

# Florida Public Airports

## Revenue Use Guide

RESOURCE MANUAL

Florida Department of Transportation



**District Aviation  
Bartow, Florida 2008**

## Florida Department of Transportation Public Airport Revenue Use Guide

### Purpose

The aim of this manual is to assist airport managers, owners, and elected officials in assuring that entities are complying with the rules regarding the proper uses of airport revenues. In general, if airport funds from either the Florida Department of Transportation (FDOT) aviation program or Federal Aviation Administration (FAA) are accepted by an entity that owns an airport, the recipient of the funding agrees to keep all revenue that is generated by the airport “on the airport.” That is, agency revenue, proceeds, and income produced by or at the airport may only be spent on directly airport-related projects or activities, or for the operations and maintenance of the airport facility. While straight forward in concept, there are many circumstances that can put an airport in jeopardy of violating the grant assurances, which are agreed to when a state or federal grant is received. It is hoped that this guide will serve to refresh the knowledge of airport managers and as a resource to educate policy makers and elected officials regarding acceptable uses of airport revenue and the consequences of its misuse.

Section one of the manual is presented in plain language in the form of questions and answers. It is intended to provide easily understood explanations to the issues surrounding aviation revenue. The second section of the manual is a quick reference of more detailed information on the types of federal aviation assistance, the definition of airport revenue, descriptions of grant assurances, revenue provisions of the Airport and Airway Improvement Act, land use regulations, the consequences of non-compliance and some examples of violations of the federal rules.

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The following appendices are included in a separate publication: (A) Airport Sponsor Grant Assurances (2005); (B) Airport and Airway Improvement Act (1982); and, © The Airport Revenue Protection Act (1996).

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## SECTION ONE

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### Airport Revenue Diversion – Frequently Asked Questions

#### **Why should this issue concern airports and elected officials?**

By accepting federal/state financial grants or property transfers, the airport agrees to abide by certain binding contractual obligations (i.e., signing a contract with federal/state government where the government provides the funding and the recipient agrees to follow certain rules). One of those rules specifies that all airport-generated revenues should be spent at the airport.

Violating any of the grant assurances (including the revenue retention provision) is like violating the terms of a contract. It can result in losing the privilege to receive grants in the future and can also lead to lawsuits and civil penalties. Congress allows the Secretary of Transportation to withhold transit and rail funds from any local government that violates the airport revenue retention restriction.

In other words, it can be too expensive for the grant recipient to violate the terms of the contract with the federal/state government. If that happens, the airport sponsor can be required to repay the grant, suffer hefty financial penalties, and lose eligibility for receiving grants in the future. In addition, the local jurisdiction can also lose federal/state general (non-aviation) transportation dollars.

#### **Why is FDOT interested in this issue?**

The intent of federal/state aviation funding is to ensure that the national network of airports is well-functioning, efficient and financially viable. Since the federal and state governments are capable of providing only a fraction of airports' development needs, airports need to spend all the revenues they generate for the operations and development of the airport to ensure adequate infrastructure investment.

The ultimate goal of any airport development grant is to make the airports as self-sustaining as possible and minimize the need for further federal/state assistance. The diversion of airport revenue for non-aviation use limits the effectiveness of grant assistance and jeopardizes the goal of achieving self-sustainability.

The main rationale for the revenue retention provision is the intent of government to ensure an effective, efficient and safe aviation system. The state and federal contributions to this goal can only be maximized when local aviation-related funds are solely used to achieve the same purpose.

**What is considered Airport Revenue?**

In general, any revenue received by the airport sponsor for an airport activity is considered airport revenue. This includes fees and proceeds received from the air carriers, tenants, and other parties for the right to conduct their activities at the airport and/or occupy airport property, as well as the revenues from the sale, transfer or disposition of real property. Airport revenue also includes all revenues received by the sponsor from the activities conducted by the sponsor as an airport owner and operator.

The airport retention provision, however, does not apply to all revenues generated by the facilities. The airport revenue retention provisions do not apply to revenues generated by the airport tenants or users themselves, but only to the revenues (land leases, rentals, access charges, landing fees, passenger facility charges, etc.) that the airport is paid by those tenants or users for their use of the land or airport facilities. Retention provisions apply to any and all such revenue received by the airport. For example, revenue retention would not apply to revenues generated by a convention center that, while located on the airport property, serves neither the airport nor any transportation purpose. Only the amount attributable to the use of airport property (rent that a commercial tenant would pay for land or facility rental) would be considered airport revenue.

In some cases the lease arrangement for land or facility may also include provisions that the airport sponsor receive a portion of the revenue produced by its use, such as a percent of event ticket sales, concessions, retail sales, fuel flowage, parking charges, and so on. In such cases, the airport sponsor's share of these funds is also considered airport revenue, and subject to all retention requirements.

**If my airport gets FDOT funds but not federal funds, must I be concerned?**

Yes. Both federal and state grants have the provision prohibiting the diversion of airport revenue for non-aviation use. FDOT grant assurances closely mirror federal assurances and are designed to maximize the effectiveness of the state aviation grant program.

