Calendar No. 83

108TH CONGRESS *1st Session*	SENATE	REPORT 108–41

AVIATION INVESTMENT AND REVITALIZATION VISION ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 824

MAY 2, 2003.—Ordered to be printed

Filed under authority of the order of the Senate of May 1, 2003

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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

R E P O R T

[To accompany S. 824]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 824) "A bill to reauthorize the Federal Aviation Administration, and for other purposes", having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 824 is to reauthorize the Federal Aviation Administration (FAA) for three years; strengthen FAA management; provide funding for the Airport Improvement Program (AIP); authorize funding for the FAA's Operations, Facilities and Equipment, and Research, Engineering, and Development accounts; provide funding for security capital costs at airports and streamline the process for approving and constructing airport capacity projects.

BACKGROUND AND NEEDS

I. OVERVIEW OF FEDERAL INVOLVEMENT IN CIVIL AVIATION

A little more than two decades after Wilbur and Orville Wright took flight on December 17, 1903 over Kill Devil Hills, North Carolina, the United States Congress passed the Air Commerce Act of 1926. The Act, which established an Aeronautics Branch within the Department of Commerce, was the beginning of the Federal government's involvement in the regulation and development of civil

aviation. This landmark legislation was passed at the urging of the aviation community, which was concerned that aviation could not reach its full commercial potential without Federal action to improve and maintain safety standards. In 1938, Congress passed the Civil Aeronautics Act to create an independent agency, the Civil Aeronautics Authority, with expanded authority to issue air carrier route certificates and regulate airfares. The Civil Aeronautics Authority was comprised of the Department of Commerce's Bureau of Air Commerce and the Bureau of Air Mail from the Interstate Commerce Commission, combining safety and economic regulatory authority in one federal agency.

The introduction of jet airliners, and a series of midair collisions, spurred passage of the Federal Aviation Act of 1958 (Aviation Act). This legislation established two independent bodies, the Federal Aviation Agency, which had broader authority to enforce safety regulations, and the Civil Aeronautics Board (CAB), which oversaw the economic regulation of air carriers. The Aviation Act entrusted safety rulemaking to the Federal Aviation Agency and gave it sole responsibility for developing and maintaining a common civil-military system of air navigation and air traffic control. In 1967, the Federal Aviation Agency was incorporated into the newly created Department of Transportation (DOT) and was renamed the Federal Aviation Administration (FAA). In 1978, Congress passed the Airline Deregulation Act which phased-out the CAB's authority over fares and phased-out the CAB itself by 1985.

The Aviation and Transportation Security Act, enacted on November 19, 2002, established the Transportation Security Administration (TSA) to be responsible for the security of all modes of transportation. On February 13, 2002, responsibility for aviation security was transferred from FAA to TSA.

II. OVERVIEW OF THE FAA'S FUNCTIONS

Today, the FAA has almost 50,000 employees at its headquarters in Washington, DC, in regional offices, and at facilities around the country and world. The FAA fulfills its mission through "lines of business" that work together to create and maintain the nation's aviation system. The primary lines of business are:

Air Traffic Services: Manages civil and military air traffic by developing and recommending national policies and establishing national programs, regulations, standards, and procedures for management of the National airspace; operates air navigation and communications systems and facilities; maintains separation and control of aircraft; and provides flight assistance to aircraft.

Regulation and Certification: Oversees the safety of aircraft and the credentials and competency of pilots and mechanics, develops mandatory safety rules, and sets the standards that have helped make air travel among the safest modes of transportation in history.

Airports: Provides oversight of planning and development of a safe, secure, and efficient airport system; manages the environmental review process for airport projects; and develops standards for the design and construction of facilities that enhance the safety of aircraft operations and security of airline passengers.

Research and Acquisition: Supports and conducts research to meet increasing demands for higher levels of system safety, security, capacity, and efficiency; and plans, monitors, controls, schedules, and implements the acquisition of materials, equipment, and services for the national airspace system and for interagency and international programs.

Commercial Space Transportation: Oversees the safety of commercial space launches and regulates the commercial space industry.

III. OVERVIEW OF AIRPORTS IN THE UNITED STATES

There are approximately 19,300 airports in the United States, of which about 5,300 are open for public use, and the remainder are for private or special use. The FAA included 3,364 airports in its 2001 National Plan of Integrated Airport Systems (NPIAS). The NPIAS is a statutorily required planning document and must be published every two years. It estimates the costs associated with establishing a system of airports adequate to meet the needs of civil aviation. All airports with scheduled commercial air service are automatically included in the NPIAS. Furthermore, general aviation airports that meet certain criteria are also incorporated in the plan. An airport must be included in the NPIAS in order to be eligible for Federal funding.

The FAA further categorizes the NPIAS airports by size. The table below shows airports categorized by size and the amount of traffic each category handles (an enplanement is defined as a passenger leaving on a flight).

TYPES AND NUMBER OF AIRPORTS [1]

Airport type	Number of airports	Percentage of all enplanements	Percentage of general aviation aircraft
Large-hub primary	31	69.6	1.3
Medium-hub primary	37	19.3	2.9
Small-hub primary	74	7.7	4.7
Non-hub primary	280	3.2	11.3
Other commercial service	124	0.1	2.0
Relievers	260	0.0	27.1
General aviation	2,558	0.0	37.2
Total NPIAS airports	3,364	100.0	86.4
Non-NPIAS airports	15,942	0.0	13.6

[1] Figures provided by FAA.

The FAA estimates that 98 percent of the United States population lives within 20 miles of a NPIAS airport and 67 percent live within 20 miles of a NPIAS airport that is served by commercial air service.

A. CAPITAL NEEDS OF AIRPORTS

For 2001 through 2005, the FAA has estimated annual planned capital development costs of about $9 billion, while the Airports Council International (ACI), an organization representing large airports, has estimated annual costs of about $15 billion for airports for 2002 through 2006. FAA's estimate included only projects that are eligible for Federal funding, whereas ACI's estimate includes projects that are both eligible and ineligible for Federal funding.

Generally, Federal funding for improvements are related to aircraft operations, typically for planning and construction of projects such as runways, taxiways, aprons, noise abatement, and land purchase, as well as security, safety, or emergency equipment. Commercial revenue producing portions of terminals (such as shop concessions or commercial maintenance hangars), automobile parking garages, and off-airport road construction are examples of improvements that generally are not eligible for Federal funding.

Neither FAA's nor ACI's estimates cover the airport terminal modifications needed to fully integrate the new explosives detection systems (EDS) required to screen checked baggage. According to Congressional testimony by TSA and the DOT Inspector General, these modifications could cost $3 billion to $5 billion over the next five years, but it has not been determined how the modifications will be funded. The bill creates a funding mechanism to ensure that these modifications have adequate funding.

If airports continue to receive about $12 billion a year from all sources for capital projects (this is the average amount they received from 1999 through 2001), they would be able to fund all of the projects included in the FAA's estimate. They would fall short, however, of the ACI estimate by about $3 billion per year.

According to FAA's analysis, 61 percent of capital needs at airports are for capacity enhancement, reconstruction, and modifications to bring the facilities up to the agency's design standards and 39 percent of the needs are related to safety, security, and environmental projects.

B. FUNDING SOURCES

As noted above, from 1999 to 2001, the 3,364 NPIAS airports received an average of $12 billion per year for capital development. The largest source of funds was bonds, followed by AIP grants and passenger facility charges (PFCs). The table below shows the amount and distribution of funding for NPIAS airports:

SOURCES OF AIRPORT FUNDING [1]

[Dollars in billions]

Funding source	1999–2001 average funding	Percent of total
Airport bonds	$6.9	59
AIP grants	2.4	21
PFCs	1.6	13
State and local funds	0.4	4
Airport revenue	0.4	.....
Total	11.8	100

[1] Figures provided by GAO.

