

LEGISLATIVE HISTORY OF R.S. 54:15A-1 thru 4  
(Taxation of Air Carriers)

Copy 2

## Previous bills:

1968-A637

April 22- Introduced by Caputo and others

Nov. 13. - Lost vote in Assembly

A656

April 22 - Introduced by Policastro and Owens

Died in committee

The bill which became law was:

L. 1969 - Chapter - A306 C. 200

January 27 - Introduced by Caputo and others

March 24 - Passed in Assembly, amended

May 15 - Passed in Senate, amended

May 20 - Senate amendment passed in Assembly

July 2 - Vetoes by the Governor (copy enclosed)

No statement

Amended during passage (copy enclosed of original bill and amendments)

Governor's veto message (copy enclosed)

December 1 - Passed over veto by Legislative

No hearing or reports were located

Newspaper clippings

copies enclosed of articles listed below

Shabaxian, Bob

"City Ask Airport Head Tax"

Newark Evening News,

January 11, 1968

"Air Passenger Tax Bill Aired"

Newark Evening News,

April 19, 1968

"Would Tax State-Based Plane Trips"

Newark Evening News,

April 18, 1968

Baglivo, Angelo

"Air Passenger Tax Vote Due"

Newark Evening News,

November 16, 1968

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(2)

"Assembly Kills Head Tax Bill for Airports"  
Trenton Evening Times,  
November 19, 1968

Baglivo, Angelo  
"Newark Airport Head Tax Rejected"  
Newark Evening News,  
November 19, 1968

Sullivan, Joseph F.  
"Airport Head Tax Advances"  
Newark Evening News,  
March 18, 1969

"Give Newark a Chance" (editorial)  
Newark Evening News,  
March 19, 1969

Sullivan, Joseph F.  
"Airport Tax Bid Seen as Futile"  
Newark Sunday News,  
March 23, 1969

Sullivan, Joseph F.  
"Assembly Approves Airport Head Tax"  
Newark Evening News,  
March 25, 1969

"Move for Tax in Air Travel"  
Newark Evening News,  
May 13, 1969

McGowan, John T.  
"Newark Airport Head Tax Passes Senate; Assembly to Act"  
Newark Evening News,  
May 16, 1969

McGowan, John T.  
"Hughes Vetoes, Denounces Airport Head Tax"  
Newark Evening News,  
June 20, 1969

Baglivo, Angelo  
"May Override Head Tax Veto"  
Newark Evening News,  
November 21, 1969

"Tax for Air Travelers is Voted by the New Jersey Legislature"  
New York Times,  
December 2, 1969

CHAPTER 200 LAWS OF N. J. 1969

Filed with Sec. of State 12-2-69

Passed 12-1-69

Governor's Office

[SECOND OFFICIAL COPY REPRINT]

## ASSEMBLY, No. 306

# STATE OF NEW JERSEY

INTRODUCED JANUARY 27, 1969

By Assemblymen CAPUTO, FIORE, DENNIS, KALTENBACHER,  
KEAN and WILSON

Referred to Committee on Transportation and Public Utilities

AN ACT imposing certain service charges for the use of public air-  
ports by passenger air carriers.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. As used in this act "passenger air carrier" means and includes  
2 a common carrier of passengers for hire by aircraft on a regular  
3 schedule or schedules and a carrier of passengers for hire by air-  
4 craft on a contract or charter basis.

1 2. Every passenger air carrier engaged in this State, whether in  
2 interstate or intrastate operations, who uses in connection with such  
3 business a public airport or airports *\*\*located within a municipality*  
4 *or municipalities with a population of 100,000 or more\*\** which shall  
5 be constructed, operated or maintained, in whole or in part, through  
6 or with funds contributed directly or indirectly by the State, or  
7 by any county, municipality or public authority, shall pay the  
8 following service charges with respect to each passenger for hire  
9 emplaning upon its aircraft at any such airport: \$1.00 for each  
10 passenger emplaning upon an aircraft scheduled for a destination  
11 within the continental United States; \$2.00 for each passenger em-  
12 planing upon an aircraft scheduled for a destination without the  
13 continental United States; \$0.50 for each passenger emplaning  
14 upon a helicopter whose destination is another airport or heliport.  
14A Each passenger air carrier subject to the provisions of this act shall  
14B file with the Director of the Division of Taxation, upon a form pre-  
16 scribed by the director, on or before the fifteenth day of each month,  
17 a return showing the number of passengers for hire emplaning  
18 upon the aircraft of such passenger air carrier at each such airport  
19 in this State during the preceding calendar month, together with

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in the above bill  
is not enacted and is intended to be omitted in the law.