When an airport sponsor accepts a grant, whether it originates from federal or state government, the sponsor enters a legally binding agreement. Both federal and state

governments expect the grant recipients to fully honor the grant agreements and have the necessary legal resources to enforce compliance.

In addition, if the airport sponsor received airport property (real estate) from the federal government, the sponsor is subject to revenue retention obligations, even if no AIP grants have ever been given to the airport. The revenue use requirements apply to every airport that receives “federal financial assistance”, which includes airport development and noise mitigation grants, transfers of federal property under the Surplus Property Act, and deeds of conveyance issued under specified federal statutes. Therefore, federal obligations regarding revenue diversion apply to all federal surplus property airports, even if no federal grants have been received by the airport sponsor.

### **What can be considered fund diversion?**

In general, revenues are considered to be diverted when an airport fails to use revenues generated from the activities that take place on the airport property for aviation purposes. More specifically, the following uses of airport revenue constitute revenue diversion:

- direct or indirect payments that are not based on a reasonable, transparent cost allocation formula calculated consistently for all units or cost centers of government
- use of airport revenue for general economic development, marketing and promotional activities unrelated to airports
- payments in lieu of taxes or other assessments that exceed the value of services provided or are not based on a reasonable, transparent cost allocation formula calculated consistently for other units or cost centers of government
- payments to compensate non-sponsoring governmental bodies for lost tax revenues exceeding stated tax rates
- loans of airport funds to a state or local agency at less than the prevailing rate of interest
- land rental to or use of land by the sponsor for non-aeronautical purposes at less than the amount that would be charged to a commercial tenant
- impact fees assessed by a non-sponsoring governmental body that the airport sponsor is not obligated to pay or that exceed such fees assessed against commercial or other governmental entities
- charging interest on a subsidy provided to the airport
- loans to the airport from internal government funds at greater than the prevailing rate of interest charged to other units or cost center of the government, or under otherwise less favorable terms

**What penalties or sanctions could be imposed if it is determined that funds have been diverted?**

If it is determined that revenues have been diverted, the grantor can immediately demand the repayment of the grant. It is stated in FDOT Aviation program assurances that: “if the agency takes any action that is not consistent with these assurances, the full amount of the Agreement will immediately become due and payable to the Florida Department of Transportation.” In addition, violation of the revenue retention requirement can result in losing the privilege of receiving federal/state grants in the future. This alone can be an extremely significant deterrent for some smaller airports.

Diverting airport revenue for non-aviation uses constitutes a violation of the grant agreement and can also result in lawsuits and civil penalties. The federal/state government is entitled to the same legal options as any other party to a contract that has been breached.

Federal transportation officials can also withhold general transportation funds from any local government that diverts revenue generated by a public airport. Under 49 USC §47107, the U.S. Secretary of Transportation “may withhold any amount from funds that would otherwise be made available to the sponsor, including funds that would otherwise be made available to a State, municipality or political subdivision thereof (including any multimodal transportation agency or transit authority of which the sponsor is a member entity) as part of an apportionment or grant if the sponsor fails to reimburse the airport for unlawfully diverted revenue.” This means that the U.S. Secretary of Transportation has the authority to withhold not only aviation, but also transit and rail funds from local governments that fail to reimburse airports for illegally diverted funds.

Among other actions, the Secretary of Transportation (USDOT) may also withhold the approval of any application to impose passenger facility charge (PFC) at any airport in response to the violation of airport revenue retention restriction by the sponsor. In addition, the Airport Revenue Protection Act of 1996 gives the U.S. Secretary of Transportation the authority to obtain (in court) civil penalties from the airport sponsor in the amount of up to three times the illegally diverted airport funds.

Finally, diverting revenue from the airport can result in a decrease in an airport’s credit rating leading to a downgrade in airport bonds and an increase in the cost of borrowing.

### Have there been cases where airports have been sanctioned?

Yes. There are multiple cases where sponsors of both commercial and GA airports were ordered to reimburse the airports for illegally diverted funds and also lost the privilege of receiving AIP grants in the future. The most infamous case of airport revenue diversion occurred at Los Angeles International Airport (LAX).

In 1993, the City of Los Angeles proposed to increase landing fees at LAX and to establish an airport surplus fund to help finance the City's police, fire and ambulance services. The new mayor called for using LAX revenues to fund an expansion of the City's police force. The City also held a referendum known as, "Proposition K," that eliminated the prohibition on revenue diversion contained in the City Charter. Later that year, LAX increased landing fees by 300 percent resulting in large protests and complaints from the air carriers. The City also demanded that the airport paid \$8.7 million in back "reimbursement" for the newly calculated indirect City service costs for the years 1983-1992.\*

These events led to the passage of provisions in the FAA Authorization Act of 1994. The new statute articulated again the long-standing federal prohibition against revenue diversion. It specifically prohibited airport payments for city services unrelated to the operation of the airport, imposed new reporting requirements on airports, and authorized civil penalties of up to \$50,000.