It should be pointed out, however, the amount and type of funding varies dramatically by size of airport. Larger airports are much more dependent on bond financing and PFCs for their capital needs. Smaller airports are disproportionally dependent on AIP funds and state and local contributions. Changes to the Federal statute governing the PFC will therefore generally be of more interest to larger airports, while changes to the AIP distribution formula will have a larger impact on the smaller airports.

1. THE AIRPORT IMPROVEMENT PROGRAM (AIP)

The current authorization for the AIP program expires at the end of FY 2003. Unlike most Federal programs, simply passing an appropriations bill is not sufficient to allow AIP funds from the Airport and Airway Trust Fund (AATF) to be released because AIP is funded by contract authority which is mandatory spending that must be included in an authorization Act. AATF funds are derived from a variety of aviation user fees and fuel taxes. A new authorization must be enacted by October 1, 2003, for funds to flow from the trust fund for this program.

The FY 2003 enacted funding level for the program, as authorized by the Aviation Investment and Reform Act for the 21st Century (AIR 21), is $3.4 billion. The President's budget proposal for FY 2004 simply flat lines the program into the out years at $3.4 billion—there is no proposed increase for inflation. The Administration's budget proposal directed more AIP funds toward medium and small airports, since they are most dependent on AIP grants. This targeting would come at the expense of the larger hub airports.

The funding for the AIP program is generally distributed either by formula or as discretionary grants by the FAA. These formulas and eligibility rules are set in statute and vary by the type and size of airport. The following table shows how funding is distributed by size of airport under current law and how it would be distributed under the President's budget request for FY 2004:

DISTRIBUTION OF AIP FUNDS BY TYPE OF AIRPORT [1]

[Dollars in millions]

Airport category	Formula	Discretionary	Total	Percent
Current law				
Large (66)	$656	$488	$1,444	35%
Small (3423)	$1,522	$647	$2,169	65%
Total	$2,178	$1,135	$3,313	100%
	66%	34%		
President's budget				
Large (66)	$286	$837	$1,123	34%
Small (3423)	$1,508	$682	$2,190	66%
Total	$1,795	$1,518	$3,313	100%
	54%	46%		

[1] Figures provided by GAO.

The table shows that the President's budget proposal would shift formula grants even further from the larger airport towards smaller ones. It also would increase the amount of funds that would be available for discretionary distribution by the FAA from the current 34 percent to 46 percent. The stated purpose of this proposal is to concentrate the funding on those airports that are most dependent on AIP funding, while increasing the discretionary funding available to fund major projects at large airports. In recent years, AIP discretionary funds have been earmarked in the reports accompanying the annual Transportation Appropriations bills for airports of all sizes, leaving less discretion for the program.

In order to allow airports to proceed without having the full Federal AIP contribution in hand, the FAA issues Letters of Intent (LOIs). The LOI represents a nonbinding commitment from the FAA to provide multi-year funding to an airport beyond the current AIP authorization period. The airport can proceed on the project without waiting for a future AIP grant because the airport and investors know that allowable costs are likely to be reimbursed. The FAA has 64 outstanding letters of intent with a total commitment of about $3 billion; large and medium-hub airports account for the majority of the total. In any given year, the amount of AIP discretionary funds that are committed under LOIs does not exceed 50 percent of the total available for discretionary grants.

As a general rule, the Federal share of an AIP project's cost is 90 percent. However, at medium and large hub airports, the Federal share is 75 percent. In the case of a project involving an airport terminal building, the Federal share is 85 percent at non-hubs, and 75 percent at hubs.

During FY 2002, the FAA awarded a total of $561 million in AIP grant funds to airports for security projects (17 percent of the $3.3 billion available). This is almost an 800 percent increase in security funding from AIP compared to prior years and is the largest amount awarded to airports for security projects in a single year since the program began in 1982. Based on data provided by the FAA, all of the security projects funded with AIP grants since the events of September 11, 2001, met the legislative and program eligibility requirements. The increase in funding for security projects came, however, at the expense of more traditional projects like airport rehabilitation.

2. PASSENGER FACILITY CHARGE (PFC)

During the late 1960's, a number of airports began collecting a local "head tax" (the precursor of the PFC) on each paying passenger boarding an aircraft. In 1973, the Airport Development Acceleration Act banned the imposition of state and local passenger charges.

In 1990, pressure on the Federal budget resulting from a deficit led to a reconsideration of head taxes. Concerns that the Aviation Trust Fund and other existing sources of funds for airport development would be insufficient to meet national airport needs led to the enactment of legislation that authorized the PFC. The PFC is a local tax imposed, with federal approval, by an airport on each boarding passenger. PFC revenues can be used for a somewhat broader range of projects than AIP grants and are more likely to be used for "ground side" projects such as passenger terminal and ground access improvements. PFCs can also be used for bond repayments.

The PFC was seen as being complementary to AIP funding, and the Aviation Safety and Capacity Expansion Act of 1990 allowed the Secretary of Transportation to authorize public agencies that control commercial airports to impose a passenger facility fee of $1, $2, or $3 on each paying passenger boarding an aircraft at the airports. The money was limited to be used to finance eligible airport-related capital projects defined in law and, unlike AIP funds, could be used to make payments for debt service or indebtedness incurred to carry out the projects. There was a $3 cap on each air-

port's PFC and there was a $12 limit on the total PFCs that a passenger could be charged per round-trip.

AIR 21 increased the PFC ceiling to $4.50. However, to impose a PFC over the $3 level, an airport has to show that the funded projects will make significant improvements in air safety, increase competition, reduce congestion or noise impacts on communities, and that these projects could not be funded with only AIP funds. Large and medium hub airports imposing PFCs above the $3 level forego 75 percent of their AIP formula funds. Beginning in FY 2001, PFCs at large and medium hub airports may not be approved unless they have submitted a written competition plan to the FAA. The competition plans are to include information such as, the availability of gates, leasing arrangements, gate-use requirements, patterns of air service, controls over-air and ground-side capacity, intentions to build gates that could be used as common facilities, and airfare levels compared to other large airports.

FAA has approved PFCs at 332 airports and 308 are currently collecting such charges. Last year, $2 billion was collected and a comparable amount is expected to be collected this year. As of December 2002, 28 large hub and 30 medium hub airports had PFCs in place.

If a medium or large hub airport charges a $3 PFC, it must forego up to 50 percent of its AIP passenger entitlement. If it charges more than $3, it must forego 75 percent of its AIP passenger entitlement. The foregone entitlements are directed into a special small airport fund to be redistributed.

Because of the complementary relationship between AIP and PFCs, PFC legislation is generally folded into the AIP provisions of FAA reauthorization legislation.

IV. AIRPORTS SECURITY COSTS

The airport community is concerned about the cost of complying with new Federal security requirements, especially the costs associated with terminal modifications required to accommodate explosive detection equipment.

The airports are requesting that new Federal resources accompany Federal requirements. According to them, airport operators can no longer absorb additional security costs without serious consequences to capital improvement programs and other airport operations. They contend that airports are already stretched thin trying to deal with a number of unfunded mandates imposed on them by the Federal government. In addition, the AIP has already been tapped heavily for security-related items, with more than $560 million in FY 2002 devoted for security, up from $57 million the previous year. The airports argue that without Federal assistance, they will have no choice but to pass costs on to the airline industry.

