Calendar No. 232

108th Congress 1st Session	SENATE	REPORT 108–111

THE COMMERCIAL SPACE TRANSPORTATION ACT OF 2003

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1260

JULY 24 (legislative day, JULY 21), 2003.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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JULY 24 (legislative day, JULY 21), 2003.—Ordered to be printed

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

R E P O R T

[To accompany S. 1260]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1260) to promote the development of the commercial space transportation industry, to authorize appropriations for the Office of the Associate Administrator for Commercial Space Transportation, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of this legislation, as reported, is to authorize the Office of Commercial Space Transportation within the Federal Aviation Administration (FAA) for a period of five years beginning in fiscal year (FY) 2004. The legislation also would extend the authorization for indemnification offered to the commercial space launch industry through the Commercial Space Launch Amendments Act for a period of five years, until December 31, 2009.

BACKGROUND AND NEEDS

The Office of the Associate Administrator for Commercial Space Transportation (AST) is the only space-related office within the FAA. Established in 1984 as the Office of Commercial Space Transportation (OCST) in the Department of Transportation (DOT), AST was transferred to the FAA in November 1995.

Under Title 49, United States Code, Subtitle IX, Sections 70101–70119 (the Commercial Space Launch Act), AST was given the responsibility to—

(1) regulate the commercial space transportation industry, only to the extent necessary, to ensure compliance with international obligations of the United States and to protect the public health and safety, safety of property, and national security and foreign policy interests of the United States;

(2) encourage, facilitate, and promote commercial space launches and re-entries by the private sector;

(3) recommend appropriate changes in Federal statutes, treaties, regulations, policies, plans, and procedures; and

(4) facilitate the strengthening and expansion of the United States space transportation infrastructure.

In fulfilling its responsibilities under the Commercial Space Launch Act, AST issues launch licenses for commercial launches of orbital rockets and suborbital sounding rockets. The first United States licensed launch was a suborbital launch of a Starfire vehicle on March 29, 1989. Since then, AST (including its predecessor, OCST) has licensed more than 100 launches.

AST also licenses the operations of non-Federal launch sites, or "spaceports". Since 1996, AST has issued site operator licenses to four spaceports—

(1) California Spaceport at Vandenberg Air Force Base;

(2) Spaceport Florida at Cape Canaveral Air Force Station;

(3) Virginia Space Flight Center at Wallops Island; and

(4) Kodiak Launch Complex at Kodiak Island, Alaska.

The first launch from a licensed, non-Federal facility was that of National Aeronautics and Space Administration's (NASA) Lunar Prospector aboard a Lockheed Martin Athena 2 rocket on January 6, 1998, from Spaceport Florida.

A number of private and commercial companies are planning to develop, or in the process of developing, reusable launch vehicles (RLVs). Many of these companies have shifted their focus toward suborbital market opportunities where the technical challenges and costs to develop a suborbital RLV are not as great as an orbital RLV. As discussed in a report entitled "Suborbital Reusable Launch Vehicles and Applicable Markets," published by the Department of Commerce's Office of Space Commercialization, there are a number of current and emerging suborbital markets, which include military surveillance, commercial/civil earth imagery, fast package delivery, high speed passenger transportation, media, advertising, and space tourism. The privately sponsored X PRIZE competition will award $10 million to the first person or team to fly a privately funded RLV to an altitude of 100 km, return safely, and fly again within 2 weeks. The prize was created to jump start the space tourism industry, but also serves as a catalyst for the suborbital commercial space transportation industry. Based upon information provided to the Committee, it is expected that three United States teams will attempt launches before January 1, 2005.

In 1988, Congress passed the Commercial Space Launch Amendments Act (the Act) that, among other things, established an insurance risk-sharing regime by which the Federal government would provide indemnification against catastrophic third-party losses resulting from licensed launch activities. The Act established insurance requirements for persons licensed to provide launch services. It allows the licensees, as an alternative to obtaining liability insurance, to demonstrate financial responsibility sufficient to com-

pensate third-party claims arising from death, bodily injury, or loss of or damage to property resulting from licensed activities. This requirement is limited to the lesser of $500 million or the amount of the maximum probable loss (as determined by AST). Under the Act, in no case will a licensee have to provide insurance in excess of the maximum liability insurance available on the world market at a reasonable cost.