This prohibition did not stop the city of Los Angeles from diverting airport revenue from LAX. In 1985 the state of California had condemned some 1.5 million square feet (34 acres) of airport land to build the Century Freeway, which connected the airport with the I-405 freeway. Back then the state paid \$43 million for the land, which the city put in the airports account. But by 1994, the city of Los Angeles, facing financial problems, requested to transfer the money to the city general account claiming that the proceeds were not subject to revenue diversion restrictions. In 1995, Los Angeles transferred \$58.5 million (condemnation proceeds plus interest) from the airport account to the city's general fund.\*\*

Both the Aircraft Owners and Pilots Association (AOPA) and the Air Transport Association (ATA) filed a complaint against the city of Los Angeles. FAA concluded that the revenue was diverted illegally and ordered the City to return \$20.1 million plus interest to the airports account.\*\* That amount resulted from the interpretation of the rules that existed at that time. FAA ruled that only 34 percent of the total amount the City received constituted illegally diverted airport revenue. Under the present policy, the entire

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\*\*Gwartney, T., Estimating Land Values, July 1999, online:  
[www.henrygeorge.org/ted.htm](http://www.henrygeorge.org/ted.htm), accessed: Mar. 28, 2007.

proceeds would have been considered airport revenue and would have to be returned to the airport.

**My airport revenue is sent “downtown” and I have little say over what is spent on the airport. What should I do?**

It is the city/county airport owner’s responsibility to develop and maintain a clear accounting system of all revenue generated by the airport, all fees paid by the airport to the city/county government, and all services and payments provided by the city/county government to the airport. All direct and indirect fees assessed to the airport have to be calculated consistently for all city/county departments and have to be based on a reasonable and transparent cost allocation formula in order for the airport sponsor not to default on a contractual grant agreement with federal/state government. Airports can also maintain their own accounting system to keep track of payments to the city/county budget and receipts (either in-kind or monetary) benefiting the airport.

## SECTION TWO

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### I. State Requirements for Airport Revenue Use

Joint Participation Agreements (JPAs) used to convey FDOT Aviation grant funds to a city/county for airport use include the following requirements in JPA Exhibit “C”:

“(The Agency hereby assures that:) **Airport Revenue:** That all revenue generated by the airport will be expended for capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property, or for environmental or noise mitigation purposes on or off the airport.

**Duration:** The terms, conditions, and assurances of the Agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date that the Agreement is executed. **However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport.** There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with state funds.

**Federal Funding Eligibility:** It will take appropriate actions to maintain federal funding eligibility for the airport. Further, it will avoid any action that renders the airport ineligible for federal funding.”

#### **ENFORCEMENT:**

JPAs include the following provision in JPA Exhibit “C”:

“**Obligation:** The Agency shall honor these assurances for the duration of this Agreement. If the Agency takes any action that is not consistent with these assurances, the full amount of this Agreement will immediately become due and payable to the Florida Department of Transportation.”

These sections obligate the grant recipient agency to use airport revenue for the airport only; define the duration for airport revenue requirements as perpetual; and require the agency to keep the airport eligible for federal funding. This includes compliance with all of the federal requirements and restrictions on airport revenue use, which are detailed in the remainder of this section.

It is important to note that any JPA executed by the agency which contains these requirements applies to the airport and its revenue as a whole, as they are “global,” and not specific to only the project for which the JPA is issued. This obligates the agency to comply with these requirements on all airport revenue.

Similarly, a single instance of airport revenue diversion or inappropriate airport revenue use violates the provision in every grant containing these provisions. For some airports, this could result in potential repayment demands of hundreds of thousands, or even millions of dollars to FDOT.

### **SUMMARY:**

In summary, FDOT Aviation grants provide and require that:

- All airport revenue must be used on the airport, or for uses directly benefiting the airport.
- This requirement has no limit or expiration; it applies as long as the airport is operated by the sponsor as an airport.
- The airport must comply with all federal revenue use requirements and restrictions.
- Airport revenue diversion or inappropriate airport revenue use can result in demand for repayment of Aviation grant funds back to the FDOT, including funds from all grants that include these provisions.

## **II. Types of Federal Assistance**

To promote aviation, Federal Aviation Administration (FAA) can provide federal development assistance to the airports. In general, this assistance can come either in the form of land or in the form of Airport Improvement Program (AIP) grants. There are three different ways the federal government can provide land to the airports.

### **1. Surplus property transfers**

This refers to the transfer of the real property (land) that previously belonged to the federal government but is no longer needed by the government for the purposes of civil aviation. This can happen, for example, during the conversion of a former military base

into a civilian facility. Over 350 airports in the U.S. have received surplus property that came primarily from former military installations (1).

2. Non-surplus property conveyances (also known as Section 16, 23, 516, or 47125 airports)

The government can provide land free of charge to airports requiring expansion of aviation facilities. This can include building new runways and taxiways, extending the existing runway, building terminals, etc. Approximately 100 airports in the U.S. have received non-surplus property by requesting land for airport expansion projects (1).