Many of the mandates issued by the FAA and TSA to provide additional law enforcement personnel, enhance airport surveillance, and revalidate all airport-issued identification, for example, remain unfunded. In FY 2002, Congress appropriated $175 million to reimburse airports for a portion of these costs. As part of the process of applying for those funds, airports collectively submitted requests for $444 million in expenses that the FAA deemed eligible expenditures for reimbursement, leaving a roughly $270 million gap that airports have been forced to absorb. An additional $150 million was

provided for reimbursement as part of the FY 2002 Supplemental Appropriations Act, but those funds did not materialize because the President rejected the "contingent emergency" portions of the law.

At a February 5, 2003, Commerce Committee hearing, DOT Inspector General Kenneth Mead stated the he believed that "facility modifications (for security projects enhancements) at airports could cost up to $5 billion." He added, "if I was the Congress, I would consider establishing a capital revolving fund that would have private-sector and public-sector representatives on the governing board. It would probably only last for three, four, or five years. I would take a small percentage of the AIP and send it to this revolving fund, and that percentage would be calculated according to what the historical spending patterns have been out of the AIP for security. And I would take a certain percent of the passenger fee that's already law, and I would drive that money into a capital fund. Because you are going to need lots of capital money when you go into these large airport terminals and start taking apart the baggage systems. And I think you need a stable funding source, for everybody's sake."

V. SERVICE TO SMALL AND RURAL COMMUNITIES

Congress has long been concerned about airline service to small and rural communities. When Congress deregulated the airlines in the late 1970's, it also created the Essential Air Service (EAS) program to ensure that communities that had been receiving service before deregulation would continue to receive service. In AIR 21, Congress created another program, the Small Community Air Service Development Pilot Program, to experiment with different approaches for attracting and retaining service.

Small communities are facing increasingly difficult challenges not only in attracting new air service, but also in retaining their current service. Many network air carriers experiencing unprecedented financial losses are taking steps to minimize losses such as cutting unprofitable service. As the financial problems continue, and because service to small communities is often relatively unprofitable, these communities may be the hardest hit. In turn, this could place further pressure on the EAS program as additional communities qualify for Federally-subsidized air service. It could also increase the demand for grants under the Small Community Air Service Development Pilot Program, which in FY 2002, already had requests far in excess of available funds.

A. THE ESSENTIAL AIR SERVICE PROGRAM (EAS)

Over two decades ago, the Congress deregulated the airline industry, phasing out the Federal government's control over domestic fares and routes served, and allowing market forces to determine the price, quantity, and quality of service. Concerned that air service to some small communities would suffer in a deregulated environment, Congress established the EAS program as part of the Airline Deregulation Act of 1978. The Act guaranteed that communities served by air carriers before deregulation would continue to receive a certain level of scheduled air service.

In general, the Act guaranteed continued service by authorizing the CAB, whose duties were later transferred to the DOT, to require carriers to continue providing service at these small commu-

nities. If an air carrier could not continue that service without incurring a loss, DOT could then use EAS funds to award that carrier, or another carrier willing to provide service, a subsidy. These subsidies are intended to cover the difference between a carrier's projected revenues and expenses, and provide a minimum amount of profit.

As of February 1, 2003, the EAS program provided subsidies to air carriers to serve 125 communities, 88 in the continental United States and another 37 in Alaska, Hawaii, and Puerto Rico. That number is expected to increase further, as financially extended air carriers now providing unsubsidized service to certain communities are likely to discontinue service to cut costs.

To be eligible for subsidized service, communities must meet three general requirements. They must have received scheduled commercial passenger service as of October 1978; they must be no closer than 70 highway miles to a medium- or large-hub airport; and they must not require a subsidy of more than $200 per person (unless the community is more than 210 highway miles from the nearest medium- or large-hub airport, in which case no average per-passenger dollar limit applies).

Federal funding for the EAS program has more than tripled since 1995, rising from $37 million to $113 million in FY 2002. Over the same period, the average subsidy per community served in the continental United States rose from nearly $424,000 in 1995, to an estimated $828,000 in 2002. For communities in Alaska, Hawaii, and Puerto Rico, the average subsidy per community served rose from just over $90,000, to an estimated $251,000 in 2002.

Total passenger traffic at EAS-subsidized communities decreased by 20 percent since 1995, and the median number of passenger enplanements fell to an estimated 10 per day (an average of just over 3 passengers per flight).

Several factors, including increasing carrier costs, limited passenger revenue, and increasing numbers of eligible communities requiring subsidized service, are likely to affect potential future subsidy requirements of the EAS program. Carriers' operating costs have increased over time, in part because of costs associated with meeting Federal regulatory requirements regarding safety in small aircraft. Carrier costs may increase further if trends in the retirement of smaller turboprop aircraft continue and carriers begin to use larger aircraft on these routes. In contrast, carrier revenues have been limited because many individuals traveling to or from EAS-subsidized communities choose not to fly from the local airport, but rather to use other, larger nearby airports, which generally offer more service at lower airfares. Lastly, the number of communities eligible for subsidies has increased, and is likely to continue to grow in the near term.

B. THE SMALL COMMUNITY AIR SERVICE DEVELOPMENT PILOT PROGRAM

Congress first authorized the Small Community Air Service Development Pilot Program as part of AIR 21 to help small communities enhance their air service. Under this program, DOT is authorized to award grants to 40 communities served by small hub or nonhub airports that have demonstrated air service deficiencies or higher than average airfares. Priority is given to communities

that provide local matching funds. AIR 21 also contained provisions to allow DOT to work with and coordinate efforts with other federal, state, and local agencies to increase the viability of service to small communities, which could include disseminating information on "best practices" identified by the program.

Congress appropriated $20 million for FY 2002 for this program. While DOT had $20 million available for grants to 40 small communities under its Pilot Program, demand for the funds far exceeded this amount. In all, DOT received 180 applications from communities in 47 states, and the applications totaled over $142.5 million, or more than seven times the amount available. By December 2002, DOT had awarded grants totaling about $20 million to 40 communities (or consortia of communities). The grants, which ranged in size from $44,000 to $1,557,500, were applied to such purposes as studies, marketing programs, financial incentives, and other transportation options.

The expectation in awarding such grants is that the communities that receive them will be able to parlay such grants into an ongoing program that can be self-sustaining. For example, in a community that is trying to enhance its existing service, the grant might help to provide a revenue guarantee to the airline for the first months of the expanded operation, with the expectation that the expanded service will stimulate the market, creating a sustainable base of passengers. The grants are not designed to be renewable. DOT received another $20 million for the program in FY 2003 that has not yet been distributed.

C. THE ADMINISTRATION PROPOSAL

In the FY 2004 Budget Submission, released in February 2003, the Administration requested only $50 million for EAS and no funding for the small community grant program. The EAS proposal also would require a 25 percent local match, except for communities that were more than 210 miles from the nearest large or medium hub, in which case a 10 percent match would be required. The Secretary would distribute the funds beginning with the most isolated community willing to provide the match and continue with the next most isolated, and so forth, until the $50 million was exhausted. There also would no longer be a minimum service requirement. In other words, the requirement that communities be served at least twice a day could be dropped in favor of air taxi, charter service, or even ground transportation.