20 such other pertinent information as the director shall require, and  
21 shall remit with the return the service fees imposed hereby.

22 Upon audit of the return, but no later than the first day of the  
23 next calendar month, the director shall forward to each munici-  
24 pality within whose boundaries a public airport is located an  
25 amount equal to the service fees collected for use of the airport  
26 \***[or airports in the municipality]**\*. *\*In the event that the airport*  
27 *is located within 2 or more municipalities, the service fees shall be*  
28 *apportioned among them in **\*\*the following\*\*** proportion **\*\*[to the***  
29 *true value of the real property of the airport located within each*  
30 *of them.]* \* **\*\*80%** to the municipality with the largest popula-  
31 tion and the remainder to the remaining municipality or municipal-  
32 ities in proportion to their respective populations.\*\* Funds so re-  
33 ceived by a municipality may be used for general municipal pur-  
34 poses.

1 3. Nothing herein shall prevent a passenger air carrier from  
2 collecting, directly or indirectly, the service fee payable with respect  
3 to each paying passenger from such passenger.

1 4. If any person, firm or corporation subject to the provisions  
2 of this act shall fail or neglect to pay the fees imposed thereby, the  
3 same may be collected by the Attorney General through civil pro-  
4 ceedings in any appropriate tribunal.

1 5. This act shall take effect July 1, 1969.

ASSEMBLY, No. 306

STATE OF NEW JERSEY

INTRODUCED JANUARY 27, 1969

By Assemblymen CAPUTO, FIORE, DENNIS, KALTENBACHER,  
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Referred to Committee on Transportation and Public Utilities

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1 BE IT ENACTED *by the Senate and General Assembly of the State*  
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1 1. As used in this act "passenger air carrier" means and includes  
2 a common carrier of passengers for hire by aircraft on a regular  
3 schedule or schedules and a carrier of passengers for hire by air-  
4 craft on a contract or charter basis.

1 2. Every passenger air carrier engaged in this State, whether in  
2 interstate or intrastate operations, who uses in connection with such  
3 business a public airport or airports which shall be constructed,  
4 operated or maintained, in whole or in part, through or with funds  
5 contributed directly or indirectly by the State, or by any county,  
6 municipality or public authority, shall pay the following service  
7 charges with respect to each passenger for hire emplaning upon  
8 its aircraft at any such airport: \$1.00 for each passenger emplan-  
9 ing upon an aircraft scheduled for a destination within the con-  
10 tinental United States; \$2.00 for each passenger emplaning upon  
11 an aircraft scheduled for a destination without the continental  
12 United States; \$0.50 for each passenger emplaning upon a heli-  
13 copter whose destination is another airport or heliport. Each  
14 passenger air carrier subject to the provisions of this act shall file  
15 with the Director of the Division of Taxation, upon a form pre-  
16 scribed by the director, on or before the fifteenth day of each month,  
17 a return showing the number of passengers for hire emplaning  
18 upon the aircraft of such passenger air carrier at each such airport  
19 in this State during the preceding calendar month, together with  
20 such other pertinent information as the director shall require, and  
21 shall remit with the return the service fees imposed hereby.

22 Upon audit of the return, but no later than the first day of the  
23 next calendar month, the director shall forward to each munici-  
24 pality within whose boundaries a public airport is located an  
25 amount equal to the service fees collected for use of the airport  
26 or airports in the municipality. Funds so received by a munici-  
27 pality may be used for general municipal purposes.

1 3. Nothing herein shall prevent a passenger air carrier from  
2 collecting, directly or indirectly, the service fee payable with respect  
3 to each paying passenger from such passenger.

1 4. If any person, firm or corporation subject to the provisions  
2 of this act shall fail or neglect to pay the fees imposed thereby, the  
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SENATE COMMITTEE AMENDMENTS TO

**ASSEMBLY, No. 306**

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**STATE OF NEW JERSEY**

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ADOPTED MAY 12, 1969

Amend page 1, section 2, line 3, after "or airports", insert "located within a municipality or municipalities with a population of 100,000 or more".

Amend page 2, section 2, line 28, after "in", insert "the following".

Amend page 2, section 2, lines 28 and 29, delete "to the true value of the real property of the airport located within each of them", and insert in lieu thereof "80% to the municipality with the largest population and the remainder to the remaining municipality or municipalities in proportion to their respective populations".

