



**House
Legislative
Analysis
Section**

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**AERONAUTICS CODE: RAISE TAX ON
AVIATION FUEL, CODIFY RULES**

**House Bill 5257 (Substitute H-1)
First Analysis (2-27-96)**

**Sponsor: Rep. Michael Nye
Committee: Transportation**

THE APPARENT PROBLEM:

The Aeronautics Code provides for the licensing and regulation of aircraft, airports, pilots, aviation schools, and numerous other aspects of aeronautics within Michigan, and gives the Michigan Aeronautics Commission general supervision over aeronautics in the state. The code was enacted in 1945 at a time when aviation was still in its early stages of growth, and has been updated occasionally over the last 50 years to reflect current industry standards and to bring it into compliance with federal law; the last major update of the code occurred in 1976. In addition, to keep abreast of changes that have occurred within the industry and at the federal level over the last 20 years, the commission generally has altered administrative rules to reflect current practices and terminology. Some people believe the act needs to be updated again, partly for purposes of incorporating into it the more modern language and standards contained in rules, but also to reflect changes in federal law which have affected the way the commission currently regulates the industry.

Moreover, the act currently levies a tax on aviation fuel of three cents per gallon, where those who buy fuel to supply commercial air carriers receive a one and one-half cent refund per gallon while all other "general aviation" users pay the full amount. At present, of the revenue generated from taxes, about one-third is used to support the infrastructure needs of state aeronautical facilities; and most of this third is used to support facilities that primarily serve commercial air carriers. However, as general aviation has grown in popularity in recent years, maintenance and upkeep of the state's general aviation infrastructure has been declining, and numerous improvements are needed. In light of these needs, and since the tax levied on aviation fuel has not changed in over 50 years, some have proposed raising the aviation fuel tax paid by general aviation users by three cents per gallon in order to pay for infrastructure needs of general aviation facilities.

THE CONTENT OF THE BILL:

The bill would amend the Aeronautics Code to increase the tax levied on aviation fuel as well as the tax refund that applies to certain persons, raise certain fees imposed under the act, and switch to a calendar year for purposes of registration and licensing of persons regulated under the act. In addition, the bill would codify provisions currently contained in administrative rules governing the licensing and regulation of aircraft, flight schools, aeronautical facilities, airport managers, and other aspects related to aviation, in order to clarify and simplify the act and bring it into conformity with federal rules and regulations and current industry standards.

Increase fuel tax, refund. The act currently levies a "privilege tax" of three cents per gallon on all aircraft fuel sold and used in the state, and provides a refund of one and one-half cents per gallon to airline operators who prove within six months of purchasing fuel that they were operating interstate on scheduled operations. The bill would increase this tax to six cents per gallon, and would increase the refund provided to airline operators to four and one-half cents per gallon. (Essentially, this tax increase would be paid on aircraft fuel purchased and used solely for "general aviation" purposes.)

Change to calendar year. Currently, the act provides for aircraft registration to run from August 1 of one year to July 31 of the next, and requires the registration fee to be paid prior to August 1 of each year. Under the bill, the registration year would be the same as a calendar year; registrations would expire on January 1, and the fee for a new registration would be due on December 31. The bill also would adjust licensing and registration provisions which apply to other types of licensees under the act to conform with the calendar year (i.e., for airport managers and aeronautical facilities), and would make other changes to reflect calendar-year registration.

House Bill 5257 (2-27-96)

Increase licensing, permit fees. Currently, the act imposes licensing and permit fees on different types of licensees, as follows: for airport managers, \$5; for aircraft owners, \$5; and for a temporary field permit, \$2. The bill would increase licensing fees which apply to airport managers and aircraft owners to \$10, and would increase the fee for a temporary field permit to \$50. However, a temporary field permit would be good for 120 days, rather than the current 15 days. Also, an application for this permit now must be received at least seven days before the requested date of issuance; under the bill, it would have to be received 14 days prior to this date.

Registration certificate, aircraft decal, assigned number. The act currently requires the registration certificate issued by the aeronautics commission to be carried "in a conspicuous place" in an aircraft at all times. The bill would remove language requiring conspicuous placement of the certificate and, thus, would require merely that it be carried in an aircraft. In addition, the act currently requires certain "decal plates" to be affixed at various points on the external surface of an aircraft. The bill would delete this requirement and other references to decals, but would retain language requiring each aircraft to "display the number assigned to it by the United States or a foreign country."