If the land is no longer needed for the aviation purposes, it usually reverts to the federal government or can be released for non-aviation purposes. The Federal Aviation Administration, which normally is entitled to represent the interest of the government, has no authority to release non-surplus land for non-aviation purposes (an act of Congress is required).

3. AIP funds to purchase land

The government can provide grants through the AIP to assist airports with their development plans. Those grants are usually provided on a matching basis with favorable terms to the grant recipient. Grants to the airports for development purposes were authorized under the Federal Airport Aid Program from 1946 through 1970 and the Airport Development Aid Program from 1971 through 1981. Since its inception in 1982, the current AIP has provided more than \$20.5 billion (2) in grants to both commercial and general aviation (GA) airports. Approximately 2,000 GA airports have received AIP funding, totaling almost \$4.7 billion for airport development and land purchases (2). The money for AIP grants comes from the Aviation Trust Fund. For small primary, reliever, and general aviation airports, the AIP (federal) funding covers 95 percent of eligible costs, while the state and the airport sponsor cover the remaining 5 percent (14). Between FY 2004 and FY 2007, a temporary increase allowed the federal share of AIP funding to be up to 95 percent of costs while starting from FY 2008 the federal share is 90 percent (14).

### III. Definition of Airport Revenue

Accepting federal grants usually puts certain restrictions on the use of airport revenue. In order to avoid confusion, the precise definition of what constitutes airport revenue has to be provided. In general, any revenue received by the sponsor for an airport

activity is “airport revenue.” More specifically, the following types of fees, charges and payments received by the airport sponsor are considered to be “airport revenue” (4):

1. Revenue from Air Carriers, Tenants, Transferees, and Other Parties

Airport revenue includes all revenue received by the sponsor for the activities of others or the transfer of rights to others relating to the airport, including revenue received:

- a) for the right to conduct an activity on the airport or to use or occupy airport property
- b) for the sale, transfer, or disposition of real airport property not acquired with federal assistance or personal airport property not acquired with federal assistance or any interest in that property, including sale through condemnation proceeding
- c) for the sale of (or sale or lease of rights in) sponsor-owned mineral, natural, or agricultural products or water to be taken from the airport
- d) for the right to conduct an activity on, or for the use or disposition of, real or personal property or any interest therein owned or controlled by the sponsor and used for an airport-related purpose but not located on the airport

2. Revenue from Sponsor Activities

Airport revenue generally includes all revenue received by the sponsor for activities conducted by the sponsor itself as an airport owner and operator, including revenue received:

- a) from any activity conducted by the sponsor on airport property acquired with federal assistance
- b) from any aeronautical activity conducted by the sponsor
- c) from any non-aeronautical activity conducted by the sponsor on airport property not acquired with federal assistance, up to an amount appropriately attributable to the use of the property (such as the amount of rent that would be charged a commercial tenant)

## **IV. Description of AIP Grant Assurances**

In order to receive federal funding, airports must agree (in writing) to uphold a set of 39 AIP grant assurances related to the airports’ operation and maintenance. Those assurances are designed to protect public interest and the federal investment in safe

and efficient aviation system covering the issues from civil rights, economic discrimination, and revenue diversion to compatible land use requirements and exclusive rights at the airports. The initial set of assurances was updated and modified in 2005 adding two new assurances (“hangar construction” and “competitive access”) as required by Vision 100 – Century of Aviation Reauthorization Act (Public Law 108-176). The standard AIP grant assurances required for all AIP grants issued after March 29, 2005 and brief descriptions, are presented below (5):

### 1. General Federal Requirements

The sponsor assures that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the acceptance and use of federal funds.

### 2. Responsibility and Authority of the Sponsor

This assurance is intended to ensure that the sponsor (either public agency or private sponsor) has legal authority to apply for the grant and to finance and carry out the proposed project. The assurance also requires the sponsor to designate an official representative to act in connection with the grant application and to provide additional information if needed.

### 3. Sponsor Fund Availability

With this assurance the sponsor certifies that it has sufficient funds available to cover the portion of the project cost that will not be paid by the United States, and to assure the operation and maintenance of items funded under the grant agreement.

### 4. Good Title

The sponsor has to assure that it holds good title to the portion of property where the funded project will be implemented, or has to give the assurance that such title will be obtained in a timely manner.

### 5. Preserving Rights and Powers

The sponsor assures that it will not take or permit any action that would deprive it of any of the rights and powers necessary to perform the terms of the grant agreement. The sponsor has to certify that it will take steps to ensure that the airport will continue to function as a public-use airport for the duration of the assurance and will be operated and maintained in accordance with Title 49, United States Code.

**6. Consistency with Local Plans**

This assurance ensures that the funded project is reasonably consistent with plans of public agencies authorized to plan for the development of the area surrounding the airport.

**7. Consideration of Local Interests**

The sponsor assures that it has given fair consideration to the interest of the communities impacted by the project.

