

Calendar No. 383

107th Congress }
2d Session }

SENATE

{ REPORT
{ 107-154

AIRMEN AGE LIMITATION

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 361

together with

ADDITIONAL VIEWS



MAY 22, 2002.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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AIRMEN AGE LIMITATION

MAY 22, 2002.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 361]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 361) to establish age limitations for airmen, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of this legislation, as reported, is to increase the Federal Aviation Administration's (FAA) regulatorily mandated retirement age for commercial airline pilots from 60 to 63 years of age while clearly maintaining the FAA's authority to take steps it deems appropriate to ensure the safety of air transportation operations.

BACKGROUND AND NEEDS

Federal aviation regulations prohibit any air carrier from using the services of any person as a pilot, and prohibit any person from serving as a pilot on a commercial airplane, if that person has reached his or her 60th birthday. See 14 C.F.R. 121.383(c). The FAA adopted the regulation, known as the Age 60 Rule, in 1959 because of concerns that a hazard to safety was presented through the utilization of aging pilots in air carrier operations.

Prior to September 11, 2001, according to media reports and some aviation industry representatives, there was a shortage of qualified commercial pilots. Post September 11, 2001, the airline industry has experienced a number of layoffs, including many pilots. However, as the industry begins to recover, with several airlines already having recalled pilots laid off in the aftermath of September 11, the pilot shortages may reoccur. While the major airlines, with lucrative pay scales, have had little difficulty attracting pilots, regional and on-demand carriers are typically hard hit by an evaporating labor pool. Because regional and on-demand carriers tend to provide much of the air service for smaller communities, individuals and businesses in those areas would be impacted if flights by smaller carriers are canceled due to a lack of available pilots. In addition, congressional testimony submitted by the Department of Transportation to the House Transportation and Infrastructure Committee suggested that the pilot shortage issue affects, to some extent, the ability of Essential Air Service carriers to provide service. Given the importance of air service to many rural and remote communities, any loss of service, even on a short-term basis, can have a significant negative economic and social impact.

S. 361 is intended to diminish the scope of the pilot shortage problem. Again, prior to September 11, 2001, there were several indicators of a shortage of regional airline pilots. For example, regional airlines were hiring pilots with 800 hours of flight time, while several years ago, they would not have hired a pilot with fewer than 2,000 hours. Furthermore, the regional airlines frequently hire flight instructors from pilot training schools. As a result, some schools have been running out of instructors, which in turn, affects the pipeline for future pilots. The supply of qualified pilots has also been negatively affected by the decline in the number of ex-military pilots seeking employment.

In the more than 40 years since the Age 60 Rule was established, life expectancies have increased and medical science has advanced considerably. In addition, piloting today is a different experience than it was in 1959, especially with the advent of modern, highly automated jet aircraft. Nevertheless, proposals to change the Age 60 Rule have been controversial, and there are divided opinions on the matter among pilots, policy makers, and others within the aviation community. Many of those who support the rule as a safety standard believe it is still a reasonable determination of the time when there is a general decline in health-related functions and overall cognitive capabilities which may affect a pilot's performance. However, the Committee also received testimony from witnesses countering claims that there are no reliable tests available to identify those aging pilots who are, or will become, incapacitated or whose performance will decline to an unacceptable level.

Opponents of the Age 60 Rule argue that it is an arbitrary and unfair standard without substantial evidence that pilots over the age of 60 are a safety risk. Because pilots already must pass routine medical and competency checks, opponents of the rule believe there is little reason to deny piloting privileges to someone who is otherwise fit to fly according to medical and competency checks. Some pilots believe the rule constitutes age discrimination.

Twenty-five European countries recently increased their mandatory retirement age for pilots to 65. Many Asian nations have also

raised their retirement ages. Foreign airlines that fly to the U.S. with pilots over the age of 60 must require those pilots to relinquish command to younger pilots when they approach U.S. airspace.

LEGISLATIVE HISTORY

On February 15, 2001, Senator Murkowski introduced S. 361, a bill to increase the mandatory retirement age for pilots from 60 to 65 years of age. The bill was cosponsored by Senators Inhofe and Enzi. Senators Bond, Feinstein, Grassley, and Thomas subsequently cosponsored the bill.

On March 13, 2001, the Committee on Commerce, Science, and Transportation held a hearing on S. 361 and the Age 60 Rule. Representatives from the FAA, the Air Line Pilots Association, the Pilots Against Age Discrimination, and the medical community testified about the issues regarding the mandatory retirement age for airline pilots. On March 15, 2001, the Committee, without objection, ordered S. 361 reported with an amendment offered by Senator McCain.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 25, 2001.