SUMMARY OF PROVISIONS

MAJOR PROVISIONS OF S. 824, THE AVIATION INVESTMENT AND REVITALIZATION VISION ACT (AIR–V)

A. FUNDING

The bill authorizes funding for the FAA for FY 2004 through FY 2006. The major programs authorized are FAA operations, facilities and equipment (which funds FAA air traffic control modernization and replacement), the airport improvement program, and research engineering and development. The table below shows the funding levels:

FAA FUNDING SUMMARY

[Dollars in billions]

	2004	2005	2006	Total
FAA operations	7.6	7.7	7.9	23.2
Facilities and equipment	2.9	3.0	3.0	8.9
Airport improv. program	3.4	3.5	3.6	10.5
Research	0.3	0.3	0.3	0.9
Total	14.2	14.5	14.8	43.5

The funding levels for FAA operations and for the facilities and equipment account are at the levels requested in the Administration proposal. The funding level for the AIP would be increased by $100 million per year in FY 2005 and in FY 2006. The Administration proposal would keep the funding levels flat at the FY 2003 level of $3.4 billion. The research levels are based on the authorized funding levels in S. 788, the Second Century of Flight Act, introduced by Senators Hollings, Brownback, Rockefeller, Inouye, Cantwell, and Kerry on April 3, 2003.

AIR–V would extend through FY 2006, the AIR 21 spending provisions requiring appropriations from the Airport and Airway Trust Fund for FAA programs to be equal to receipts plus interest credited to fund. The bill also extends through FY 2006 the AIR 21 provision giving priority and protections for funding from the trust fund for the FAA capital programs. Any funds above the taxes and interest that are required to fund the operations account are derived from the general fund. The AIR 21 funding "guarantees" that are enforced through points of order in the Senate and in the House of Representatives, are also continued.

B. STREAMLINING OF AIRPORT PROJECTS

AIR–V contains provisions designed to expedite the process for construction of airport capacity and safety projects. The environmental streamlining provisions in the bill would allow DOT to designate certain airport expansion proposals as National Capacity Projects, which would receive dedicated resources and expedited procedures for environmental reviews. In addition, these projects would receive priority consideration for review and clearance by other federal agencies. The bill also includes a pilot program intended to allow airports to contribute to a fund that can be used by the FAA to hire more personnel to handle the complex and time-consuming work associated with current environmental reviews. Many of these provisions were included in S. 633, the Aviation Delay Prevention Act, which was reported out favorably by the Committee during the last Congress.

C. AVIATION SECURITY

AIR–V contains a number of provisions related to aviation security. Most importantly, the bill would create a new fund which is financed with $500 million annually in security service fees which are already being collected by the TSA. The fund would be administered by the Secretary of Transportation to make grants to airports to assist with capital security costs. Estimates of the capital cost of modifying airports to accept explosive detection system (EDS) equipment range from $3 billion to $5 billion. The source of funding

for these costs has not been clear. Again, in FY 2002, the FAA distributed $561 million in AIP grants toward these costs. The FAA has indicated it is considering taking action to provide a similar amount in FY 2003. Due to concern that the diversion of AIP grants to security projects threatens to undermine important airport capacity and safety projects, the bill tightens AIP eligibility rules to prohibit the use of AIP for such purposes.

The bill also would require the Secretary of Homeland Security to reevaluate the entire aviation security system, submit a report to Congress on the results of the evaluation, and to redeploy resources accordingly.

LEGISLATIVE HISTORY

On April 8, 2003, Senator McCain introduced S.824, a bill to reauthorize the FAA and its programs, as well as streamline airport capacity projects and improve aviation security. The bill was originally co-sponsored by Senators Hollings, Lott, and Rockefeller. Sections of the bill regarding the streamlining of airport capacity projects largely arose from provisions provided in S. 633, the Aviation Delay Prevention Act, which was reported favorably out of the Commerce Committee in the 107th Congress. A substantial portion of the FAA's research and development sections were essentially identical to S. 2951, the Federal Aviation Administration Research, Engineering, and Development Act of 2002, which also was reported favorably out of the Commerce Committee and passed by the Senate during the 107th Congress.

On April 10, 2003, the Commerce Committee held a hearing on S. 824.

On May 1, 2003, the Committee ordered S. 824 to be reported favorably with an amendment in the nature of a substitute.

ESTIMATED COSTS

In compliance with subsection (a)(3) of paragraph 11 of rule XXVI of the Standing Rules of the Senate, the Committee states that, in its opinion, it is necessary to dispense with the requirements of paragraphs (1) and (2) of that subsection in order to expedite the business of the Senate.

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:

S. 824 would create a new program requiring the FAA to certify flight attendants. Complying with the requirement is expected to have some impact on air carriers. The air carriers, however, already have to comply with the FAA's and the TSA's requirements for training flight attendants, so the impact should be incremental. Other impacts of provisions in the bill should be minor.

NUMBER OF PERSONS COVERED

S. 824 would reauthorize FAA programs and is intended to improve airport capacity management and reduce airport congestion in the United States. The number of persons covered should be consistent with current levels of individuals effected.

ECONOMIC IMPACT

S. 824 would authorize funds for the FAA's programs. These programs are intended to sustain and promote aviation safety, security, and efficiency. Adequate levels of safety, security, and efficiency as well as the promotion of the free flow of people and products, are essential to sound air commerce. This legislation will work toward ensuring an environment conducive to economic opportunity. Other sections of the bill are intended to improve the nation's airport capacity needs and should have a beneficial impact on the economy of the United States.

PRIVACY

S. 824 is not expected to have an adverse effect on the personal privacy of any individuals that will be impacted by this legislation.

PAPERWORK

S. 824 would have a minimal impact on current paperwork levels, and seeks to reduce duplication in some areas. The legislation requires the DOT to identify reasonable alternatives that exist to capacity enhancement projects for publication in the Federal Register, and to identify airports which cause significant delays to the national air transportation system. Airports that are identified as contributing considerably to air traffic delays in the United States will be required to generate a study on the matter, or develop a task force to submit recommendations for capacity enhancement.

Airports also would be required to report to the Secretary of Transportation when they deny an air carrier access to a gate.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title; Amendment of Title 49

This section provides that the Act may be cited as The Aviation Investment and Revitalization Vision Act (AIR–V). This section provides that, except where otherwise expressly provided, any references to sections or provisions are made to title 49, United States Code.

Sec. 2. Table of Contents

This section contains the table of contents.

TITLE I—REAUTHORIZATIONS; FAA MANAGEMENT

Sec. 101. Airport Improvement Program

Section 101 authorizes $3.4 billion in FY 2004; $3.5 billion in FY 2005; and $3.6 billion in FY 2006 for the Airport Improvement Program. In addition, the Administration may expend from these authorized funds for administrative expenses provided they do not exceed $69.7 million for FY 2004; $71.8 million for FY 2005; and $74.0 million for FY 2006.

Sec. 102. Airway Facilities Improvement Program

This section authorizes $2.9 billion in FY 2004; $2.97 billion in FY 2005; and $3.0 billion in FY 2006 for the Airway Facilities Im-

provement Program. It also requires a report on major FAA modernization programs.

Sec. 103. FAA Operations

This section authorizes funding for FAA Operations at $7.6 billion for FY 2004; $7.7 billion for FY 2005; and $7.9 billion for FY 2006. The Committee is aware that the FAA, as part of its annual Budget Submission, provides information on training funds for inspectors. Rather than request a separate report, the Committee will continue to review the amounts provided for inspector training through the Budget Submission.

Sec. 104. Research, Engineering, and Development

This section authorizes funding for Research, Engineering, and Development at $289 million for FY 2004; $304 million for FY 2005; and $317 million for FY 2006.

