 2% approved by the electors on March 15, 1994, from the use, storage, or consumption of aviation fuel, must be disbursed in the same manner as specified by Senate Bill 613.

The Department of Treasury, on an annual basis, must reconcile the amounts distributed under Senate Bill 614 during each fiscal year, and provide an annual reconciliation report, as described in Senate Bill 613. The reconciliation report is subject to the confidentiality restrictions and penalties provided in Section 28(1)(f) of the revenue Act.

"Qualified airport" means that term as defined in the Aeronautics Code.

Informational Report & Penalties

Under the bill, beginning April 1, 2016, and each calendar quarter thereafter, every person storing, using, or consuming aviation fuel subject to the tax imposed by the Use Tax Act when the tax was not paid to a seller, and every seller collecting the tax from the purchaser from sales of aviation fuel, must file an informational report with the Department of Treasury on a form prescribed by it on or before the last day of the month immediately following the end of a calendar quarter. The report must show all of the following for the previous calendar quarter:

- The entire amount of taxable aviation fuel sold or purchased by the person, as applicable.
- The amount of tax for which the person is liable from the purchase or sale of aviation fuel.
- The number of taxable gallons of aviation fuel sold or purchased by the person, as applicable, at each airport and the gross proceeds from the sales or purchase of those gallons of aviation fuel, as applicable.
- Any other information the Department considers necessary for the proper administration of the Act.

("Aviation fuel" means fuel as that term is defined in the Aeronautics Code.)

The report may not include any remittance for tax and does not constitute a return or otherwise alleviate the person's obligations under Section 6 of the Act. (Section 6 requires every person storing, using, or consuming tangible personal property or services subject to the use tax to file a return with the Department and to pay the amount of tax imposed.)

A person required to file the informational report that fails or refuses to do so within the time and in the manner specified by the bill is liable for a penalty of \$10 per day for each day for each separate failure or refusal, up to a maximum penalty of \$500 for each separate violation. The Department may waive the penalty if the taxpayer demonstrates to the Department's satisfaction that the failure to file is due to reasonable cause.

MCL 259.203 (S.B. 418)
259.35 (S.B. 425)
259.34 (S.B. 426)
259.7 (S.B. 612)
205.56c & 205.75 (S.B. 613)
205.96c & 205.111 (S.B. 614)

BACKGROUND

Airport Improvement Program Grants

The Airport Improvement Program (AIP) is the latest in a succession of programs implemented to promote the planning and development of the national airport system. The Program provides grants to public agencies and private owners for planning and development of individual public-use airports within the National Plan of Integrated Airport Systems (NPIAS).¹ A "public-use airport" is an airport open to the public that is publicly owned, or a privately owned airport designated as a reliever by the FAA or having scheduled service and at least 2,500 enplanements).

A grant recipient ("sponsor") must use the grant funds for eligible grant activities and must comply with Federal environmental and procurement laws. Also, approval of the grant is contingent on the receipt of certain assurances specified by law, and within the grant application and agreement. Specifically, under 49 USC § 47107(b), local taxes on aviation fuel and revenue generated by the airport must be spent for the capital or operating costs of the airport, the local airport system, or a facility owned by the airport operator that is directly and substantially related to air transportation. The U.S. Secretary of Transportation also must receive assurances that the airport owner or operator will operate the airport in a safe and serviceable manner, will not grant exclusive rights, and will mitigate airspace hazards.

Under the AIP, eligible projects include airport improvements related to safety, capacity, security, and environmental concerns. Funding may be used for capital improvements or rehabilitation projects, as well as professional services necessary for the eligible project. Operational costs (e.g., salaries and supplies) and projects related to airport operations are not eligible for funding. For medium and large primary hub airports, an AIP grant covers 75% of the eligible costs for the project (80% for noise program implementation). For smaller airports, the grant covers approximately 90% to 95% of the eligible project costs.

Revenue Use Requirements, State & Local Taxes on Aviation Fuel

Generally, under 49 USC § 47133, an airport that is the subject of Federal assistance may use airport revenue only for airport-related purposes. These include the capital or operating costs of the airport, the local airport system, or a facility owned by the airport operator that is

¹ The NPIAS an inventory of airports that are significant to civil aviation, national defense, and the Postal Service.

directly and substantially related to air transportation. State and local taxes on aviation fuel, except those in effect on December 30, 1987, are included within this restriction.

On November 7, 2014, the FAA adopted an amendment to its *Policy and Procedures Concerning the Use of Airport Revenue* regarding its position on the use of proceeds from taxes on aviation fuel.² The amendment reiterates the FAA's position that state or local taxes on aviation fuel are subject to Federal revenue use requirements, but notes that revenue generated by state taxes on aviation fuel may be used for noise mitigation purposes, or for state aviation programs. The amendment notes that for AIP grant sponsors, the revenue use requirements are enforceable through assurances made in the grant application and the provisions of the grant agreement. For nonsponsor states and local governments that fail to comply with the requirements, the Secretary of Transportation may assess a civil fine, file for a compliance order from a U.S. district court, or apply additional sanctions under other FAA programs.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

Senate Bill 418

The bill will have no fiscal impact on State or local government.

Senate Bills 425 and 426

The bills will have no fiscal impact absent Senate Bills 613 and 614, to which the bills are tie-barred. Senate Bills 613 and 614 earmark sales and use tax revenue to the Qualified Airport Fund. Senate Bill 426 created that Fund, and expanded the revenue sources from which the Aeronautics Fund may receive revenue to include revenue earmarked by Senate Bills 613 and 614. Senate Bill 425 places restrictions on expenditures associated with appropriations from the Qualified Airport Fund.

Senate Bill 612

The bill will have no fiscal impact on State or local government.

Senate Bills 613 and 614

The bills will reduce General Fund revenue by approximately 8.2 million in FY 2016-17 based on current prices for jet fuel and aviation gasoline. To the extent that prices are above current averages, the revenue loss will increase. Under the January 2017 Consensus Forecast, prices are expected to rise slightly through FY 2018-19, when the projected revenue reduction will total \$12.0 million.

The bills redirect the revenue from the General Fund to two aviation-related funds. Based on current prices, the bills will increase revenue to the State Aeronautics Fund by approximately \$2.9 million in FY 2016-17, and provide \$5.3 million in revenue to the Qualified Airport Fund in FY 2016-17.

Fiscal Analyst: David Zin

² 79 FR 66282, November 7, 2014. The amendment took effect on December 8, 2014.

[SAS\1516\418es](#)

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.