

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 989

Motor Fuel Taxes

**SPONSOR(S):** Detert

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1932 (s)

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Transportation Committee</u>	<u>15 Y, 0 N</u>	<u>Pugh</u>	<u>Miller</u>
2) <u>Finance &amp; Tax Committee</u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
3) <u>State Infrastructure Council</u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
4) <u>                                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
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**SUMMARY ANALYSIS**

Persons who use motor fuel in off-road agricultural vehicles and farm equipment, commercial fishing vessels and related equipment, and vessels and other equipment used in aquaculture operations are entitled to a refund of certain motor fuel taxes, pursuant to s. 206.41(4)(c), F.S. The refund is conditioned on the requirement that no amount of the fuel was used in any vehicle or equipment operated on state highways.

HB 989 adds a fourth category of vehicles and equipment: those used exclusively for commercial aviation purposes on airport property only. The bill also specifies that for initial applicants, the motor fuel tax refund will be retroactive to the last three calendar years.

The Department of Revenue (DOR) estimates that the amount of the retroactive refund will range from \$242,380 to \$450,135. Thereafter, the fiscal impact may range from \$100,000 to \$180,000 annually. The Revenue Estimating Conference has adopted the higher estimated amount as the consensus impact of this bill.

Most of the refund will impact the State Transportation Trust Fund, with a small portion impacting counties and municipalities who share the state-collected local-option fuel tax created pursuant to s. 206.41(1)(e), F.S.

An estimated 101 businesses qualify for the refund, according to DOR.

HB 989 raises no apparent constitutional or other legal issues.

The bill takes effect July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Ensure Lower Taxes:** HB 989 refunds certain motor fuel taxes paid by vehicles and equipment used only on commercial airport properties. According to DOR's analysis, 101 companies, including airlines, fixed-based aviation operators, and independent contractors, will benefit from the refund. .

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Florida collects several different types of motor fuel taxes, most of which are used to finance state highway and other transportation projects. Motor fuel taxes generated more than \$2.2 billion in revenues in fiscal year 2005-2006.<sup>1</sup>

Section 206.41, F.S., lists the major motor fuel taxes, their uses, and their distribution. It also authorizes refunds of certain motor fuel taxes to persons who fall into three categories: those who purchase fuel for use in vehicles and equipment used exclusively on farm property; those who purchase fuel for commercial fishing vessels and equipment never operated on public highways; and those who purchase fuel for vessels and equipment used exclusively in aquaculture operations that is never operated on public highways. These refunds in fiscal year 2003-2004 totaled \$326,000.<sup>2</sup>

The three motor fuel taxes which are refunded are: the motor fuel sales tax, the State Comprehensive Enhanced Transportation System Tax (SCETS), and the local-option fuel tax.

DOR has long-established programs for the collection and, where authorized, refunding of fuel tax revenues. Applications for refunds must be accompanied by a completed application, and applicants are directed to retain all invoices and receipts of fuel purposes, in the event that DOR decides to audit or inspect these records.

##### Effect of Proposed Changes

HB 989 amends s. 206.41(4)(c), F.S., to add vehicles and equipment used exclusively for commercial aviation purposes, and which are never used on public highways, as eligible for motor fuel tax refunds. The type of vehicles and equipment that are envisioned as qualifying for the refund include the vehicles known as "tugs" that deliver luggage, concessions, and other products to airplanes, as well trucks that never leave the airport property, generators, landscaping equipment used exclusively on airport property, and safety and rescue equipment.

Initial refund applications under this new aviation category shall be eligible for a refund equal to the three previous calendar years of fuel taxes paid, from the date of application.

DOR estimates 101 companies are eligible for the refunds. The retroactive rebate amount is estimated to total between \$242,380 and \$450,135. Thereafter, the fiscal impact may range from \$100,000 to \$180,000 annually. **(See "II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT" below.)**

The bill takes effect July 1, 2006.

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<sup>1</sup> 2005 Florida Tax Handbook, page 86. On file with the House Transportation Committee.