ASSEMBLY COMMITTEE AMENDMENTS TO  
**ASSEMBLY, No. 306**

—•—  
**STATE OF NEW JERSEY**  
—•—

ADOPTED MARCH 17, 1969

Amend page 2, section 2, line 26, delete “or airports in the municipality”.

Amend page 2, section 2, line 26, before “funds”, insert “In the event that the airport is located within 2 or more municipalities, the service fees shall be apportioned among them in proportion to the true value of the real property of the airport located within each of them.”.



STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

July 2, 1969

ASSEMBLY BILL NO. 306

To the General Assembly:

I herewith return Assembly Bill No. 306, without my approval, for the following reasons:

This bill seeks to impose upon every passenger air carrier a "service fee" of from \$.50 to \$2.00 for each passenger embarking from an airport located in one or more municipalities with a population of 100,000 or more. Such "fee" would be in the amount of \$1.00 for each passenger to be carried within the United States, \$2.00 for each passenger for an overseas destination, and \$.50 for each helicopter passenger. The air carriers would be authorized to collect these amounts from their individual passengers.

I believe that the record of this Administration is clear with regard to the needs of our urban areas, and, particularly, our State's largest city. I have proposed time and again legislation, some of it unpopular, which would provide significant aid to our hard-pressed cities and local taxpayers. For if we do not cure the sickness in our urban areas, it will surely spread to all of the State. My proposals have, in most instances, been rejected. Now the Legislature comes forward with a bill designed to aid the cities of Newark and Elizabeth which is clearly unconstitutional on its face and is, in effect, a cruel hoax on citizens of these communities. For if I were to sign this bill, not only would these cities never receive one nickel, but, in fact, we would actually be adding to their burden by thousands of dollars in legal fees in a futile attempt to prove a point on which the courts of the United States have not varied from 1849 to the most recent decision in 1969.

Although the amounts required to be collected under this bill are termed "service fee", there can be no question that the bill constitutes a direct tax upon interstate and foreign commerce.

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EXECUTIVE DEPARTMENT

Assembly Bill No. 306

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It is well established that there exists as an attribute of national citizenship the right to travel in interstate and foreign commerce free of restraints or burdens imposed by the several states. This right was first recognized in The Passenger Cases, 48 U.S. 283 (1849), which held that a head tax imposed upon every arriving ship passenger was invalid. Mr. Chief Justice Taney, although believing that a state might validly tax aliens, held that all citizens possess "the right to pass and repass through every part of it [the United States] without interruption" and that "a tax imposed by a State for entering its territories or harbors is inconsistent with the rights which belong to the citizens of other States as members of the Union." (p. 492).

This statement became the holding of Crandall v. Nevada, 73 U.S. 35 (1867), which is precisely on point. Nevada levied a tax of \$1.00 upon every person leaving the state by means of common carrier. As in the proposed legislation, liability for the payment of the tax was placed on the carriers who, however, were authorized to collect it from the passengers. In striking down this law, the Supreme Court said:

"He [the citizen] has the right to come to the seat of government to assert any claim he may have upon that government, or to transact any business he may have with it. To seek its protection, to share its offices, to engage in administering its functions, he has a right of free access . . . and this right is in its nature independent of the will of any state over whose soil he must pass in the exercise of it." (p. 44)

This problem was reaffirmed as recently as the Supreme Court decision April 21, 1969, in Shapiro v. Thompson, 37 Law Week 4333, invalidating residency requirements for the receipt of welfare benefits as an infringement of the right of travel and as a denial of legal protection.

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EXECUTIVE DEPARTMENT

Assembly Bill No. 306

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This right insofar as interstate travel is concerned has been further strengthened by repeated Supreme Court decisions of great significance. Thus, Twining v. New Jersey, 211 U.S. 78 (1908), stated that "among the rights and privileges of national citizenship recognized by this court are the right to pass freely from state to state . . ." (p. 97). In Edwards v. California, 314 U.S. 160 (1941), the concurring opinion stated "the right to move freely from state to state is an incident of national citizenship protected by the privileges and immunities clause of the Fourteenth Amendment against state interference." (p. 178). United States v. Guest, 383 U.S. 745 (1966), held that "[T]he constitutional right to travel from one State to another . . . occupies a position fundamental to the concept of our Federal Union." (p. 757).

