



## Airlines for America®

*We Connect the World*

February 8, 2024

The Honorable Chris Gorsek  
The Honorable Susan McLain  
Co-Chairs, Joint Committee on Transportation  
State Capitol  
Salem, OR 97301

Re: HB 4109

Dear Sen. Gorsek, Rep. McLain and Members of the Joint Committee on Transportation:

On behalf of Airlines for America® (A4A), the trade association for the leading U.S. airlines,<sup>1</sup> I am writing to respectfully express our opposition to HB 4109 as written. While A4A commends the legislature for taking concrete steps to ensure Oregon's compliance with federal law regarding the use of jet fuel tax revenue, we believe some provisions of the bill do not comport with the letter or spirit of the law.

As you know, federal law requires that revenue raised from state taxes on aviation fuel must be used for the capital or operating costs of an airport, an airport system or facilities that are substantially related to the air transportation of passengers or property. These funds may also be used for state aviation programs or noise mitigation. The only exception is for taxes that were in place as of December 30, 1987.<sup>2</sup> The Federal Aviation Administration (FAA) issued policies and procedures under the statute in 1999.<sup>3</sup> The FAA then clarified the policy with proposed amendments in 2013,<sup>4</sup> finalized those amendments in 2014 and directed state and local governments to certify their compliance with the policy or come into compliance within three years.<sup>5</sup> These rules are commonly referred to as "FAA revenue use policy." After Oregon spent several years working with the FAA to certify compliance with the law, we are concerned that some of the stated expenditures in HB 4109 may run afoul of the law.

Specifically, the legislation would amend ORS 319.023 to direct the Oregon Department of Aviation (ODAV) to spend the tax receipts based on various allocations and criteria. After appropriating 5 percent of the revenues to the ODAV for the costs of the ODAV and State Aviation Board, the remaining grants are allocated into two parts. First, the bill indicates that 75 percent of the revenues per subsection 5(a) be distributed for:

- A. Matching funds for grants from the FAA Airport Improvement Program (AIP);
- B. Grants for emergency preparedness and infrastructure projects under the Oregon Resilience Plan and Oregon Aviation Plan;
- C. Grants for (i) services critical to aviation, including fuel, sewer, water and weather equipment; (ii) aviation-related business development, including hangars, parking for business aircraft and related facilities; and (iii) airport development for local economic benefit, including marketing and signs; and
- D. Grants to assist commercial air service to rural Oregon.

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<sup>1</sup> A4A's members are Alaska Airlines, Inc.; American Airlines Group Inc.; Atlas Air, Inc.; Delta Air Lines, Inc.; Federal Express Corp.; Hawaiian Airlines, Inc.; JetBlue Airways Corp.; Southwest Airlines Co.; United Airlines Holdings, Inc.; and United Parcel Service Co. Air Canada, Inc. is an associate member.

<sup>2</sup> 49 USC sections 47107(b) and 47133.

<sup>3</sup> FAA, Policy and Procedure Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696 (Feb. 16, 1999).

<sup>4</sup> 78 Fed. Reg. 69789 (Nov. 21, 2013).

<sup>5</sup> 79 Fed. Reg. 66282 (Nov. 7, 2014).

A4A fully supports the use of these funds to match the FAA AIP grants in (A) and believes this is the highest and best use of this revenue. While grants in support of the Oregon Aviation Plan in (B) are likely legal under the FAA revenue use policy, we do not believe the same is true of grants in support of the Oregon Resilience Plan. It is unlikely those grants are strictly for aviation purposes, which creates uncertainty and makes it cumbersome for system users and the FAA to make a determination about compliance. Therefore, we recommend either deleting the reference to the Oregon Resilience Plan or adding clarifying language to make it clear that grants must be “for such resiliency projects that are directly for airport or aviation purposes.”

We see a similar issue with the grants for services and equipment in (C)(i). The revenue use policy prohibits payments that exceed the fair and reasonable value of services and facilities received. Therefore, if retained, we recommend that language be added, such as “the purchase of airport-related weather equipment and payment of airport-related sewer and water charges or assessments” to ensure that grants are used for aviation. Similar language regarding fuel would be helpful.

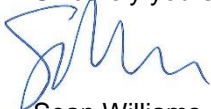
Our greatest concerns relate to the grants for aviation-related business development in (C)(ii), airport development for local economic benefit in (C)(iii) and assistance for rural commercial air service in (D). We believe these provisions are too broad to comport with the revenue use policy, which prohibits the use of airport revenue (including fuel tax revenue) for general economic development, and should therefore be removed.

The remaining 25 percent of revenues pursuant to subsection (6) of the bill would be distributed for (a) safety improvements recommended by the State Aviation Board and local community airports and (b) infrastructure projects at public use airports. A4A does not have concerns with this provision.

In summary, A4A believes and recommends that the best use of aviation fuel tax revenues to ensure compliance with federal law is to revise the legislation to provide 75 percent (or more) for AIP matching grants and the remainder for safety and infrastructure projects at public use airports.

For these reasons, I therefore urge you to amend the legislation to address these concerns and comments. Thank you for your time and consideration of this important matter to the aviation industry. If you have any questions or comments, please do not hesitate to e-mail me at [swilliams@airlines.org](mailto:swilliams@airlines.org).

Sincerely yours,



Sean Williams  
Vice-President, State and Local Affairs  
Airlines for America