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**SENATE BILL 5281**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senators Saldaña, Keiser, and Nguyen

AN ACT Relating to modifying the aircraft fuel excise tax; amending RCW 82.42.020, 82.42.030, 82.42.090, 43.84.092, and 43.84.092; reenacting and amending RCW 82.42.010; adding a new section to chapter 82.42 RCW; creating a new section; providing effective dates; and providing an expiration date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  (1) The legislature finds that airports can have significant impacts on the communities in which they are located, including, the quality of life of its residents and employees, infrastructure demands, and environmental and public health burdens.

(2) The legislature further finds that the airports can exacerbate historic environmental health disparities and poor air quality in those communities and for the employees that work in them.

(3) The legislature further finds that the levying 5 cents of the existing 18 cent aircraft fuel excise tax on commercial aircraft operators can provide a funding source to further address these environmental and other impacts.

(4) The legislature further finds that the federal aviation administration has determined that this 5 cent portion of the aircraft fuel tax qualifies for grandfathered status and therefore does not need to meet the airport revenue use requirements.

(5) Therefore, the legislature intends to impose only a portion of the aircraft fuel excise tax on commercial aircraft, while creating a funding mechanism to mitigate the impacts of emissions and pollutants, and to further environmental justice goals in airport locations throughout the state.

**Sec.**  RCW 82.42.010 and 2013 c 225 s 301 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Air carrier" means any airline, air cargo carrier, air taxi, air commuter, or air charter operator, that provides routine air service to the general population for compensation or hire, and operates at least ((~~fifteen~~)) 15 round trips per week between two or more points and publishes flight schedules which specify the times, days of the week, and points between which it operates. Where it is doubtful that an operation is for "compensation or hire," the test applied is whether the air service is merely incidental to the person's other business or is, in itself, a major enterprise for profit.

(2) "Aircraft" means every contrivance now known or hereafter invented, used or designed for navigation of or flight in the air, operated or propelled by the use of aircraft fuel.

(3) "Aircraft fuel" means gasoline and any other inflammable liquid, by whatever name such liquid is known or sold, the chief use of which is as fuel for the propulsion of aircraft, except gas or liquid, the chief use of which as determined by the director, is for purposes other than the propulsion of aircraft.

(4) "Commercial air operator" means:

(a) An air carrier or supplemental air carrier operating under a certificate of public convenience and necessity under the provisions of the federal aviation act of 1958, P.L. 85-726, as amended; or

(b) A local service commuter.

(5) "Dealer" means any person engaged in the retail sale of aircraft fuel.

((~~(5)~~)) (6) "Department" means the department of licensing.

((~~(6)~~)) (7) "Director" means the director of licensing.

((~~(7)~~)) (8) "Distributor" means any person engaged in the sale of aircraft fuel to any dealer and includes any dealer from whom the tax hereinafter imposed has not been collected.

((~~(8)~~)) (9) "Local service commuter" means an air taxi operator who operates at least five round-trips per week between two or more points; publishes flight schedules which specify the times, days of the week, and points between which it operates; and whose aircraft has a maximum capacity of ((~~sixty~~)) 60 passengers or eighteen thousand pounds of useful load.

((~~(9)~~)) (10) "Person" means every natural person, firm, partnership, association, or private or public corporation.

**Sec.**  RCW 82.42.020 and 2022 c 182 s 201 are each amended to read as follows:

((~~There~~)) (1) Except as provided in subsection (2) of this section, there is levied upon every distributor of aircraft fuel, an excise tax at the rate of 18 cents on each gallon of aircraft fuel sold, delivered, or used in this state.

(2) There is levied upon every distributor of aircraft fuel, an excise tax at the rate of 5 cents on each gallon of aircraft fuel sold, delivered, or used in this state for use by a commercial air operator.

(3) There must be collected from every user of aircraft fuel either the use tax imposed by RCW 82.12.020 or the retail sales tax imposed by RCW 82.08.020. The taxes imposed by this chapter must be collected and paid to the state but once in respect to any aircraft fuel.