Sec. 105. Other Programs

This section extends to FY 2006 the AIR 21 formula determining the Airport and Airways Trust Fund share of the FAA budget.

Sec. 106. Reorganization of the Air Traffic Services Subcommittee.

This section changes the Air Traffic Subcommittee, created in AIR 21, from a subcommittee of the Management Advisory Council to a free-standing Committee. The Administrator will serve as Chair, with the Secretary of Transportation to appoint the additional 4 members of the 5 member board. No appointed Committee member may be a United States government employee. With the exception of the Committee's current appointees, subsequent appointees will have 3 year terms.

Sec. 107. Responsibilities of the COO

This section clarifies the FAA's Chief Operating Officer (COO) responsibilities for managing the FAA's air traffic control system. Although the legislation that established the position of COO was clear that the position was that of a Chief Operating Officer, some of the functions that the statute currently bestows upon the position, specifically those related to developing (rather than implementing) the agency's strategic plan and its budget, are those more in line with the position of a Chief Executive Officer (CEO). The amendments clarify that the COO would be responsible for the day-to-day operational functions of the air traffic control organization.

TITLE II—AIRPORT DEVELOPMENT

Sec. 201. National Capacity Projects

This section adds a new chapter 477 to title 49 entitled National Capacity Projects.

§ 47701. Capacity Enhancement

This new section requires the Secretary to identify any large hub airports with delays that markedly affect the national air transportation system. Any airport that is identified and is not currently participating in the runway expansion process or has not begun a capacity enhancement study (CES) must perform a CES or estab-

lish a delay reduction task force to report to the Secretary. Any airport that is the subject of a report or study recommending construction in response to delays must have the planning and environmental review process to address this matter completed within 5 years. Any airport that does not take recommended expansion action will be ineligible for federal planning and expansion funds or approval of passenger facility fees during that 5-year period for any projects that are not environment, safety, or security-related.

§ 47702. Designation of National Capacity Projects

This new section allows the Secretary to designate projects that are determined to have a significant impact on enhancing the national air transportation system as national capacity projects.

§ 47703. Expedited Coordinated Environmental Review Process; Project Coordinators and Environment Impact Teams

This section requires DOT to develop and implement an expedited, coordinated environmental review process that encompasses all Federal, state, regional, and local agencies' reviews for airport projects. This process would provide for concurrent reviews and conclude by a date certain. The Secretary also will be required to start a pilot program to be funded by airport sponsors to improve environmental review of national capacity projects. The pilot program will provide for the hiring of full-time staff from outside the United States Government with an expertise in environmental policy. The Committee is aware that a number of large projects, like Sea-Tac in Seattle, have gotten caught up in Federal agency bureaucratic disputes, causing substantial delay in construction of the project. This section seeks to end such bureaucratic wrangling.

§ 47704. Compatible Land Use Initiative for National Capacity Projects

The Secretary is also empowered to make grants to state, local government, and airports for land use compatibility plans directly related to national capacity projects.

§ 47705. Air Traffic Procedures at National Capacity Projects

This section provides the Secretary the option of prescribing air traffic procedures at facilities that are working on national capacity projects in an effort to minimize any adverse impacts of construction.

§ 47706. Pilot Program for Environmental Review at National Capacity Projects

The Secretary also will be required to start a pilot program to be funded by airport sponsors to improve environmental review of national capacity projects. The pilot program will provide for the hiring of full-time staff from outside the United States government with an expertise in environmental policy.

§ 47707. Definitions

This section sets out definitions for "national capacity project," and other terms based on existing statutory meanings.

Sec. 202. Categorical Exclusions

Section 202 requires the Secretary to provide a report on recognized and proposed categorical exclusions from an environmental assessment or environmental impact statement (EIS) on airport projects to the Committee within 30 days of enactment of the Act. It does not change existing procedures under NEPA.

Sec. 203. Alternative Analysis

Section 203 requires the Secretary to request public comments within 30 days of identifying airport enhancement projects to examine potential alternatives. Sixty days will be provided for public comment, and within 90 days after that point the Secretary will make the determination whether reasonable alternatives exist to the proposed project.

Sec. 204. Increase in Apportionment For, and Flexibility of, Noise Compatibility Planning Programs

Section 204 amends the U.S. Code to ensure that at least 35 percent of special apportionment grants are used to address airport noise compatibility planning issues.

Sec. 205. Secretary of Transportation To Identify Airport Congestion-Relief Projects and Forecast Airport Operations Annually

Section 205 requires the Secretary to provide to the Committee within 90 days of enactment of this legislation a list of planned projects and a list of options for expanding capacity at the 8 airports with the most severe delays.

Sec. 206. Design-Build Contracting

This section extends the pilot program, contained in AIR 21, to allow desion-build contracting for federally assisted airport projects. The Administrator may approve a design-build contract if (1) the Administrator approves the application using criteria established by the Administrator; (2) the design-build contract is in a form that is approved by the Administrator; (3) the Administrator is satisfied that the contract will be executed pursuant to competitive procedures and contains schematic designs adequate for the Administrator to approve grant; (4) use of a design build contract will be cost effective and expedite the project; (5) the Administrator is satisfied that there will be no conflict of interest; and (6) the Administrator is satisfied the selection process will be open, fair, and objective and that at least three or more bids will be submitted for each project under the selection process.

(b) The Administrator may reimburse an airport sponsor for design and construction costs incurred before a grant is made if the project is approved by the Administrator in advance and is carried out in accordance with all administrative and statutory requirements.

(c) Design-Build contract is defined as an agreement that provides for both design and construction of a project by the contractor.

Sec. 207. Special Rule for Airports in Illinois

Section 207 retains the power of the Governor of Illinois to approve or disapprove airport projects in the State, but ensures that

the provisions of the Act may be applied to projects in Illinois, and that airports in the state would be eligible to utilize the expedited process. This provision is similar to the provision included in S. 633 from the 107th Congress.

Sec. 208. Elimination of Duplicative Requirements

Section 208 eliminates redundant requirements in chapter 471 regarding project grant applications for airport development.

Sec. 209. Streamlining the Passenger Facility Fee Program

This section would amend current PFC consultation requirements with air carriers to require consultation only with those carriers whose passengers will be charged a PFC. It also would delete the requirement for significant contribution tests since previous requirements are deemed adequate and the current requirement creates complicated collection schedules. This section also establishes a pilot program for smaller airports to implement a fee unless Secretary overrules such action.

Sec. 210. Quarterly Status Reports

In the second calender quarter after the date of enactment, the Secretary of Transportation shall provide quarterly status reports to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the status of construction of major runway projects at the 40 largest airports

Sec. 211. Noise Disclosure Requirements

The purpose of this section is to increase prospective home buyers' awareness of areas near airports that are exposed to aircraft noise by requiring notice that certain properties are subject to noise, as depicted on noise exposure maps. This notice is required for approval of a loan by federally regulated lenders and Federal agency lenders.

To assure that noise exposure maps made available for noise disclosure are reasonably up to date, this section also would amend the requirements for revising noise exposure maps by adding a new requirement that noise exposure maps be revised if there is any significant reduction in noise contours depicted on a previously submitted noise exposure map. Under current law, such revisions are required only where an increase in noise results in a substantial new incompatible use.

Sec. 212. Prohibition on Requiring Airports To Provide Rent-Free Space for FAA or TSA

Neither TSA nor FAA may require airport sponsors to provide space at airport sponsor-owned buildings to FAA or TSA without cost for services relating to air traffic control, air navigation, aviation security, or weather reporting. This does not prohibit agreements from being made between these parties without cost or with below market rates, nor does it prohibit a Secretary from requiring an airport sponsor to provide land without cost to FAA for air traffic control facilities or space without cost to the TSA for necessary security checkpoints.