And insofar as foreign travel is concerned, the imposition of a State tax upon international passengers was held invalid in Henderson v. Wickham, 92 U.S. 259 (1875), Chy Lung v. Freeman, 92 U.S. 276 (1875), and People v. Compagnie General Transatlantique, 107 U.S. 59 (1883).

There are no cases to the contrary.

In addition to violating the fundamental right of the citizen to travel, the act also creates an arbitrary and invalid discrimination in violation of the equal protection clause of the Federal Constitution. This discrimination is aimed at departing commercial air passengers as opposed to arriving passengers. It also creates an arbitrary and unjustified discrimination among the subclasses of passengers covered by the act. There seems no reason, in fact or in theory, to impose a charge on departing passengers but not against others similarly situated with respect to airport facilities such as arriving passengers, general aviators, and visitors to the airport.

The bill, since it limits this tax only to Newark airport, also creates an invalid discrimination with regard to all the other airports from which commercial passenger flights depart in New Jersey.

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EXECUTIVE DEPARTMENT

Assembly Bill No. 306

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Finally, the tax levied by this bill, although termed a "service charge," bears no reasonable relation to the use of airport facilities or to any expenditure which may be borne by the city or the State in connection with the operation of the airport. Therefore, it is in violation of the Commerce Clause of the Federal Constitution.

It has long been held, with respect to state fees for the use of highways and other state facilities, that the formula or classification adopted by the state must bear a reasonable relation to the use of such facilities, McCarroll v. Dixie Greyhound Lines, Inc., 309 U.S. 176 (1940), Interstate Transit, Inc. v. Lindsey, 283 U.S. 183 (1931). As noted above, the charge imposed by the act is entirely arbitrary and bears no conceivable relationship to the actual use made of airport facilities either by passengers or by carriers, nor are funds raised by it required to be devoted to airport uses. It differs significantly from highway and waterway use charges upheld as permissible, in which the amount of the fee is based on mileage, weight, or some other factor related to actual use.

The discrimination in the application of this tax makes it plain that actual use has not been considered at all. There is no tax burden whatsoever on air cargo freight or people who handle it when clearly this is a use of the airport and its facilities. Further, the sponsors of this legislation have made no showing, nor could a reasonable man make a showing, that an international traveler will somehow make greater use of the airport facilities and should, therefore, be taxed twice as much as a domestic traveler. This list of inequities, incongruities, and injustices could be developed at great length, but I believe that the unconstitutional nature of this act has already been most clearly established.

It has been argued both on the floor of the Legislature and to me personally that it is solely the province of the courts to decide constitutionality, and that it is not my function to interpose judgment but that I should merely let the courts decide. I would point out to

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EXECUTIVE DEPARTMENT

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people who hold this view that both I, as Governor, and the members of the Legislature are sworn to uphold the Constitution of the United States. It is folly, therefore, for either of us to overlook our plain duty in the face of an obviously unconstitutional act in an attempt to curry fleeting favor with voters or to avoid the hard issues of significant aid to our urban areas.

I cannot be persuaded that I should stand aside from my constitutional duty and certify to a long costly and fruitless court battle, a measure which will never produce one cent of revenue for the cities of Newark or Elizabeth. For a court injunction would issue the very first day staying the collection of this tax until the inevitable negative decision was rendered.

Thus, for example, when the State of Indiana only last year attempted to impose a charge of \$1.00 on every departing passenger from Dress Memorial Airport in Evansville, a suit was immediately brought by the air carriers affected and the collection of that tax was permanently enjoined and the ordinance held to violate the United States and Indiana Constitutions. Not one cent was ever collected.

I believe, therefore, that it is my plain duty, as it should have been the Legislature's, to refuse to approve this obviously unconstitutional act. Other public officials in similar situations have not shied from this duty. Thus, in recent years formal opinions by the City Attorney of the City of Los Angeles, by the Attorney General of the State of North Carolina, by the Attorney General of the State of Washington, and by the Attorney General of the State of Hawaii, have all held similar legislation to be an unconstitutional burden on interstate commerce and on the right of travel of all citizens.

Nowhere is there reported one instance where such legislation has been held constitutional in any state of the United States.

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EXECUTIVE DEPARTMENT

Assembly Bill No. 306

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I trust members of the Legislature will join with me in seeking to aid Newark and our other urban areas with real rather than false and illusory programs.

For the above reasons, I must withhold approval of this type of legislation.

I therefore return Assembly Bill No. 306 without such approval.

Respectfully,

/s/ Richard J. Hughes

[seal]

/s/ Alan J. Karcher