Hon. JOHN MCCAIN,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed estimate for S. 361, a bill to establish age limitations for airmen.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley and Kathy Ruffing.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 361—A bill to establish age limitations for airmen

Summary: S. 361 would increase the mandatory retirement age from 60 to 63 for pilots employed by air carriers. CBO estimates that implementing new regulations under the bill would cost less than \$500,000 a year, subject to the availability of appropriated funds. S. 361 would reduce outlays for Social Security benefits in the near term if significant numbers of pilots who would otherwise retire instead worked until age 63. CBO estimates that such near-term savings could total up to \$5 million a year through 2011, but that those savings would be offset by higher net Social Security costs after 2011.

The Joint Committee on Taxation (JCT) estimates that S. 361 would affect taxable pension benefits of certain pilots and taxable income of employers of certain pilots, but that overall there would be a negligible effect on federal revenues. Because the bill would affect receipts, pay-as-you-go procedures would apply. S. 361 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would have no impact on state, local, or tribal governments.

Estimated cost to the Federal Government: By increasing the mandatory retirement age from 60 to 63 for pilots employed by air carriers, the bill would decrease Social Security outlays and increase revenues. In addition, S. 361 would require the Federal Aviation Administration (FAA) to issue new regulations.

Spending subject to appropriation

Subject to the availability of appropriated funds, CBO estimates that issuing new regulations would increase the costs of the FAA by less than \$500,000. Subsequent monitoring by FAA would also cost less than \$500,000 a year.

Direct spending

S. 361 would slightly reduce outlays for Social Security benefits in the near term if significant numbers of pilots who would otherwise retire instead worked until age 63.

Eligible people can file for Social Security retirement benefits beginning at age 62. For each month that they delay filing, their eventual benefit increases; that actuarial adjustment is meant to give retirees approximately the same lifetime benefits regardless of their age at filing.

A hypothetical pilot, because of his or her high lifetime earnings, probably has a primary insurance amount (PIA, the figure on which all Social Security benefits are based) at or near the maximum. In 2002, that PIA will be about \$1,800. A pilot who reaches 62 in 2002 could collect 77.5 percent of that, or about \$1,400 a month. But if he or she delays filing for a year, the monthly check would be 83.3 percent of PIA, or about \$1,500, even before Social Security's annual cost-of-living adjustment (COLA). For that pilot, the first-year savings to the Social Security program would be about \$17,000 and annual costs thereafter about \$1,200.

There is little information, though, with which to determine how many of the roughly 1,400 pilots who would qualify each year resemble that example. Many of them would still file at 62, attracted by the combination of \$17,000 in Social Security benefits plus their airline pension. Others would want to keep working in aviation, though not as pilots, deferring their Social Security benefits until "normal retirement age," or NRA. (Until that age—which will be 65 years and 6 months for people who reach 62 in 2002—Social Security benefits are reduced or erased when a worker has substantial earnings.) Neither of those groups would have reason to change those plans if S. 361 were enacted.

Male workers who do not face mandatory retirement overwhelmingly file at either age 62 or NRA. Only about 20 percent file between those ages. (Research suggests that retirees who apply at 63 and 64 were often waiting for something—such as a company pension or a spouse's retirement—before filing.) CBO assumes that, if

S. 361 were enacted, about 20 percent of pilots would likewise delay filing until age 63. Thus, for each group of 1,400 pilots affected, about 300 would postpone filing for Social Security. Their total Social Security benefits would be lower by about \$5 million in the first full year but about \$400,000 higher each year thereafter. Those amounts would increase gradually because of COLAs. Over the 2002–2011 period, total savings would be between \$3 million and \$5 million annually (see table). In the long run—well beyond CBO’s 10-year horizon—Social Security savings would be zero, because the savings and the costs would offset each other.

ESTIMATED EFFECT OF S. 361 ON OUTLAYS FOR SOCIAL SECURITY BENEFITS

	By fiscal year, in millions of dollars—									
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
CHANGES IN DIRECT SPENDING										
Retired-worker benefits:										
Gross savings	-2	-5	-5	-6	-6	-6	-7	-7	-8	-9
Offset cost	0	*	1	1	2	2	3	4	5	5
Subtotal	-2	-5	-4	-4	-4	-4	-4	-4	-3	-3
Auxiliary benefits ¹	*	-1	-1	-1	-1	-1	-1	-1	-1	*
Total outlay changes	-3	-5	-5	-5	-5	-5	-4	-4	-4	-4

¹ Benefits to eligible spouses, children, or survivors of retired workers.
* = Less than \$500,000.