**8. Consultation with Users**

The sponsor certifies that, in making a decision to undertake the airport development project, it has undertaken reasonable consultations with affected parties.

**9. Public Hearings**

The sponsor assures that, in projects involving the location of an airport, an airport runway, or a major runway extension, it has provided the opportunity for public hearing for the purpose of considering the economic, social, and environmental effects of the project, as well as, its consistency with goals and plans of the local community in the vicinity of the airport.

**10. Air and Water Quality Standards**

In projects involving airport location, runway construction, or a major runway extension, the sponsor has to provide for the governor of the state in which the project is located to certify in writing that the project will be designed, constructed, and operated so as to comply with applicable air and water quality standards.

**11. Pavement Preventive Maintenance**

With respect to projects approved after January 1, 1995 for replacement or reconstruction of pavement at the airport, the sponsor has to assure that it has implemented an effective airport pavement maintenance-management program and will continue using such program for the useful life of any pavement constructed with federal financial assistance.

12. Terminal Development Prerequisites

For projects, which include terminal development at public use airports, the sponsor has to certify that at the day of the grant application submittal, the airport has all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code and all the security equipment required by the federal regulations.

13. Accounting Systems, Audit and Record Keeping

The sponsor assures that it will keep all the project accounts and records regarding the details of project cost and will make these records available to the Comptroller General for the purpose of audit and examination.

14. Minimum Wage Ranges

The sponsor shall include in all contracts, in excess of \$2000 that involve labor, the provisions establishing minimum rates of wages that the contractors shall pay to skilled and unskilled labor.

15. Veteran's Preference

The sponsor ensures that in the employment of labor for the project (except for executive, administrative, and supervisory positions), the preference shall be given to the veterans of the Vietnam era and disabled veterans provided such individuals are available and qualified to perform the work.

16. Conformity to Plans and Specifications

The sponsor certifies that it will execute the project subject to plans, specification and schedules approved by the Secretary of Transportation.

17. Construction Inspection and Approval

The sponsor will provide and maintain competent technical supervision and regular inspections at the construction site throughout the project to assure that the work conforms to the approved plans, specifications, and schedules.

18. Planning Projects

The sponsor will execute the project in accordance with the approved program narrative contained in the project application and will provide the Secretary with periodic reports

on planning work activities. The Secretary will have the right to disapprove the use of any consultants and subcontractors suggested by the sponsor and will have unrestricted authority to publish disclose and distribute any material prepared in connection with the grant.

#### 19. Operation and Maintenance

The sponsor assures that the airport and all the facilities necessary to serve the aeronautical users of the airport will be operated at all times in a safe and serviceable condition and in accordance with minimum standards required for maintenance and operation.

#### 20. Hazard Removal and Mitigation

The sponsor will take appropriate actions to adequately clear existing airport hazards (by removing, lowering, marking or lighting) to assure the protection of the airspace required for instrument and visual operations to the airport.

#### 21. Compatible Land Use

The sponsor assures that it will take appropriate action, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations.

#### 22. Economic Nondiscrimination

The sponsor certifies that it will make the airport available for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities including commercial aeronautical activities.

#### 23. Exclusive Rights

The sponsor will permit no exclusive right for the use of the airport by any person providing or intending to provide aeronautical services to the public. Providing services at an airport by a single fixed-based operator (FBO) is not considered exclusive right if: (1) it would be unreasonably costly, burdensome, or impractical for more than one FBO to provide such services; (2) allowing more than one FBO would require the reduction of space leased under the existing agreement with FBO.

24. Fee and Rental Structure

The sponsor assures that it will maintain the fee and rental structure for the facilities and services at the airport, which will make the airport as self-sufficient as possible under the circumstances existing at the particular airport, accounting for such factors as the volume of traffic and economy of collection.

25. Airport Revenue

All revenues generated at the airport (from rental of property or from providing services) shall stay at the airport, meaning that it shall be expended for the capital or operating costs of the airport. The violation of this assurance can result in civil penalties or other sanctions to the airport sponsor.

26. Reports and Inspections

The sponsor assures that it will prepare and submit to the Secretary annual or special financial and operations reports that may be reasonably requested by the Secretary, and that it will make such reports available to the public.

27. Use by Government Aircraft

The sponsor is required to assure that it will make available all of the usable facilities of the airport for landing and takeoff of U.S. Government aircraft at all times without charge, except if the use of government aircraft is substantial. In the case of substantial use by government aircraft, a charge may be made for a reasonable share, proportional to such use, of the cost of maintaining and operating the facilities used.

28. Land for Federal Facilities

The sponsor will provide airport space, facilities, and any areas of land or water with no cost to federal government for use in connection with any air traffic control or air navigation activities, or weather-reporting activities related to air traffic control, as the Secretary considers necessary.

29. Airport Layout Plan

The sponsor will keep up to date, and submit for Secretary's approval, an airport layout plan showing in detail: (1) boundaries of the airport and all proposed additions; (2) the location and nature of all existing and proposed airport facilities and structures (such as

runways, taxiways, aprons, hangars, terminal buildings and roads); and (3) the location of all existing and proposed non-aviation areas and of all existing improvements.