Sec. 213. Rules for Fiscal Year 2004

Section 213 increases from 90 percent to 95 percent, the federal governments funding share for projects funded by State block grant programs for nonhub and small hub projects for FY 2004. It also holds harmless, for one year, airports whose enplanements have dropped due to reduced travel.

Sec. 214. Agreements for Operation of Airport Facilities

Section 214 authorizes $6.5 million in FY 2004, $7.0 million in FY 2005, and $7.5 million in FY 2006 for funding for the Control Tower Program.

Sec. 215. Public Agencies

Section 215 allows the Department of Interior to apply for AIP for an airport owned by the Department that is required to be maintained for commercial aviation safety at a remote location.

Sec. 216. Flexible Funding for Nonprimary Airports to Apportionments

This section aligns the uses of apportionments to nonprimary airports with those permitted for primary airports. It would permit these apportionments to be used at any other airport owned by the same sponsor; and would allow the sharing of apportionments by the transfer of the apportionment to another airport within the same state or geographical area.

TITLE III—AIRLINE SERVICE DEVELOPMENT

SUBTITLE A—PROGRAM ENHANCEMENTS

Sec. 301. Delay Reduction Meetings

Section 301 allows the Secretary to call for meetings between air carriers and the FAA Administrator to consider flight reductions at heavily congested airports if the Secretary and Administrator determine that conditions necessitate such discussions. Any meetings that are called will be chaired by the Administrator and will be open to all scheduled air carriers only to discuss the conditions that prompted the meeting, and the air carriers must be informed of these conditions at least two days prior to meeting. Any delay reduction proposals are required to be made to the Administrator rather than to another carrier. The DOT is required to be represented at any meetings, and the Administrator must make a transcript of the meeting available to the public within three working days.

This section also mandates that the Secretary develop procedures for this program within 30 days, and requests air carriers to file a request with the Secretary to participate in this program. The Secretary also will have the option of developing a program to address the unique situation presented by inclement weather. In addition, it provides the same immunity afforded under the Clayton Act.

Sec. 302. Small Community Air Service Development Pilot Program

This section extends the small community air service development pilot program, established in AIR 21, until 2006 with funding

of $27.5 million per year for the 3 year extension. It also clarifies that 40 communities per year may participate and that no community may participate in the program twice. It also clarifies eligibility for the programs Airport Development Zone; which DOT initially limited to one report, contrary to the law's original intent.

Sec. 303. DOT Study of Competition and Access Problems at Large and Medium Hub Airports

This section instructs the Secretary of Transportation to study competition and airline access problems at hub airports. Specifically gate usage and availability; and effects of pricing of gates and other facilities on competition and access should be studied. Within 6 months, the Secretary's findings, conclusion, and recommendations are to be submitted to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

Sec. 304. Competition Disclosure Requirements for Large and Medium Hub Airports

This section requires that airports which deny applications by an air carrier for access to gates or other facilities submit to the Secretary notification of the denial and a report explaining the reasons for the denial and a time line, if any, by which the request will be accommodated.

SUBTITLE B—SMALL COMMUNITY AND RURAL AIR SERVICE REVITALIZATION

Sec. 351. Essential Air Service Reauthorization

This section extends the current funding levels for 3 years.

Sec. 352. Incentive Program

This section establishes a "Marketing Incentive Program" as part of the EAS program, aimed at increasing ridership, reducing subsidy costs, and developing opportunities to improve the service to EAS communities.

The section directs the Secretary of the Transportation to establish a program though which eligible EAS communities may receive grants of up to $50,000 from the Department to develop and implement a plan to increase passenger use and boardings at their airport. Under the grant program, at least 25 percent of the public costs associated with a community's plan must come from non-Federal sources which may be financed through in-kind contributions or with proceeds from the sale of bonds, but may not come, directly or indirectly, from other forms of Federal funding. If the Secretary determines that a community participating in the marketing program has increased average monthly boardings or the level of passenger usage at their airport by at least 25 percent over any one-year period while the program has been in effect, then only 10 percent of the costs associated with the marketing plan must come from non-Federal sources for the following year. If the Secretary determines that a community participating in the marketing program has increased average monthly boardings or the level of passenger usage at their airport by at least 50 percent over any one-year period while the program has been in effect, then none of the

publicly financed costs associated with the marketing plan must come from non-Federal sources for the following year.

The section allows the Secretary to provide any State with an eligible EAS community up to $50,000 to assist the State and associated communities in improving their ability to increase passenger boardings at these locales, with the requirement that at least 10 percent of the costs associated with this effort are from non-Federal sources, including in-kind contributions.

The section authorizes $12,000,000 for each of fiscal years 2004 through 2007 to fund the Marketing Incentive Program with the requirement that not more than $200,000 be used for administrative costs in any given year. The section also defines four terms for use in the sub-chapter.

Sec. 353. Pilot Programs

Section 353 directs the Secretary of Transportation to create a number of pilot programs for improving service at EAS communities. The programs that must be developed include:

A Community Flexibility program for up to 10 communities under which a locale may decide to opt-out of the EAS program for a period of 10 years in exchange for a grant equivalent to 2 years of EAS assistance for such locales to improve their existing aviation facility;

An Equipment Changes program for up to 10 communities through which a locale may request the use of smaller equipment to improve service as long as such a change does not compromise safety;

An Alternative Services program for any three airport sponsors under which the Secretary can provide a locale 100 percent of the funding necessary to establish a reasonable amount of alternative transportation from the participating facility to the closest hub or small-hub airport with the airport sponsor authorized to use its EAS funding for any project that would improve the existing facility, and the option of exiting the pilot program at any time after one-year of participation;

A Cost-Sharing program under which the airport sponsors of EAS locales may share in the cost of improved service above the basic EAS subsidy they are provided; and,

A Local Participation program under which the Secretary selects 10 EAS communities that are within 100 miles of a hub airport that must pay a 10 percent share for three year period. Any of the communities selected are automatically eligible for the other pilot programs. Travel time may be considered in determining which communities will participate. In addition, no more than one community per state may be designated, and chosen communities may appeal that designation. Participating communities may use in-kind contributions when providing their share, and are not precluded in participating in any other pilot programs in this section. The section permits a Code-Sharing program under which the Secretary may require air carriers providing service to EAS communities, along with major air carriers serving larger destinations, to participate in multiple code-sharing arrangements that would improve air transportation service. It also mandates that the Secretary require EAS providers to track changes in service, and that communities seeking to participate in any of these programs sub-

mit an application as determined by the Department of Transportation.

Sec. 354. EAS Program Authority Changes

Section 354 permits the Secretary of Transportation to increase the current rate of compensation to EAS providers that have experienced an average monthly cost increase of ten percent or more. In addition, any funds that are reimbursed to the Department as a result of decreased subsidy needs will be provided to the Secretary and may be used to increase flights at that airport.

TITLE IV—AVIATION SECURITY

Sec. 401. Study of Effectiveness of Transportation Security System

The section instructs the Secretary of the Department of Homeland Security to study the effectiveness of the aviation security system. Within 6 months the Secretary's findings, conclusions and recommendations will be submitted to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. The Secretary is directed to redeploy resources based on the results of the study.