Aeronautical traffic rules. Current provisions contained in administrative rules, including general aeronautical rules that apply both in the air and on the ground, the use of licensed facilities by aircraft users, emergency actions required by aircraft users in the event of an accident, rules governing landings and takeoffs, and minimum operating altitudes for aircraft would be codified in the act.

Flight schools. The bill would codify and update provisions contained in administrative rules relative to aviation schools. Rules, however, currently refer to both "ground schools" (where students study aviation in classrooms) and "flight schools" (time spent in the air learning how to fly). The bill would codify provisions governing flight schools only, but with minor changes to make the language consistent with industry standards and bring it into compliance with federal rules governing flight schools.

Public use facilities. The bill would codify provisions currently contained in rules relating to public use landing areas, and would require all licensed public-use facilities to be included on state aeronautical charts and in other aviation publications offered to the public.

Aeronautical facilities. The bill would codify and update provisions currently contained in rules governing the different categories of licensed aeronautical facilities. Current rules provide for six different types of airports: a class D substandard airport, classes C, B, and A public airports, seaplane bases, and heliports. The bill would establish six different types of aeronautical facilities, the first three of which essentially correspond to the four classes of airports contained in rule, with some alterations. These would include the basic utility airport, general utility airport, and air carrier airport. The bill would incorporate into the act provisions now in rules governing the seaplane base and heliport, and would include a new category--the hospital heliport--along with minimum specifications for this facility similar to those which apply to the others.

Airport managers. Provisions similar to those currently in rules governing airport managers would be adopted into the act under the bill.

Flying club. The bill would define a flying club as a nonprofit entity organized for the express purpose of providing its members with aircraft for their personal use and enjoyment, where aircraft ownership would be vested in the club's name or owned in equal shares by all its members. Property rights of club members would be equal, and any part of net earnings of a flying club that were to be distributed to members would have to be in equal shares to all members. A club could not derive greater revenue from the use of aircraft than the amount necessary for its actual operation, maintenance, and replacement or upgrade of its aircraft, and a club's aircraft could not be used by members for rental purposes or by anyone for charter or lease.

State ownership of airports. The act currently permits the state to own and operate an "airport at Lansing" (currently known as the Capital City Airport). The bill would delete this language--since this airport no longer is owned and operated by the state--and, instead, would permit the state to own and operate multiple airports. (The state currently owns and operates five airports.)

Reciprocal agreements with Ohio, Indiana. Currently, the act specifies that the governing body of a political subdivision in Wisconsin whose laws permit may acquire, establish, construct, enlarge, own, control, lease, equip, improve, maintain, and operate various types of aeronautical facilities in Michigan--subject to all laws, rules, and regulations of Michigan applicable to its political subdivisions in such aeronautical projects--but subject to Wisconsin's laws in all matters relating

to financing of such projects. Under the bill, these and related provisions would be applicable to political subdivisions in the states of Ohio and Indiana.

Powers of political subdivisions. The bill would codify various provisions currently found in rules that permit political subdivisions of the state to acquire air easements surrounding aeronautical facilities and establish aeronautical facilities. Also, provisions in rule governing the powers of county boards of commissioners relative to funds for publicly owned or operated facilities, and prescribing the state's authority to create a state plan for approach protection surrounding aeronautical facilities, would be codified.

Commission powers. Current rules prescribe the Aeronautics Commission's authority to deal with determinations of hazard at public- and state-owned aeronautical facilities, limit activities within airport property, and regulate aircraft activities over, above, and upon the state's lands and waters; the bill would codify these provisions. Also, the act currently grants the commission general supervision over aeronautics in the state and, among other things, authorizes it to provide for the licensing of aircraft manufacturers. The bill would clarify that the commission has "exclusive authority to approve the operation of airports, landing fields, and other aeronautical facilities within the state" in order to assure uniform regulation of aeronautics, and would eliminate the commission's authority to license aircraft manufacturers.

Suspension, revocation of license. The bill would codify current rules authorizing the commission or its authorized representative, after considering the facts of a case and holding a hearing, to suspend or permanently revoke, or both, the license, certificate, or letter of authority of someone who committed certain proscribed activities or failed to take appropriate action as specified.

Penalty provisions. Currently, someone who violates the act generally is guilty of a misdemeanor. Under the bill, a person who violated the act would be responsible for a civil infraction and would have to pay a civil fine of up to \$500. In addition, the bill would codify various penalty provisions contained in rules relating to tampering with markings of aeronautical facilities, allowing domestic animals or fowl on aeronautical facility property, and conduct constituting misdemeanor and felony violations.