### 30. Civil Rights

This assurance obligates the sponsor to comply with the rules ensuring that no person shall be excluded from participating in any activity, benefiting from the current grant funds, on the basis of race, creed, color, national origin, sex, age or handicap.

### 31. Disposal of Land

This assurance requires the sponsor to dispose of the land, acquired with federal assistance (when the land is no longer needed), at fair market value and to return the portion of the proceeds proportionate to the United States' share of land acquisition to the Secretary of Transportation.

### 32. Engineering and Design Services

The sponsor certifies that it will award each contract or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, etc. in the manner specified in Title IX of the Federal Property and Administrative Services Act of 1949 or other equivalent qualification-based requirement.

### 33. Foreign Market Restrictions

The sponsor assures that it will not allow the funds provided under this grant to be used for acquiring any products or services from the countries listed by the United States Trade Representative as denying fair and equitable market opportunities for U.S. products and companies.

### 34. Policies, Standards, and Specifications

The sponsor will carry out the project in accordance with policies, standards and specifications approved by the Secretary and in accordance with applicable state policies and standards.

### 35. Relocation and Real Property Acquisition

This assurance requires the sponsor to be guided in acquiring real property for the project by the land acquisition policies in Subpart B of 49 CFR Part 24 and pay or

reimburse property owners for necessary expenses as specified in Subpart B.

### 36. Access by Intercity Busses

The sponsor assures that the airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport. The sponsor, however, has no obligation to fund special facilities for buses or for other modes of transportation.

### 37. Disadvantaged Business Enterprises

The grant recipient assures that it will not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program.

### 38. Hangar Construction

The airport owner or operator will grant a long term lease to the person (an aircraft owner) willing to construct a hangar at the airport at his/her expense.

### 39. Competitive Access

If the airport owner or operator has been unable to accommodate one or more requests by an air carrier for access to gates in order to provide or expand service, it shall provide the Secretary with a report describing the details of the request and the explanation as to why the requests could not be accommodated.

Once an airport sponsor accepts an AIP grant, these assurances become binding contractual obligations between the sponsor and the federal government. The full description of the assurances is presented in Appendix A. Generally, grant requirements remain in effect through the useful life of the facility developed under the grant, but do not exceed 20 years. After 20 years, FAA has limited enforcement capabilities (3). However, in the case of using grant funds to purchase land for the airport, these requirements stay in effect as long as the airport is on the land.

## V. Airport and Airway Improvement Act (AAIA)

### 1. Revenue Retention Provision

The financial grants (through AIP) and land transfers restrict both the use of airport

land, and the use of airport revenue to airport purposes. Under the Airport and Airway Improvement Act (AAIA) of 1982, public agencies receiving federal funding for airport development since September 3, 1982 are required to comply with the revenue retention requirement (4). Revenue retention assurance (Assurance #25) requires airport owners to “use all the revenue generated by the airport for the capital or operating costs of the airport, the local airport system or other local facilities that are directly related to the actual transportation of passengers or property.” In other words, AAIA requires that the revenue generated at the airport is spent at the airport for operations and improvements. The full text of the Airport and Airway Improvement Act is presented in Appendix B.

The Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100-223 (December 30, 1987) amended the revenue retention requirement prescribed in AAIA by requiring that airport-generated revenue be expended on the facilities that are “directly and substantially related to actual air transportation of passengers or property” (4). This amendment narrowed the permissible uses of airport revenues to expenditures that are not only “directly” but also “substantially” related to actual air transportation to further assure that such revenues are not diverted for general expenses.

The revenue retention provision, however, is not intended to apply to revenues generated by the airport tenants or users themselves. It only applies to the revenues that the airport is paid by those tenants or users for their use of airport land or facilities (e.g. land leases, rentals, access charges, landing fees, etc.). For example, the revenue retention provision would not apply to revenue generated by such facilities as a water reservoir or a convention center, which might be located on airport property but serve neither the airport nor any air transportation purpose. Only the amount attributable for the use of airport property (rent that a commercial tenant would pay for land or facility rental) would be considered airport revenue and would be subject to retention provision.

## 2. Grandfather Provision

The revenue retention requirement has a “grandfather” provision—an exception that allows airport revenue to be used for non-airport purposes in the cases when the use predates the AAIA. In particular, revenue use restrictions do not apply to the airports’ debt obligations or provisions in governing statutes issued or enacted before September 3, 1982 (4). None of the grandfathered airports are in Florida.

### 3. Rationale for Revenue Retention Provision

The plain purpose of revenue retention is to prevent an airport owner or operator who receives federal assistance from using airport revenues for expenditures unrelated to the airport.