The Act also required the Secretary to provide for the payment of successful third-party claims against parties to the extent such claims are not compensated by insurance, including self-insurance. These payments are subject to advance appropriations. With respect to the claims arising out of any particular launch incident, payments are limited to $1.5 billion in excess of the required insurance amount. Since 1989, this amount is indexed to reflect inflation.

The Act established a framework to govern third-party liability compensation plans in cases where aggregate claims are likely to exceed the required financial responsibility amounts. The Secretary is directed to survey the causes and extent of damages in such cases and to submit the results to Congress. The President is required to submit to Congress a plan outlining the dollar value of the claims and recommending funding sources. The Act describes the procedures and timetables applicable to Congressional consideration of the plan, which must be approved by a joint resolution. Expedited procedures are prescribed for any plan that requires additional appropriations or legislative authority. The compensation plan provisions apply only with respect to licenses issued or transferred for which the Secretary receives a complete and valid application no later than December 31, 2004.

The United States commercial space launch industry continues to demonstrate a solid safety record and there has been no event requiring implementation of statutory indemnification provisions. However, a number of insurance market-driven factors are coalescing at a time of decreased commercial launch demand and heightened price sensitivity, reinforcing the findings set forth in the FAA report, "Liability Risk-Sharing Regime for United States Commercial Space Transportation: Study and Analysis" (FAA Liability Study), dated April 2002, that the existing risk allocation regime is adequate, proper, and effective, as well as necessary to maintain a near-level playing field with foreign competitors.

The FAA Liability Study included an evaluation of the effects of the events of September 11, 2001, on the commercial space transportation insurance market. The report noted the increasing reluctance of underwriters and re-insurers to participate in aerospace risks after September 11, reflecting a re-evaluation of space risk in general. Their participation in space risk is critical to this market segment. Insurance market reactions have continued to evolve in this direction and difficulties in insuring space risk in general have increased due to recent satellite failures while in orbit, in addition to the overall reduction in the aviation liability insurance market following September 11. Although space insurance covering satellite assets is different from launch liability coverage, industry has advised the FAA that it is becoming increasingly difficult and costly to cover any aerospace risk, including launch liability.

Because of the decline in demand for worldwide commercial launch services since 1999, competition between international launch providers is fierce and prices have dropped. Further increases in the cost of doing business would seriously hurt United States launch competitiveness. Foreign launch providers receive indemnification support from their governments. The industry has indicated that paying the expense of any additional insurance coverage requirements would not allow them to stay in business, even under the best market conditions.

At its October 2002 meeting, the Commercial Space Transportation Advisory Committee (COMSTAC) adopted a report effectively endorsing the FAA Liability Study's analysis of the issues and most notably its assessment that maintaining the current liability risk-sharing regime is the only option that achieves four out of the five objectives delineated by the FAA in its study. In forwarding its report, the COMSTAC Chairman, Livingston L. Holder, Jr., stated that "continuation of this regime is critical to the viability and global competitiveness of United States space launch providers, which—along with their subcontractors and suppliers—provide assured access to space for military, civil, as well as commercial missions."

COMSTAC also recommended in its report amending the Commercial Space Launch Act by eliminating the sunset provision applicable to indemnification authority or, alternatively, by extending the indemnification authority for 10 years.

LEGISLATIVE HISTORY

S. 1260 was introduced on June 13, 2003, by Senator McCain and Senator Brownback and was referred to the Committee on Commerce, Science, and Transportation. A hearing on the FAA Reauthorization was held on April 10, 2003. On June 19, 2003, the Committee met in open executive session and, by a voice vote, ordered S. 1260 reported without amendment.

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, July 1, 2003.

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 cost estimate for S. 1260, the Commercial Space Transportation Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kathleen Gramp.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 1260—Commercial Space Transportation Act of 2003

Summary: S. 1260 would authorize appropriations for fiscal years 2004 through 2008 for the Department of Transportation's (DOT's) regulatory and programmatic activities related to commercial space transportation systems. In addition, the bill would provide a five-year extension of DOT's authority to indemnify nonfederal entities that are licensed by DOT to provide such services.

Assuming appropriation of the specified amounts, CBO estimates that implementing S. 1260 would cost a total of $65 million over the 2004–2008 period. Enacting this bill would have no effect on direct spending or revenues.