Note.—Components may not sum to totals because of rounding.

Revenues

As a result of small and offsetting effects, S. 361 would have a negligible net effect on federal revenues. The taxable pension benefits of pilots are reduced when pilots retire before the mandatory retirement age, currently age 60. By increasing the mandatory retirement age to 63, S. 361 would reduce the taxable annual pension benefits for pilots who retire before age 60 more than under current law. The reduction in taxable annual pension benefits would result in a slight decrease in federal revenue. However, employers’ pension liability would be reduced and employers may decrease the amount of deductible contributions made to their defined benefit pension plans. As a result, some employers may have a higher taxable income under S. 361 than under current law. The increase in employers’ taxable income would result in a slight increase in federal revenues. S. 361 also would have an additional negligible effect on federal revenues because some pilots may choose to postpone retirement after age 60, thereby postponing taxable pension distributions that otherwise would have been made under current law mandating retirement for pilots at age 60. However, once pension distributions commenced, the annual benefit would be greater than that made under current law. Overall, total pension benefits would be actuarially equivalent under current law and under the bill. Therefore, there would be a slight reduction in federal revenues in the early years after enactment of this proposal as some pilots would postpone taxable pension distributions, but there would be a small and offsetting increase in federal revenues in the later years after enactment as those pilots who postponed retirement would receive larger taxable pension benefits than under law.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. JCT estimates that S.

361 would affect taxable pension benefits of certain pilots and taxable income of employers of certain pilots, but that overall there would be a negligible effect on federal revenues. Spending for Social Security, however, is specifically excluded from pay-as-you-go rules.

Intergovernmental and private-sector impact: S. 361 contains no intergovernmental or private-sector mandates as defined in UMRA and would have no impact on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Mark Hadley and Kathy Ruffing; Revenues: Robert Taylor; Impact on State, Local, and Tribal Governments: Victoria Heid Hall; and impact on the Private Sector: Jean Talarico.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis and G. Thomas Woodward, Assistance Director for Tax Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

Under section 1, former pilots who have been forced to retire because of the current mandatory retirement age, but are younger than 63 years of age, would no longer be subject to the prohibition and would potentially be eligible to fly as a commercial airline pilot. Pilots under the age of 60 would eventually have the option to fly for a longer period of time.

ECONOMIC IMPACT

Due to section 1, some older pilots may decide to continue flying beyond their expected Age 60 retirement dates, and thus continue to earn a salary. Some younger pilots may not be promoted as quickly if more senior pilots continue flying. Airlines may incur the additional costs of employing some of their most senior pilots, who have the highest pay scales, for a few additional years. Those additional costs would be offset, at least in part, when the airlines are able to forego the costs of training younger pilots to replace those who otherwise would have retired because of the Age 60 Rule. If a pilot shortage were to affect small and rural communities, section 1 may economically benefit those communities by increasing the supply of pilots.

Section 2 may cause air carriers to incur the costs of additional or more stringent medical, cognitive, or proficiency testing for pilots who have reached the age of 60 if the FAA determines that such testing is necessary to ensure the safety of air transportation. This section may also cause air carriers to incur costs associated if the FAA sets crew pairing standards that, for example, limit the number of individuals in a flight crew who are over the age of 59.

PRIVACY

Within the air transportation system, the overriding need to ensure safety has long been settled with respect to pilots' expectations of privacy. Pilots who choose to fly beyond their 60th birth-

days may be subjected to additional certification testing or crew pairing standards if the FAA determines that such measures are necessary to ensure the safety of air transportation operations.

PAPERWORK

Under section 1, the FAA would incur additional paperwork associated with the change in the current age limit. In addition, under section 2, air carriers and the FAA may have additional paperwork if the FAA decides to impose crew pairing standards or additional certification testing for pilots who have reached the age of 60.

SECTION-BY-SECTION ANALYSIS

Section 1. Age and other limitations

Section 1 would increase the regulatory age limit imposed on commercial airline pilots from 60 years of age to 63 years of age. Currently, federal rules prohibit air carriers certified under part 121 of the Federal Aviation Regulations from using the services of a pilot who is 60 years of age or older and prohibit pilots who are 60 years of age or older from flying part 121 aircraft operations. See 14 C.F.R. 121.383(c). Part 121 sets the operating requirements for commercial, civil aircraft (with more than nine seats or 7,500 pounds payload). This section would go into effect six months after the enactment of this Act to give the FAA time to accommodate this change.