The main rationale for the revenue retention provision is the intent of the federal government to ensure that the national network of airports is well-functioning, efficient and safe. This is possible only with adequate investment in airport infrastructure of both commercial and GA airports. However, the federal AIP program is capable of providing only about 20 percent to 30 percent of the total capital development needs of the airports (4). To ensure the maximum effectiveness of the AIP program, and thus adequate infrastructure investment, airports should also spend all of the revenue they generate for operations and development of the airport. A federal grant should not provide the airport with an opportunity to use federal funds to replace other airport-generated funds and use the latter for non-aviation related activity. Thus, revenue retention requirement serves as the sort of “unlimited match” on a federal grant. The goal is to make the airports as self-sustaining as possible and minimize the need for further federal assistance.

## VI. Land Use Policies

The disposition of land acquired by federal donation or with federal assistance is governed by specific requirements included in the agreement between the United States and the sponsor. Typically, those provisions are more restrictive than the general restrictions on the use of the airport revenue. Although, the revenue received through the sale of sponsor-owned property (acquired without federal assistance) technically is not subject to revenue retention requirements (except when such property is on approved airport layout plan), historically, FAA has strongly discouraged the use of such revenue for the non-airport purposes. If land is on the Exhibit “A” attached to a grant, it is considered obligated airport property and is subject to revenue use provisions, regardless of how it was obtained, until resealed by FAA.

### 1. Airport Layout Plan

An Airport Layout Plan is the agreement between FAA and the airport owner regarding the allocation of airport areas for specific operational and support facilities. In general, land designated in the plan cannot be used, leased, or sold for purposes other than airport purposes without the consent of FAA. To alter the land use, an airport owner

must receive FAA permission regardless of whether the land was acquired with or without federal assistance. FAA can grant its permission (called “land release”) if the land is not needed for present or foreseeable future airport purposes.

When FAA releases the land for non-airport purposes to generate revenues for an airport, its policies require that the airport receives fair market value for the sale or lease of the land. Generally, if an airport sells or leases land for less than fair market value, the revenues are considered to be lost or foregone, and this constitutes revenue diversion.

### VII. Consequences of Non-compliance

In violating revenue retention requirements, an airport runs the risk of losing the privilege of eligibility for AIP grants, facing civil penalties, and FAA lawsuits, as well as the possibility of a credit rating downgrade that could jeopardize future debt financing. When the airport fails to comply with federal requirements, FAA has a number of enforcement tools:

#### 1. Withholding AIP Grants

FAA can withhold the AIP funds (both new and existing grants) from the airport, or deny requested land releases. Pulling out federal assistance money might prove to be not a very effective deterrent to some airports especially the largest ones that can go without federal assistance. However, many small GA airports can't afford to lose federal grant money.

#### 2. Judicial Enforcement

The federal government is entitled to the same legal options as any other party to a contract that has been breached. FAA can seek court judgment in the case of violation of the revenue retention provision.

#### 3. Civil Penalties

FAA may assess civil penalties of up to \$50,000 without going to court (6). In addition, Airport Revenue Protection Act of 1996 (P.L. 104-264) gives statutory authority to the U.S. Secretary of Transportation to assess civil penalties (filed in U.S. District Court) against the airport sponsor in the amount of up to three times the amount of the illegally diverted airport revenue (8).

#### 4. Withholding Transportation Funds

Congress has strengthened FAA's enforcement power to resolve revenue diversion cases by including restrictive language in appropriations and transportation laws. For fiscal years 1994 and 1995, Congress specified that transportation funds could be withheld from any local government that diverts revenue generated by a public airport (7). The Airport Revenue Protection Act of 1996 made this enforcement action permanent, giving the Secretary of Transportation the authority to withhold not only aviation, but also transit and rail funds from local governments that fail to reimburse airports for illegally diverted funds and to assess civil penalties against those that fail to reimburse the federal government (8). The full text of the Airport Revenue Protection Act of 1996 is presented in Appendix C.

#### 5. Credit Rating

Another possible consequence of diverting revenue from the airport, which is often overlooked, is a decreased credit rating that can lead to a downgrade of airport bonds, and an increase in the cost of borrowing. According to Moody's Investors Service and Standard & Poor Corp., diversion of revenue from the airport would force both agencies to review the airport's credit rating, because diverting funds could cut into an airport's revenue and increase its debt. When funds are diverted from a public facility, the credit rating agencies (Moody's and S&P) usually place the facility on credit watch with negative implications, meaning that a credit watch is usually a precursor for a lower rating (9).

### VIII. FAA Enforcement Procedure

Despite the enforcement tools available, FAA prefers to address airport noncompliance through negotiations and settlements. Informal resolution of disputes is initiated prior to formal enforcement procedures. If the airport owner violates its assurance obligations, the FAA regional or district office will first try to obtain voluntary compliance. When the airport owner cannot be brought into voluntary compliance, the FAA regional or district office will notify the airport owner in writing about the violation, specify corrective action to bring the owner back into compliance, and prescribe a deadline for the corrective action. If the airport owner refuses to take the suggested corrective action, the FAA regional and headquarters offices coordinate the enforcement actions.

FAA relies heavily on airports' voluntary compliance and self-certification rather than direct oversight of all airports. Furthermore, FAA also relies on third-party complaints

regarding non-compliance, meaning that the agency typically will only investigate the airport compliance if it receives a complaint from a third party accusing the airport of non-compliance with federal requirements. This, however, does not mean that there is no compliance oversight at all. As directed by Congress, FAA conducts on-site land use compliance inspections at 18 federally-obligated airports annually, with the minimum of 2 airports inspected per region (15). FAA Airport Compliance Branch leaves the selection of airports to be inspected up to the Regional Airports Divisions and their field offices. Typically, the regional and field offices rely on past inspections, complaints, and specific requests from headquarters when selecting airports for the annual land-use inspection (15).

## IX. Examples of Activities Violating Federal Requirements

### 1. Revenue Use

In general, revenues are considered to be diverted when an airport fails to use revenues generated from the activities that take place on the airport property for airport purposes. In particular, FAA prohibits airport revenue to be used for the following purposes (10):

- Direct or indirect payments, other than payments that reflect the value of services and facilities provided to the airport that are not based on a reasonable, transparent cost allocation formula calculated consistently for other units or cost centers of government
- Use of airport revenue for general economic development, marketing and promotional activities unrelated to airports or airport systems
- Payments in lieu of taxes, or other assessments that exceed the value of services provided or are not based on a reasonable, transparent cost allocation formula calculated consistently for other units or cost centers of government
- Payments to compensate non-sponsoring governmental bodies for lost tax revenues exceeding stated tax rates
- Loans of airport funds to a state or local agency at less than the prevailing rate of interest
- Land rental to, or use of land by, the sponsor for non-aeronautical purposes at less than the amount that would be charged a commercial tenant
- Impact fees assessed by a non-sponsoring governmental body that the airport sponsor is not obligated to pay or that exceed such fees assessed against commercial or other governmental entities

### 2. Land Use

The following are considered unauthorized uses of airport land and are prohibited by FAA:

- Selling or leasing the land acquired with federal assistance for less than its fair market value
- Using the land acquired with federal assistance for non-airport related purposes without the consent of FAA
- Selling, leasing or altering the use of airport land designated in the Airport Layout Plan without the permission of FAA, regardless of whether the land was acquired with or without federal assistance
- Altering the use of land or transferring other airport property that causes harm to the airport, creates incompatible land-use, or interferes with current or future aeronautical activities or functions at the airport
- Any sale, lease or alteration of use of airport property (including land) that can result in the safety hazards to civil aviation

### 3. Exceptions

There are few exceptions that can justify the use of below-the-market rent of airport land and property. In most cases, FAA can take a flexible approach to higher education institutions located at the airport. Some airports have leased or transferred property to the non-profit accredited collegiate aviation programs on very favorable terms (less than fair market value). FAA recognizes that the development of the aviation “human infrastructure” is just as important as the development of the physical infrastructure, and facilitates those aviation programs located on the airports’ property. Airport space is also often leased at below market rates to not-for-profit air and space museums located at the airport. Those types of rental arrangements are not considered revenue diversion because these aviation programs and museums support airport operations and contribute to the understanding and support of the aviation.

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## References

1. Aircraft Owners and Pilots Association, Online publication, Issue Brief: Airport Property Releases, April 2000, <http://www.aopa.org/whatsnew/la-airport.html?PF> accessed: Jul 24, 2006.
2. General Aviation Airports: Unauthorized Land Use Highlights Need for Improved Oversight and Enforcement, Report to Congress, U.S. General Accounting Office, GAO/RCED-99-109, May 1999.
3. AOPA's Guide to FAA Airport Compliance, Aircraft Owners and Pilots Association, 2000.
4. Policies and Procedures Concerning the Use of Airport Revenue, Federal Aviation Administration, Federal Register, Vol. 64, No. 30, February 16, 1999.
5. Airport Improvement Program Grant Assurances (3/2005), Federal Aviation Administration Memorandum, PGL-05-03, June 3, 2005.
6. 49 U.S.C. §46301 (P.L. 103-305, section 112).
7. P.L. 103-122 section 328 and P.L. 103-331 section 325.
8. P.L. 104-264, sections 804, 805.
9. Deady, T. Credit Analysts Cast a Cold Eye on Success of Airport Ballot Measure, Los Angeles Business Journal, Nov 16, 1992.
10. FAA Releases Proposed Airport Revenue Diversion Policy, AAE Airport Report, Vol. XLI, No. 5, Mar. 1, 1996.
11. Airport and Airway Improvement Act (P.L. 97-248), 1982
12. Dempsey, P. Theory and Law of Airport Revenue Diversion, Airport Cooperative Research Program (ACRP) Legal research digest, May 2008.
13. 49 U.S.C. §47107.
14. Airport Improvement Program (AIP) Handbook, Federal Aviation Administration, Order 5100.38C, June 28, 2005
15. Johnson, S. Preparing for an Airport Land Use Inspection, conference presentation, Federal Aviation Administration Southwest region Protecting the Air and Improving the Ground Conference, Oct. 25, 2007.





**Florida Department of Transportation**