<sup>2</sup> *ibid*, page 91.

C. SECTION DIRECTORY:

Section 1: Amends s. 206.41, F.S., to add commercial aviation purposes to those that are exempt from certain state fuel taxes. Defines "commercial aviation purposes." Provides for three-year retroactivity for businesses filing their initial refund applications.

Section 2: Specifies an effective date of July 1, 2006.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to the DOR estimates, the State Transportation Trust Fund could lose as much as \$450,000 in motor fuel tax revenues because of the retroactive rebates, and between \$100,000 and \$180,000 annually in the future.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

According to DOR, local governments may experience a \$200,000 loss in local-option fuel tax revenues from the 3-year retroactive rebate. In subsequent years, the annual loss is described as "insignificant" by DOR.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate, although private companies doing business on airport property, and which purchase fuel for vehicles that never leave airport property, are the largest group of beneficiaries of the proposed motor fuel tax refund.

These companies include American, Continental, Delta, Southwest and United Airlines, US Airways and other airlines doing business in Florida, as well as independent contractors who provide security, landscaping, or other services to airport customers and tenants, and fixed-base operators that transport fuel, concessions, and other items on airport properties.

D. FISCAL COMMENTS:

The DOR analysis prepared for the Feb. 22, 2006, Revenue Estimating Conference, used two different methodologies to calculate the bill's potential fiscal impact, and based the calculations on 2004 state sales tax returns.

One methodology calculated the total gallons of fuel used by large, mid-size, and small companies, then applied a weighted average of state fuel taxes paid on the number of gallons, to come up with a range of refund amounts. The other methodology was simpler, basically multiplying the number of gallons of fuel, on average, each of the 101 companies reported purchasing in 2004, then multiplying that by the amount of the fuel taxes, to get the total estimated fiscal impact.

The simple formula indicated the annual rebate cost would be \$119,862.

The more complex formula came up with the total estimated impact as a range of three estimates. The three estimates for the cost of the three-year retroactive rebates were: \$242,380; \$346,257; and \$450,135. The annual costs after the retroactive rebates ranged from \$100,000, to \$140,000, to \$180,000.

The Revenue Estimating Conference by consensus decided to accept the more complex formula's high estimate as the impact of this bill.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

HB 989 does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds, or reduce the authority that municipalities have to raise revenues.

The bill does reduce the percentage of a state tax shared with counties or municipalities – in this case, the local-option fuel tax authorized under s. 206.41(1)(g), F.S. However, the Revenue Estimating Conference decided at its Feb. 22, 2006, review of this legislation that the annual impact would be “insignificant.”

The estimated \$200,000 loss in local-option fuel tax revenues because of the 3-year retroactive rebate also appears to fall well below the threshold of triggering a mandate review. If the cumulative loss of state revenue-sharing does not equal or exceed an amount equal to the state's population multiplied by 10 cents, the impact is considered insignificant for mandate analysis purposes. Based on an estimated population of 19 million residents, the threshold would be \$1.9 million.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

DOR appears to have sufficient existing rulemaking authority to implement the provisions of HB 989. In its analysis of HB 989, the agency indicates that it may provide by rule the refund application and filing procedures.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

In its analysis of HB 989, DOR writes:

“The term ‘aviation ground support vehicles’ could include vehicles registered to use public highways by the Department of Highway Safety and Motor Vehicles. Since the bill authorizes refunds retroactively to 3 years prior to the date of the initial application, without either a clear definition of the term ‘aviation support vehicles’ or a list of qualifying aviation ground support vehicles being included in the bill language, it would be difficult for the Department (of Revenue) to verify that gallons of motor fuel, for which a refund application is submitted, are gallons actually used in qualifying vehicles.”

Bill supporters respond that DOR has existing authority to audit and inspect the records of applicants seeking refunds, and if DOR is not satisfied that the applicant has sufficient verification, the agency is under no obligation to issue the refund.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES