

Senator Kirk A. Cullimore proposes the following substitute bill:

AVIATION FUEL INCENTIVE AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kirk A. Cullimore

House Sponsor: Calvin R. Musselman

LONG TITLE

General Description:

This bill addresses provisions relating to an aviation fuel incentive program.

Highlighted Provisions:

This bill:

▸ directs the Division of Finance to deposit money from severance tax revenue into an aviation fuel incentive account;

▸ enacts provisions relating to an aviation fuel incentive, including provisions that:

- authorize the Utah Inland Port Authority to award an aviation fuel incentive, under certain circumstances, to an airline carrier that meets certain requirements;

- establish application procedures and requirements; and

- establish maximum amounts to be awarded as an aviation fuel incentive; and

▸ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



AMENDS:

[51-9-307](#), as enacted by Laws of Utah 2021, Chapter 401

[59-5-115](#), as last amended by Laws of Utah 2021, Chapter 401

ENACTS:

[11-58-208](#), Utah Code Annotated 1953

[59-5-121](#), Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **11-58-208** is enacted to read:

11-58-208. New aviation fuel incentive -- Requirements.

(1) As used in this section:

(a) "Aviation fuel" means fuel that is:

(i) used by a carrier; and

(ii) subject to an aviation fuel tax under Title 59, Chapter 13, Part 4, Aviation Fuel.

(b) "Aviation fuel incentive" means a grant awarded by the authority to a qualifying carrier from the incentive account as provided in this section.

(c) "Aviation fuel project" means a project for the development of facilities in the state to increase the production of aviation fuel.

(d) "Base production year" means the fiscal year designated by the authority under Subsection (3).

(e) "Carrier" means a federally certificated air carrier, as defined in Section [59-13-102](#).

(f) "Commission" means the State Tax Commission.

(g) "Incentive account" means an account that the authority establishes and maintains under Subsection (4) and from which the authority pays an aviation fuel incentive.

(h) "Incentive year" means any of the first 10 consecutive fiscal years immediately following the base production year.

(i) "New aviation fuel" means the quantity of aviation fuel produced by a refinery during an incentive year that exceeds the quantity of aviation fuel produced by the refinery during the base production year.

(j) "Qualifying carrier" means a carrier that meets the requirements of Subsection (4).

(k) "Refinery" means the same as that term is defined in Section [79-6-701](#).

57 (2) As provided in this section, the authority may award a grant of up to \$1,000,000 per
58 incentive year from the incentive account to a carrier that the authority determines to be a
59 qualifying carrier.

60 (3) The authority shall designate as the base production year the fiscal year that the
61 authority determines to be the fiscal year that precedes the first fiscal year during which new
62 aviation fuel is expected to be produced.

63 (4) (a) The authority shall establish and maintain an account for the deposit of money
64 under Section [59-5-121](#) and for the authority's payment of aviation fuel incentives under this
65 section.

66 (b) The authority shall maintain and account for money in the account described in
67 Subsection (4)(a) separate from all other money of the authority.

68 (5) A carrier that seeks to be awarded an aviation fuel incentive for a fiscal year shall:

69 (a) submit to the authority an application that meets the requirements of Subsection (6);
70 and

71 (b) demonstrate to the authority's satisfaction that:

72 (i) a refinery from which the carrier purchases aviation fuel has invested at least
73 \$5,000,000 since May 3, 2023 in an aviation fuel project; and

74 (ii) due to the aviation fuel project, the refinery, during an incentive year:

75 (A) has produced at least 4,500,000 gallons more aviation fuel for use by carriers in the
76 state than the refinery produced during the base production year; and

77 (B) has not produced less gas and diesel fuel than the refinery produced during the base
78 production year.

79 (6) (a) An application under Subsection (5) shall include information that the authority
80 determines to be relevant to the authority's determination of whether the carrier qualifies for an
81 aviation fuel incentive, including:

82 (i) for the application for the first incentive year that the carrier submits an application
83 under this section:

84 (A) the amount of the refinery's investment in an aviation fuel project; and

85 (B) the quantity of aviation fuel and gas and diesel fuel produced by the refinery during
86 the base production year;

87 (ii) the quantity of aviation fuel and gas and diesel fuel produced by the refinery during

the applicable incentive year; and

(iii) verification that the new aviation fuel was produced for use by a carrier in the state.

(b) An application under Subsection (5) shall be submitted to the authority before a deadline established by the authority.

(c) Multiple carriers may not rely on the same refinery to support the carriers' applications for an aviation fuel incentive.

(7) (a) A carrier may receive an aviation fuel incentive for no more than 15 consecutive incentive years.

(b) The maximum cumulative amount a carrier may receive as an aviation fuel incentive is \$10,000,000 or one-third of the amount the refineries represented in the carrier's applications invested in an aviation fuel project, whichever is less.

(c) The authority may not award aviation fuel incentives in excess of the amount that the Division of Finance deposits into the incentive account under Section [59-5-121](#).

