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TESTIMONY BEFORE
HOUSE COMMITTEE ON COMMERCE, LABOR, AND ECONOMIC DEVELOPMENT

HOUSE BILL 2037
ESTABLISHMENT OF AN AVIATION GRANT PROGRAM IN KANSAS

FEBRUARY 2, 2017

Mr. Chairman and Committee Members:

The Kansas Department of Transportation (KDOT) is submitting this neutral written testimony on House Bill 2037.

HB 2037 would authorize the Kansas Department of Transportation (KDOT) to establish and administer a program for grants to be awarded to Kansas educational institutions for the creation or development of (1) aviation small businesses and aviation projects and (2) for Unmanned Aircraft Systems (UAS) education courses or education programs. The program would be administered by the Director of Aviation under the supervision of the Secretary of Transportation, and grants awarded at the discretion of the Director of Aviation, upon criteria approved by the Secretary of Transportation. Grants would be made upon terms and conditions that the Director of Aviation deems appropriate and would be made from funds credited to an Aviation Fuel Sales Tax Fund.

HB 2037 would also establish the Aviation Fuel Sales Tax Fund to be administered by KDOT. The fund would be for the purpose of development of the aviation industry in Kansas and funding of the aviation grant program. The Fund would consist of monies from (1) public and private sources, grants or matching funds received by KDOT to further the purposes of the aviation grant program, and (2) sales tax revenue from all sales of aviation fuel for the prior fiscal year ending June 30. Subject to appropriation acts, on July 1, 2017, and on or before each July 1 thereafter, the Secretary of Revenue would advise the Secretary of Transportation and the Director of Accounts and Reports of the amount of sales tax revenue from all sales of aviation fuel for the prior fiscal year. The Director of Accounts and Reports would transfer that amount from the State General Fund to the Aviation Fuel Sales Tax Fund.

Passage of HB 2037 would technically result in a diversion of aviation revenue by the State of Kansas in violation of the Federal Aviation Administration's (FAA) *Policies and Procedures Concerning the Use of Airport Revenue; Proceeds from Taxes on Aviation Fuel, (79 Fed. Reg. 66282, November 7, 2014)* which provides that all state or local taxes on aviation fuels (except taxes in effect on December 30, 1987) are subject to the revenue use requirements in 49 U.S.C. 74107(b) and 47133. Under federal law, revenue from taxes imposed on sale of aviation fuel may be used only for airport purposes, specified as "capital and operating costs of an airport, the local airport system, or other local facilities owned or operated by the airport owner/operator and directly and substantially related to the air transportation of passengers or property." State taxes on aviation fuel may also be used to support a statewide aviation program, such as the Kansas Airport Improvement Program (KAIP), which is funded through the Public

Use General Aviation Airport Development Fund established under K.S.A. 75-5061. Expenditures by a state under a statewide aviation program which provides grants and awards to airports for permissible purposes under the FAA revenue use rules, is an "offset" which can be utilized by states to meet the compliance requirements of the federal rule. Kansas currently utilizes KAIP expenditures as an offset in order to meet the revenue use requirements for state and local taxes on aviation fuel.

In December 2015, in compliance with an FAA directive sent to Governor Brownback, KDOT submitted an Action Plan on behalf of the State of Kansas to the FAA to demonstrate the State's intent to come into compliance with the 2014 revisions to the FAA revenue use policy by the mandatory compliance date of December 2017. As explained in that letter, KDOT is currently working with the Kansas Department of Revenue to develop a method to track and report actual tax revenues from the sale of aviation fuel across Kansas in order to establish that the amount of annual funding to the KAIP under K.S.A. 75-5061 exceeds the amount of non-grandfathered tax revenue received from aviation fuels. Kansas represented in its letter to the FAA that it does and will continue to comply with the revenue use rules through the offset of grants made under the KAIP in annual amounts greater than the amounts received from non-grandfathered state taxes (i.e., those implemented after December 30, 1987).

KDOT believes the grant programs established by the implementation of HB 2037 do not fall within the permissible uses for state taxes on aviation fuels (as they do not support airport capital or operating costs nor directly or substantially relate to the air transportation of passengers or property), and thus would result in a diversion of aviation revenues under federal law.

However, assuming the amount of funds annually transferred under K.S.A. 75-5061 and subsequently expended on the KAIP does and will continue to exceed aviation fuel revenues generated from non-grandfathered taxes, and that KAIP funds are and continue to be used for general aviation airport purposes as set forth in K.S.A. 75-5061, the State of Kansas should continue to be in compliance with the FAA revenue use rules under the FAA's offset provisions. The Kansas Department of Revenue estimates that $1,137,992 of sales tax was generated from the sale of aviation fuel during calendar year 2015. K.S.A. 75-5061 provides that $5 million is transferred annually from the State Highway Fund to the Public Use General Aviation Airport Development Fund to be used for the purposes set forth in that statute.

HB 2037 states that "Grants shall be made in compliance with applicable federal laws or rules governing use of aviation fuel sales tax revenues." If HB 2037 were enacted, KDOT would be responsible for ensuring that amounts awarded from the KAIP for grants for permissible purposes under K.S.A. 75-5061 exceed the amount of non-grandfathered aviation fuels tax revenue generated annually in order to verify compliance with the FAA's revenue use policy.

Implementation of HB 2037 would require an additional 1.00 FTE position to administer the grant programs established in the bill. The agency anticipates the new position would result in additional expenditures of $70,545 for FY 2018.

KDOT is neutral on this bill, although anticipates working with the committee on technical wording changes that KDOT understands will be offered when this bill is worked.

Thank you for allowing us to submit testimony.