S. 1260 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, and tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1260 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—					
	2003	2004	2005	2006	2007	2008
SPENDING SUBJECT TO APPROPRIATION						
Spending under current law:						
Budget authority[1]	12	0	0	0	0	0
Estimated outlays	12	1	0	0	0	0
Proposed changes:						
Authorization level	0	13	13	13	14	14
Estimated outlays	0	11	13	13	14	14
Spending under S. 1260:						
Authorization level[1]	12	13	13	13	14	14
Estimated outlays	12	12	13	13	14	14

[1] The 2003 level is the amount appropriated for that year for the Office of Commercial Space Transportation.

Basis of estimate: For this estimate, CBO assumes that the amounts authorized will be appropriated near the start of each fiscal year and that outlays will follow historical trends for those activities. Based on information from DOT, we estimate that extending the department's indemnification authority through 2009 would have no significant budgetary effect over the next five years. DOT has had this indemnification authority since 1988 but has never had to pay claims to third parties for accidents involving commercial space vehicles or services.

Intergovernmental and private-sector impact: S. 1260 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, and tribal governments.

Estimate prepared by: Federal costs: Kathleen Gramp; impact on state, local, and tribal governments: Gregory Waring; impact on the private sector: Lauren Marks.

Estimate approved by: Paul R. Cullinan, Chief for Human Resources Cost Estimates Unit, Budget Analysis Division.

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

The Committee believes that the bill would not subject any individuals or businesses affected by the legislation to any additional regulation.

ECONOMIC IMPACT

This legislation would not have an adverse impact on the Nation. It would extend the third party liability indemnification offered by the Federal government to the commercial space launch industry for an additional 5 years. There have been no claims under this indemnification provision since its inception in 1988.

PRIVACY

This legislation would not have a negative impact on the personal privacy of individuals.

PAPERWORK

This legislation would not increase the paperwork requirements for private individuals or businesses. This legislation would require the FAA to submit a report to Congress on the need for a distinct regulatory regime for suborbital vehicles.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 would entitle the bill as the "Commercial Space Transportation Act of 2003".

Sec. 2. Office of Commercial Space Transportation

Section 2 would authorize appropriations for AST of $12,601,000 for FY 2004, $12,979,000 for FY 2005, $13,368,000 for FY 2006, $13,769,000 for FY 2007, and $14,183,000 for FY 2008.

Sec. 3. Commercial space transportation indemnification extension

Section 3 would extend the indemnification available to the commercial space launch industry until December 31, 2009, providing an additional five years of coverage beyond the current expiration date of December 31, 2004.

Sec. 4. Suborbital vehicle regulations

Section 4 would require the Secretary of Transportation to submit a report to Congress on the need for a distinct regulatory regime for suborbital vehicles. The report would be due within 6 months of enactment of the bill.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as

reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49. TRANSPORTATION

SUBTITLE IX. COMMERCIAL SPACE TRANSPORTATION

CHAPTER 701. COMMERCIAL SPACE LAUNCH ACTIVITIES

§ 70113. Paying claims exceeding liability insurance and financial responsibility requirements

(a) GENERAL REQUIREMENTS.—(1) To the extent provided in advance in an appropriation law or to the extent additional legislative authority is enacted providing for paying claims in a compensation plan submitted under subsection (d) of this section, the Secretary of Transportation shall provide for the payment by the United States Government of a successful claim (including reasonable litigation or settlement expenses) of a third party against a licensee or transferee under this chapter, a contractor, subcontractor, or customer of the licensee or transferee, or a contractor or subcontractor of a customer, resulting from an activity carried out under the license issued or transferred under this chapter for death, bodily injury, or property damage or loss resulting from an activity carried out under the license. However, claims may be paid under this section only to the extent the total amount of successful claims related to one launch or entry—

(A) is more than the amount of insurance or demonstration of financial responsibility required under section 70112(a)(1)(A) of this title; and

(B) is not more than $1,500,000,000 (plus additional amounts necessary to reflect inflation occurring after January 1, 1989) above that insurance or financial responsibility amount.

(2) The Secretary may not provide for paying a part of a claim for which death, bodily injury, or property damage or loss results from willful misconduct by the licensee or transferee. To the extent insurance required under section 70112(a)(1)(A) of this title is not available to cover a successful third party liability claim because of an insurance policy exclusion the Secretary decides is usual for the type of insurance involved, the Secretary may provide for paying the excluded claims without regard to the limitation contained in section 70112(a)(1).