(d) If more than one carrier qualifies for an aviation fuel incentive in an incentive year, the authority shall prorate money granted to qualifying carriers based on the percentage of new aviation fuel produced by the refineries represented in a carrier's application as compared to the total amount of new aviation fuel produced by all refineries represented in the applications of all qualifying carriers.

(8) (a) For purposes of determining whether a carrier meets the requirements to be a qualifying carrier, the authority may require a carrier that submits an application for an aviation fuel incentive to provide the authority with a document that expressly directs and authorizes the commission to disclose to the authority the carrier's returns and other information that would otherwise be subject to confidentiality under Section [59-1-403](#) or Section 6103, Internal Revenue Code.

(b) Upon the commission's receipt of a document described in Subsection (8)(a), the commission shall provide the authority with the returns and other information requested by the authority that the document directs and authorizes the commission to provide to the authority.

(9) The authority may adopt a policy establishing:

(a) the application and reporting criteria for a carrier to receive an aviation fuel incentive under this section; and

(b) procedures for establishing the base production year.

(10)(a) Within 90 days after the end of the 15th fiscal year after the base production year, the authority shall pay to the Division of Finance all money in the account that the port authority has not awarded by grant under this section.

(b) Any money that the authority pays to the Division of Finance under Subsection (10)(a) is considered to be severance tax revenue collected under Section 59-5-102 in the fiscal year during which the authority pays the money to the Division of Finance.

Section 2. Section **51-9-307** is amended to read:

51-9-307. New Severance Tax Revenue Special Revenue Fund.

(1) As used in this section:

(a) "Fund" means the New Severance Tax Revenue Special Revenue Fund created in this section.

(b) "New revenue" means revenue collected above \$100,000,000 from the taxes imposed under Title 59, Chapter 5, Severance Tax on Oil, Gas, and Mining, after subtracting the amounts required to be distributed under Sections 51-9-305, 51-9-306, 59-5-116, [and] 59-5-119, and 59-5-121.

(2) There is created a special revenue fund known as the "New Severance Tax Revenue Special Revenue Fund" that consists of:

(a) money deposited by the State Tax Commission in accordance with this section; and

(b) interest earned on the money in the fund.

(3) Beginning July 1, 2021, the State Tax Commission shall deposit into the fund 100% of new revenue until the new revenue equals or exceeds \$200,000,000 in a fiscal year.

Section 3. Section **59-5-115** is amended to read:

59-5-115. Disposition of taxes collected -- Credit to General Fund.

Except as provided in Section 51-9-305, 51-9-306, 51-9-307, 59-5-116, [or] 59-5-119, or 59-5-121, a tax imposed and collected under Section 59-5-102 shall be paid to the commission, promptly remitted to the state treasurer, and credited to the General Fund.

Section 4. Section **59-5-121** is enacted to read:

59-5-121. Severance tax revenue for aviation fuel incentive account.

(1) As used in this section:

(a) "Base revenue year" means the fiscal year designated by the port authority under

150 Subsection (3).

151 (b) "Incentive account" means the same as that term is defined in Section [11-58-208](#).

152 (c) "Incremental revenue" means the amount that is calculated by subtracting the net
153 severance revenue for the base revenue year from the net severance revenue for the applicable
154 incremental revenue year.

155 (d) "Incremental revenue year" means any of the first 10 consecutive fiscal years
156 immediately following the base revenue year.

157 (e) "Net severance revenue" means the amount of severance tax revenue collected
158 during a fiscal year under Section [59-5-102](#), after deducting the amount of severance tax
159 revenue required to be distributed under Sections [51-9-305](#), [51-9-306](#), [59-5-116](#), and [59-5-119](#).

160 (f) "Port authority" means the Utah Inland Port Authority created in Section [11-58-201](#).

161 (2) Subject to Subsections (3) and (4), for each of the 10 consecutive fiscal years
162 beginning the first incremental revenue year, the Division of Finance shall deposit incremental
163 revenue into the incentive account.

164 (3) (a) The port authority shall designate as the base revenue year the fiscal year that:

165 (i) begins on or after July 1, 2023; and

166 (ii) the port authority determines will precede the first fiscal year during which the
167 effects of the aviation fuel incentive program under Section [11-58-208](#) on the amount of
168 severance tax revenue under Section [59-5-102](#) are expected to begin to occur.

169 (b) No later than September 30 of the first incremental revenue year, the port authority
170 shall provide written notification to the Division of Finance of the fiscal year that the port
171 authority designates as the base revenue year.

172 (4) (a) The Division of Finance may not deposit incremental revenue under Subsection
173 (2) that exceeds \$1,000,000 per fiscal year.

174 (b) The maximum cumulative amount of incremental revenue that the Division of
175 Finance may deposit into the incentive account is \$10,000,000.

176 (c) If the amount of incremental revenue for any incentive year is less than \$1,000,000,
177 the Division of Finance shall deposit into the incentive account the amount of incremental
178 revenue available.