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STATEMENT OF SEAN WILLIAMS, VICE PRESIDENT OF STATE AND LOCAL GOVERNMENT AFFAIRS RE: HB 5363

House Bill 5363 (HB 5363) establishes a fee of \$15 per ton of carbon dioxide equivalent (t-CO₂e) to be collected on all fossil fuels, include kerosene-based jet fuel, sold in the state for distribution or use in the state beginning in 2020. The fee would take effect when Massachusetts and Rhode Island enact fossil fuel fees of not less than \$10/t-CO₂e.

Connecticut is federally preempted from imposing this fee on jet fuel. Federal law precludes states from regulating aviation emissions under the Clean Air Act (CAA). Specifically, Section 233 preempts states and their political subdivisions from “adopt[ing] or attempt[ing] to enforce any standard respecting emissions of any air pollution from any aircraft or engine thereof unless such standard is identical to a standard” established by the U.S. Environmental Protection Agency (EPA).¹ The fee that would be imposed by HB 5363 would effectively impose carbon emissions regulation on aircraft via the fuel they consume. There currently is no federal/EPA standard for CO₂, therefore the State is preempted from regulating such emissions.

In addition, federal aviation law independently preempts state or local agencies from regulating aviation operations. Courts have long held the Federal Aviation Act of 1958 creates a “uniform and exclusive system of federal regulation” of aircraft that preempts state and local regulation.² This federal regulatory scheme extends not only to aircraft in flight, but also to aircraft-related operations on the ground. In addition, the Airline Deregulation Act precludes states from “enact[ing] or enforce[ing] a law, regulation, or other provision having the force and effect of law related to a price, route or service.”³ Because aviation operations are exclusively regulated at the federal level, Connecticut cannot impose this fee on jet fuel.

Lastly, federal law prohibiting revenue diversion would prevent Connecticut from imposing the proposed fossil fuel fee on jet fuel. Specifically, 49 U.S.C. Section 47133 prohibits taxation of aviation fuel by any state or local government unless the tax existed before September 2, 1982, or the revenue generated from the tax is dedicated to the operating or capital costs of airports, the transportation of passengers or property, or noise abatement. HB 5363 proposes to allocate the funds collected under the fossil fuel fee to state residents and employers. Therefore, applying the proposed fee to jet fuel is expressly prohibited under federal law.

Please do not hesitate to contact me at swilliams@airlines.org with any questions.

¹ 42 U.S.C. § 7573.

² *Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 639 (1973); see also *American Airlines v. Dept. of Transp.*, 202 F.3d 788, 801 (5th Cir. 2000) (aviation regulation is an area where “[f]ederal control is intensive and exclusive”) (quoting *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 3030 (1944)).

³ 49 U.S.C. § 41713(b)(1).