(b) NOTICE, PARTICIPATION, AND APPROVAL.—Before a payment under subsection (a) of this section is made—

(1) notice must be given to the Government of a claim, or a civil action related to the claim, against a party described in subsection (a)(1) of this section for death, bodily injury, or property damage or loss;

(2) the Government must be given an opportunity to participate or assist in the defense of the claim or action; and

(3) the Secretary must approve any part of a settlement to be paid out of appropriations of the Government.

(c) WITHHOLDING PAYMENTS.—The Secretary may withhold a payment under subsection (a) of this section if the Secretary certifies that the amount is not reasonable. However, the Secretary

shall deem to be reasonable the amount of a claim finally decided by a court of competent jurisdiction.

(d) SURVEYS, REPORTS, AND COMPENSATION PLANS.—(1) If as a result of an activity carried out under a license issued or transferred under this chapter the total of claims related to one launch or entry is likely to be more than the amount of required insurance or demonstration of financial responsibility, the Secretary shall—

(A) survey the causes and extent of damage; and

(B) submit expeditiously to Congress a report on the results of the survey.

(2) Not later than 90 days after a court determination indicates that the liability for the total of claims related to one launch or entry may be more than the required amount of insurance or demonstration of financial responsibility, the President, on the recommendation of the Secretary, shall submit to Congress a compensation plan that—

(A) outlines the total dollar value of the claims;

(B) recommends sources of amounts to pay for the claims;

(C) includes legislative language required to carry out the plan if additional legislative authority is required; and

(D) for a single event or incident, may not be for more than $1,500,000,000.

(3) A compensation plan submitted to Congress under paragraph (2) of this subsection shall—

(A) have an identification number; and

(B) be submitted to the Senate and the House of Representatives on the same day and when the Senate and House are in session.

(e) CONGRESSIONAL RESOLUTIONS.—(1) In this subsection, "resolution"—

(A) means a joint resolution of Congress the matter after the resolving clause of which is as follows: "That the Congress approves the compensation plan numbered -------- submitted to the Congress on --------, 20--.", with the blank spaces being filled appropriately; but

(B) does not include a resolution that includes more than one compensation plan.

(2) The Senate shall consider under this subsection a compensation plan requiring additional appropriations or legislative authority not later than 60 calendar days of continuous session of Congress after the date on which the plan is submitted to Congress.

(3) A resolution introduced in the Senate shall be referred immediately to a committee by the President of the Senate. All resolutions related to the same plan shall be referred to the same committee.

(4)(A) If the committee of the Senate to which a resolution has been referred does not report the resolution within 20 calendar days after it is referred, a motion is in order to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of the plan.

(B) A motion to discharge may be made only by an individual favoring the resolution and is highly privileged (except that the motion may not be made after the committee has reported a resolution on the plan). Debate on the motion is limited to one hour, to be divided equally between those favoring and those opposing the reso-

lution. An amendment to the motion is not in order. A motion to reconsider the vote by which the motion is agreed to or disagreed to is not in order.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed and another motion to discharge the committee from another resolution on the same plan may not be made.

(5)(A) After a committee of the Senate reports, or is discharged from further consideration of, a resolution, a motion to proceed to the consideration of the resolution is in order at any time, even though a similar previous motion has been disagreed to. The motion is highly privileged and is not debatable. An amendment to the motion is not in order. A motion to reconsider the vote by which the motion is agreed to or disagreed to is not in order.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph is limited to not more than 10 hours, to be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(6) The following shall be decided in the Senate without debate:

(A) a motion to postpone related to the discharge from committee.

(B) a motion to postpone consideration of a resolution.

(C) a motion to proceed to the consideration of other business.

(D) an appeal from a decision of the chair related to the application of the rules of the Senate to the procedures related to a resolution.

(f) APPLICATION.—This section applies to a license issued or transferred under this chapter for which the Secretary receives a complete and valid application not later than **[**December 31, 2004.**]** *December 31, 2009.*

* * * * * * *

§ 70119. Office of Commercial Space Transportation

There are authorized to be appropriated to the Secretary of Transportation for the activities of the Office of the Associate Administrator for Commercial Space Transportation—

(1) $12,607,000 for fiscal year 2001; **[**and**]**

(2) $16,478,000 for fiscal year **[**2002.**]** *2002;*

(3) $12,601,000 for fiscal year 2004;

(4) $12,979,000 for fiscal year 2005;

(5) $13,368,000 for fiscal year 2006;

(6) $13,769,000 for fiscal year 2007; and

(7) $14,183,000 for fiscal year 2008.

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