Sec. 402. Aviation Security Capital Fund

This section establishes the Aviation Security Capital Fund which is financed with $500 million annually in security service fees which are already collected by the Transportation Security Administration (TSA). The Fund is administered by the Secretary of Transportation and will make grants to airports to assist with capital security costs. The Fund will allocate 40 percent to hub airports; 20 percent to medium hub airports; 15 percent to small hub airports; and 25 percent distributed at the Secretary's discretion to address security risks. Airport apportionment is based on a formula based on the ratio of passenger enplanements at each airport bears to total passenger enplanements. The funds should enable DOT to reimburse and fund actions taken since September 11, 2001, to improve security.

Sec. 403. Modification of Security-Related Airport Development Definition

This section modifies the definition of "Airport Development" to remove the eligibility for airport capital costs associated with installing explosive detection system equipment. Such costs would be funded from the Aviation Security Capital Fund.

Sec. 404. Armed Forces Charter

This section provides that the Armed Forces are not subject to the same security rules as commercial charters.

TITLE V—MISCELLANEOUS

Sec. 501. Extension of War Risk Insurance Authority

This section extends the Secretary of Transportation's underlying authority to issue war-risk insurance through calendar year 2006. This authority currently expires at the end of calendar year 2004.

Sec. 502. Cost-Sharing of Air Traffic Modernization Projects

This section would provide permanent authorization for a successful pilot program that was enacted as part of AIR 21 (see section 304 of Pub.L. 106–181, Apr. 8, 2000) to encourage non-Federal investment in critical air traffic facilities and equipment. The 3-year pilot program allowed for cost sharing between FAA and airports or joint ventures of airports and air carriers, of not more than 10 air traffic modernization projects. In FY 2001, 5 cost-sharing projects were awarded and 5 more were awarded in FY 2002. The program allowed FAA to facilitate the modernization of the national airspace system (NAS) in areas where Federal funds were not available to meet all needs. Given the success of the program, section 203 would make the AIR-21 provision a permanent program under chapter 445 of title 49, and propose several changes to its terms: limit the Federal share for each project to $5 million instead of $15 million; expand the eligibility of those who may participate to any major user of the NAS (e.g. air carriers would not have to be in a joint venture with an airport in order to participate); permit the funding of up to 10 projects per fiscal year; and clarify that any facilities or equipment funded by the program that may be transferred to the FAA are transferred with the FAA's consent and meet FAA standards.

Sec. 503. Counterfeit or Fraudulently Represented Parts

This section would direct the FAA Administrator to deny the certification of a person who knowingly, and with the intent to defraud, carried out or facilitated an activity relating to counterfeit or fraudulently represented aviation parts or materials, and otherwise punishable by law. The person denied certification could be an individual or entity that carried out or facilitated such activity, or an entity subject to a controlling or ownership interest of an individual who carried out or facilitated such activity. This section also would direct the FAA Administrator to deny the certification of a person whose certificate had been previously revoked for involvement in an activity relating to counterfeit or fraudulent parts. With this modification, the basis for certificate denial would be expanded to include those that are the basis for certificate revocation.

Sec. 504. Clarifications to Procurement Authority

Subsection (a)(1) removes obsolete references in current law by deleting subparagraphs granting the Administrator authority under certain statutes (the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) and the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253)), that, because of procurement reform, no longer apply to FAA acquisitions. In addition, the amendment clarifies that the acquisition management system used by FAA must provide for more timely and cost-effective acquisitions of services as well as equipment and materials. The amendment also deletes the compliance date of January 1, 1996, which is now obsolete since the FAA has implemented the system.

Sec. 505. Judicial Review

Section 505 would amend the judicial review provision in chapter 461 of title 49 to clarify that decisions to take actions authorizing airport development projects are reviewable in the circuit courts of

appeals under section 46110, notwithstanding the nature of the petitioner's objections to the decision. This provision also would clarify that FAA orders pertaining to airport compliance are exclusively reviewable in the Circuit Courts of Appeals, like other orders issued under similar provision in Part B of subtitle VII of title 49. The modification is necessary because of a recent court decision that, in FAA's view, wrongly interpreted current law. It also would clarify that orders of the Transportation Security Administration under 49 U.S.C. 114(s) (relating to nondisclosure of security activities) are similarly treated.

Section 505 would resolve the jurisdictional issue in City of Alameda v. FAA, 285 F.3d 1143 (9th Cir. 2002) to reflect the holding in Suburban O'Hare Comm'n v. Dole, 787 F.2d 186 (7th Cir. 1986) and its progeny. Until City of Los Angeles v. FAA, 239 F.3d 1033 (9th Cir. 2001) and City of Alameda, it was settled law that FAA decisions that included approval of airport layout plans were exclusively reviewable in the Circuit Courts of Appeals. The leading case in this area, Suburban O'Hare, held that the circuit court of appeals had exclusive jurisdiction under 46110 to review FAA's decision authorizing approval of the airport layout plan and other actions to support new runways and related development at Chicago's O'Hare airport.

Sec. 506. Civil Penalties

This section would amend the general civil penalty provision of subtitle VII of title 49, governing the civil penalties for violations of aviation law, to make uniform and increase, the maximum civil penalty for each violation at $25,000 per violation. The section would affect penalties for both safety, civil rights, and economic violations.

Under current law violations of some provisions enforced by the FAA are subject to a $1,000 civil penalty (those committed by individuals, airports, manufacturers, aircraft maintenance facilities, etc.) and others (those committed by air carriers) are subject to a $10,000 penalty. The increased level is needed to make the penalty for violations more effective and to bring it more in line with recent enactments. For example, in AIR 21, the penalty for "air rage" violations was set at $25,000 (see section 511 of Pub. L. 106-181, Apr. 5, 2000). Similarly, the penalty for violations of requirements for transportation of hazardous materials is now set at $25,000. More recently in the Homeland Security Act of 2002 (see section 1602 of Pub. L. 107-296, Nov. 25, 2002), the maximum penalty for security violations by air carriers also was increased to $25,000 (it was increased to a maximum of $10,000 for non-air carrier violators).

The section also would amend penalties for violations of provisions enforced by the Office of the Secretary. This section applies generally to the activities of commercial air carriers. Among the enforcement responsibilities relating to the economic regulation of air carriers are the enforcement of: (1) restrictions on the extent of air carrier's operations; (2) the reporting of required financial and traffic data; (3) prohibitions on unfair and deceptive trade practices; and (4) prohibitions of discriminatory treatment by air carriers of individuals based on race, ethnicity or disability. Under current law, there are a number of different civil penalties applicable to these kinds of violations. The general penalty provision of $1,000

(raised to $1,100 by regulation to reflect inflation) applies to most unauthorized operations and reporting violations; a penalty of $2,500 applies to violations of 49 U.S.C. 41712 regarding unfair and deceptive trade practices; and a $10,000 penalty applies to violations of 49 U.S.C. section 41705 relating to discriminatory treatment of disabled individuals, while a $2,500 penalty applies to other forms of discrimination under 49 U.S.C. section 40127. This section would apply a uniform civil penalty of $25,000 to all violations of economic statutes or rules. The section ensures that more serious violations of title 49, such as violations involving discriminatory conduct, are not subject to a lower maximum penalty than less serious infractions.

In addition, this section clarifies that violations of sections 40127 and 41712 would not be limited to $2,500. An additional clarification is needed with respect to current section 46301(a)(7).

Subsection (b) of this section also would alter a cap on the FAA's authority to administratively determine a civil penalty. Currently, the FAA's authority is limited to $50,000, (i.e. cases involving a finding of violations with civil penalties in excess of $50,000 must be referred to the United States Attorney for prosecution). This section increases the limit to $1 million.