Section 2. Reservation of safety authority

Section 2 makes it clear that the Act does not change the authority of the FAA to take steps to ensure the safety of airline operations involving pilots over the age of 59. For example, the FAA could require that pilots who have reached the age of 60 undergo additional medical, cognitive, or proficiency testing and that crew pairing standards are set for crews with such pilots.

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following description of the record votes during its consideration of S. 361:

Senator McCain offered an amendment to change the maximum age limit for pilots to 63 years of age and to make it clear that the increased age limit does not change the FAA's safety authority. On a rollcall vote of 13 yeas and 8 nays as follows, the McCain amendment was adopted.

YEAS—13	NAYS—8
Mr. McCain	Mr. Hollings
Mr. Stevens	Mr. Inouye
Mr. Burns ¹	Mr. Rockefeller
Mr. Lott	Mr. Dorgan
Mrs. Hutchison	Mr. Wyden
Ms. Snowe	Mr. Cleland
Mr. Brownback ¹	Mrs. Boxer
Mr. Smith ¹	Mr. Edwards
Mr. Fitzgerald	
Mr. Ensign	
Mr. Allen ¹	
Mr. Kerry	
Mr. Breaux	

¹By proxy

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

ADDITIONAL VIEWS OF SENATORS HOLLINGS, INOUE,
ROCKEFELLER, DORGAN, CLELAND, BOXER, EDWARDS,
AND CARNAHAN

During the Executive Session on February 15, 2001, several issues were raised during the consideration of S. 361. We would like to state our concerns about the legislation approved by the Committee and express our interest in working to change the legislation prior to Floor consideration of S. 361.

The bill as drafted poses two major issues. First, should Congress repeal the FAA regulation known as the Age 60 Rule (14 CFR 121.383(c)) and establish by law a new mandatory retirement age of 63 for airline pilots? Second, is there an effective protocol to determine which pilots over the age of 60 are fit to fly given the knowledge that the aging process causes a decline in cognitive functions that affect piloting skills?

We do not believe that Congress should repeal the FAA regulation known as the Age 60 Rule (14 CFR 121.383(c)). The Age 60 Rule was promulgated by the FAA pursuant to its statutory authority to issue and enforce regulations governing air safety. Congress has vested air safety regulatory authority in the FAA, and over the years, the agency has exercised its authority in a prudent and impartial manner to ensure the safety of air transportation.

In this case, the FAA has devoted time, resources and expertise to explore exhaustively the aeromedical issues associated with the Age 60 Rule. For instance, in 1995, after concluding an exhaustive rulemaking process for regional (commuter) air carriers, the FAA applied all part 121 air carrier safety rules, including and particularly the Age 60 Rule, to regional carriers. More recently, the Senate Appropriations Committee directed the FAA to conduct a study (Senate Report 106-55 on the Department of Transportation and Related Agencies Appropriations Act for FY 2000) of all available non-scheduled commercial (and noncommercial) data concerning the relative accident data correlated with the amount of flying by pilots as a function of their age for pilots age 60 to 63 and comparing it with all 4-year groupings of scheduled commercial (and noncommercial) pilots declining from age 60. In addition, it directed the FAA to compare discernable groups in their entirety and track accident frequency as a function of age. The findings were reported to Congress on March 7, 2001 and reaffirmed earlier conclusions that a "U"-shaped relationship exists between the age of pilots and accident rate. The findings were similar to Golaszweski's conclusions (1983, 1991, 1993) that accident rates decrease for younger pilots as they age, then level off in the middle years, then begin to increase as they age. In this study, conducted by the FAA's Civil Aeromedical Institute (CAMI), the accident rates for pilots between the ages of 60 and 63 were higher than immediately preceding age cohorts per 100,000 flight hours.

Congress should rely on the agency's safety judgement as sound and authoritative. The action by the Committee to change and codify this regulation only serves to undermine the authority of the FAA to administer the air safety regulations. The federal courts in several cases over the past two decades, most recently in *PPF v. FAA*, 118 F. 3d 758 (D.C. Cir. 1997), have upheld the FAA in its decisions regarding this particular regulation, and have never found the agency's decision-making process to be arbitrary and capricious.