**Sec.**  RCW 82.42.030 and 2013 c 225 s 303 are each amended to read as follows:

The provision of RCW 82.42.020 imposing the payment of an excise tax on each gallon of aircraft fuel sold, delivered or used in this state does not apply to:

(1) Aircraft fuel sold for export and exported from this state;

(2) Aircraft fuel imported into the state in interstate or foreign commerce and intended to be sold while in interstate or foreign commerce;

(3) Aircraft fuel sold to an agency of the United States government;

(4) ((~~Aircraft fuel delivered directly into the aircraft fuel tanks of equipment operated by an air carrier or supplemental air carrier operating under a certificate of public convenience and necessity under the provisions of the federal aviation act of 1958, P.L. 85~~‑~~726, as amended;~~

~~(5) Aircraft fuel delivered directly into the aircraft fuel tanks of equipment operated by a local service commuter;~~

~~(6)~~)) Aircraft fuel sold to emergency medical air transport entities;

((~~(7)~~)) (5) Aircraft fuel sold to a licensed aircraft fuel distributor;

((~~(8)~~)) (6) Aircraft fuel delivered into the bulk storage tank of a certified user;

((~~(9)~~)) (7) Aircraft fuel used in the operation of aircraft for testing or experimental purposes; and

((~~(10)~~)) (8) Aircraft fuel used in the operation of aircraft when such operation is for the training of crews in Washington state for purchasers of aircraft who are certified air carriers.

**Sec.**  RCW 82.42.090 and 2017 3rd sp.s. c 25 s 42 are each amended to read as follows:

(1) All moneys collected by the director from the aircraft fuel excise tax as provided in RCW 82.42.020(1) shall be transmitted to the state treasurer and shall be credited to the aeronautics account hereby created in the state treasury.

(2) All moneys collected by the director from the aircraft fuel excise tax as provided in RCW 82.42.020(2) shall be transmitted to the state treasurer and shall be credited to the commercial aviation mitigation account created in section 6 of this act.

(3) Moneys collected from the consumer or user of aircraft fuel from either the use tax imposed by RCW 82.12.020 or the retail sales tax imposed by RCW 82.08.020 shall be transmitted to the state treasurer and credited to the state general fund.

NEW SECTION. **Sec.**  A new section is added to chapter 82.42 RCW to read as follows:

The commercial aviation mitigation account is created in the state treasury. All receipts from aircraft fuel excise tax imposed under RCW 82.42.020(2) must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account must be used only for addressing environmental and other impacts associated with airports.

**Sec.**  RCW 43.84.092 and 2022 c 182 s 403 are each amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The abandoned recreational vehicle disposal account, the aeronautics account, the Alaskan Way viaduct replacement project account, the ambulance transport fund, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the Chehalis basin account, the Chehalis basin taxable account, the cleanup settlement account, the climate active transportation account, the climate transit programs account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the commercial aviation mitigation account, the common school construction fund, the community forest trust account, the connecting Washington account, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community services account, the diesel idle reduction account, the drinking water assistance account, the administrative subaccount of the drinking water assistance account, the early learning facilities development account, the early learning facilities revolving account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the electric vehicle account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the fair start for kids account, the ferry bond retirement fund, the fish, wildlife, and conservation account, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the state higher education construction account, the higher education construction account, the higher education retirement plan supplemental benefit fund, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the hospital safety net assessment fund, the Interstate 405 and state route number 167 express toll lanes account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the limited fish and wildlife account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the money-purchase retirement savings administrative account, the money-purchase retirement savings principal account, the motor vehicle fund, the motorcycle safety education account, the move ahead WA account, the move ahead WA flexible account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the pilotage account, the pollution liability insurance agency underground storage tank revolving account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puget Sound Gateway facility account, the Puget Sound taxpayer accountability account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the sexual assault prevention and response account, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state reclamation revolving account, the state route number 520 civil penalties account, the state route number 520 corridor account, the statewide broadband account, the statewide tourism marketing account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation future funding program account, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the University of Washington bond retirement fund, the University of Washington building account, the voluntary cleanup account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the vulnerable roadway user education account, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

**Sec.**  RCW 43.84.092 and 2022 c 182 s 404 are each amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The abandoned recreational vehicle disposal account, the aeronautics account, the Alaskan Way viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the Chehalis basin account, the Chehalis basin taxable account, the cleanup settlement account, the climate active transportation account, the climate transit programs account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the commercial aviation mitigation 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Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

NEW SECTION. **Sec.**  Section 7 of this act expires July 1, 2024.

NEW SECTION. **Sec.**  Section 8 of this act takes effect July 1, 2024.

NEW SECTION. **Sec.**  This act takes effect October 1, 2023.

**--- END ---**