Repeal. The bill would repeal obsolete sections of the act governing airspace reservations, decal plates,

certificates of public convenience and necessity, landing areas for emergency public use, and authority of the Aeronautics Commission to issue revenue bonds in amounts up to \$5 million to pay for improvements to the Capital City Airport. In addition, other sections would be repealed dealing with aviation instructors, aviation schools, and inspection of aircraft, as these provisions would be added elsewhere to the act by the bill. And finally, a section governing certificates of competency would be repealed as this is an area currently governed by federal rules.

MCL 259.2 et al.

FISCAL IMPLICATIONS:

The Aeronautics Commission, within the Department of Transportation, says the bill would result in increased revenue to the Aeronautics Fund of between \$3 million to \$3.5 million annually, which would be used primarily to pay for needed maintenance, repairs, and improvements to the state's general aviation airport facilities. (2-22-96)

ARGUMENTS:

For:

The bill would bring the Aeronautics Code into the 1990s by codifying language contained in administrative rules, revising the act to reflect current federal rules, and clarifying numerous provisions currently in the act. For instance, the Aeronautics Commission is authorized by rule to regulate aviation schools, which are divided between "flight schools" and "ground schools." Yet the commission no longer oversees aviation studies in ground schools as this is an activity performed by colleges or other traditional school settings and, thus, is under the purview of the Department of Education. Another example includes language that authorizes the commission to license aircraft manufacturers, which was inadvertently added to the act by the 1976 amendments; since this has always been a federal responsibility, this provision should be deleted from the act. The bill would add to the act updated provisions from rules relating to flight schools only, and would add other updated and clarified language from rules governing commission powers, specifying the different categories of licensed aeronautical facilities and minimum criteria they would have to meet, and regulating airport managers, aeronautical traffic rules, state authority to own multiple airports, and numerous other provisions. Also, the bill would repeal a number of sections that are either obsolete or which contain provisions that, for the sake of clarity, belong elsewhere in the act.

For:

The current tax levied on aviation fuel is at the same level as when the act was first created 50 years ago—that is, three cents per gallon. Currently, commercial air carriers receive a one and one-half cent refund on this tax, since they purchase huge quantities of fuel to supply the needs of the high-powered jets and other aircraft that make up their fleets. Of the approximately \$8.5 million raised under the act from this tax, between \$2.5 million to \$3 million is used for capital and infrastructure needs of aeronautics facilities around the state. However, close to 70 percent of this amount now goes to pay for infrastructure needs of facilities that primarily benefit or serve commercial air carriers. As interest in general aviation continues to grow, the needs of the infrastructure that serves this segment of aeronautics likewise increases. The bill proposes to raise the aviation fuel tax and the refund paid to commercial air carriers by three cents. Thus, the tax would be paid entirely by general aviation users, and the commission says that the additional revenue raised under the bill would be used primarily for improving the infrastructure needs of general aviation airports and facilities throughout the state. And, it should be noted, the tax increase has the support of groups representing a cross-section of the flying public involved in general aviation.

Response:

The bill fails to guarantee that the additional revenue generated would be earmarked solely for improving infrastructure needs of general aviation facilities. An amendment should be added that would dedicate this revenue solely for its intended purpose. In fact, the act fails to specify how current revenue generated from the tax is to be used, leaving it up to the commission to direct money where it is most needed. While this may give the commission ample flexibility, it also may result in a situation where a disproportionate amount of tax revenues paid by general aviation users goes to support infrastructure needs primarily benefitting commercial air carriers, or vice-versa. It may be wise to adopt a formula that directs revenue from the two sources into two separate categories, in order to ensure adequate funding of infrastructure needs of both.

For:

The bill would provide for minor fee increases for certain licenses and permits issued under the act to levels that reflect the commission's costs to issue them. Thus, the fee for an airport manager would be raised from \$5 to \$10, while the fee for a temporary field permit would go from \$2 to \$50. (The fee increase for this permit is not being raised as dramatically as it would appear since the bill also would increase the effective time period for this permit from 15 days to 120 days.) The bill also would raise the penalty for

failing to timely register an aircraft from \$5 to \$10.

POSITIONS:

The Capital Region Airport Authority, which owns and operates both the Capital City Airport and the Mason Airport, supports the bill. (2-22-96)

The Michigan Association of Airport Executives supports the bill. (2-22-96)

The Aircraft Owners and Pilots Association supports the bill. (2-22-96)

Chrysler Pentastar Aviation, Inc., supports the bill. (2-27-96)

The Department of Transportation has not yet taken a position on the bill. (2-22-96)

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