Sec. 507. Miscellaneous Amendments

Subsection (a), (b), and (c) make a number of technical changes recommended by the General Accounting Office to clarify the FAA's management of funds in the AIP program.

Subsection (d) permits the use of AIP funds for safety data collection and that the recipient of the grant may be a private company. The safety data provides information that is useful for AIP funding and airport planning decisions. Not all states collect such data, and a private entity may be able to fill in any gaps that exist.

Subsection (e) expands a statute of limitation provision involving revenue use to other local governments. When a sponsor contributes capital or subsidizes airport operations, existing law allows the sponsor to claim reimbursement for such contributions within 6 years of occurrence. This amendment would extend this policy to other governmental entities in order to recognize that such entities also contribute capital or operating costs to airports.

Subsection (f) clarifies the review of revenue use through the annual audit activities under the Single Audit Act. Current law, 49 U.S.C. 47107(m), requires the FAA to regulate in an area that has historically been overseen by the Office of Management and Budget (OMB). OMB's exclusive authority is intended to ensure auditing consistency across all Federal agencies. The proposed amendments to 47107(m) will correct this situation by replacing language directing FAA to promulgate regulations with language referencing FAA's appropriate compliance role, while still maintaining Congress's intent that Single Audits include a review of the use of airport revenues.

Subsection (g) updates a provision in the Aviation Safety and Noise Abatement Act of 1979, recodified as section 47503, to conform language to the original congressional intent of the provision that the forecast year for airport noise exposure maps should reflect conditions at least five years into the future. The current lan-

guage, stating that "1985" is the five-year forecast time frame, is outdated.

Subsection (h) would amend section 40117 to clarify that passengers on military charters of commercial aircraft are not subject to collection of a passenger facility fee.

Sec. 508. Low Emission Airport Vehicles and Infrastructure

This section expands the eligibility for AIP and PFC to the acquisition of airport-owned vehicles and airport-owned ground support equipment, or conversion of such equipment, to low emission technology, for infrastructure to support low emission airport vehicles, for gate electrification, and other related air quality improvements at commercial service airports in nonattainment and maintenance air quality areas. The section includes a provision for the Secretary to work with the EPA Administrator to develop an agreement, with specified conditions, on how airports will receive emission credits for voluntary emission reductions. The provision would require appropriate credits as a condition for AIP funding. Finally, a pilot program is proposed at not more than 10 commercial service airports to fund the retrofit of conventionally fueled airport ground support equipment using emission control technologies in order to evaluate the benefit-cost of such retrofits.

Sec. 509. Low Emission Airport Vehicles and Ground Support Equipment

This section permits the use of PFC revenue, but not AIP, for the incremental cost of the acquisition or conversion of ground support equipment or airport-owned vehicles to low emission technology or cleaner burning conventional fuels, at commercial service airports in nonattainment or maintenance air quality areas. PFC funding would be conditioned on the provision of appropriate emission credits to the airport, as in section 508. PFC could also be used for conventional fuel retrofitting with certified emission control technologies.

Sec. 510. Pacific Emergency Diversion Airport

This section directs the Secretary of Transportation to reach an MOU with the Secretaries of Defense, the Interior, and Homeland Security, to facilitate the sale of aircraft fuel on Midway Island, so that the revenue from the fuel sales can be used to operate Midway Island Airport in accordance with Federal Aviation Administration airport standards.

Sec. 511. Gulf of Mexico Aviation Service Improvements

This section allows the Secretary of Transportation to develop a program to expand and improve the safety, efficiency, and security of air traffic control and aviation-related navigation, low altitude communications, surveillance, and weather services in the Gulf of Mexico.

Sec. 512. Air Traffic Control Collegiate Training Initiative

This section allows the FAA to spend funds to support the Air Traffic Control Collegiate Training Initiative.

Sec. 513. Increase in Certain Slots

This section increases the number of beyond the perimeter slots at Ronald Reagan Washington National Airport by 12.

Sec. 514. Air Transportation Oversight System Plan

This section requires the FAA to submit a plan of action to the Congress for addressing identified problems with the Air Transportation Oversight System.

Sec. 515. National Small Community Air Service Development Ombudsman

This section establishes the position of National Small Community Air Service Development Ombudsman.

Sec. 516. National Commission on Small Community Air Service

This section establishes a National Commission on Small Community Air Service.

Sec. 517. Training Certification for Cabin Crew

This section requires the FAA to issue certificates to cabin crew members that complete certain training.

Sec. 518. Aircraft Manufacturer Insurance

This section extends war-risk insurance to certain aircraft manufacturers.

Sec. 519. Ground-Based Precision Navigational Aids

This section authorizes a program for ground-based precision navigational aids for terrain-challenged airports.

Sec. 520. Stand by Power Efficiency Program

This section authorizes a program to increase energy efficiency and cost-effectiveness, and encourage the use of fuel cell technology, in meeting the Federal Aviation Administration's standby power needs.

TITLE VI—SECOND CENTURY OF FLIGHT

Sec. 601. Findings

Section 601 presents fourteen findings of Congress that explain the purpose of, and need for title VI.

SUBTITLE A—THE OFFICE OF AEROSPACE AND AVIATION LIAISON

Sec. 621. Office of Aerospace and Aviation Liaison

This section establishes the Office of Aerospace and Aviation Liaison within the Department of Transportation. This office is charged with coordinating aviation and aeronautics research programs, activities, goals, and priorities within the Federal Government, and directed to include private United States aviation and aeronautical firms in this effort. Areas of responsibility include: air traffic control, technology transfer from government programs to the private sector, noise, emissions, fuel consumption, and safety. It also requires the Office to provide a plan and an annual report to Congress. It authorizes $2,000,000 for FY 2004 and FY 2005.

Sec. 622. National Air Traffic Management System Development Office

This section establishes a National Air Traffic Management System Development Office within the FAA with the mission of developing a next generation air traffic management system plan for the United States. This plan is required to focus on transforming the national airspace system to meet air transportation mobility, efficiency, and capacity needs beyond those currently included in the FAA's Operational Evolution Plan (OEP) in an effort to build on existing capabilities while improving the security, safety, quality, and affordability of the system. In pursuing this mandate, the plan must employ a system-of-systems multi-agency approach while developing an integrated and secure architecture that ensures as seamless a global operation as possible.

The office is required to include personnel from the various Federal agencies, and to consult private industry and other interested parties. It authorizes $300,000,000 for FYs 2004 through 2010.

Sec. 623. Report on Certain Market Development and Government Policies

This section requires the Office of Aerospace and Aviation Liaison to issue a report within 6 months on market developments and government policies influencing the competitiveness of the United States jet transport aircraft industry. Specifically this report should include comparisons to the European Union and global market factors affecting the jet transport industries in the United States.

SUBTITLE B—TECHNICAL PROGRAMS

Sec. 641. Aerospace Workforce Initiative

This section directs NASA and the FAA to establish a joint program of competitive, merit-based, multi-year grants for eligible applicants to increase the number of students studying in technical training programs, certificate programs, associate, bachelor's, or master's degrees in fields related to aerospace and aviation safety. The Director of the joint program is required to consider ways to increase the level of students participating in these types of aerospace and aviation studies when developing the grant programs. It authorizes such sums as necessary for NASA and FAA to carry out this section in FY 2004, and requires a report to Congress to advise whether this program should be extended with a budget and plan for conducting the program. The Committee expects to continue to review this section to best address ways to encourage people to enter the aviation safety and aerospace workforce.

Sec. 642. Scholarships for Service

This section directs NASA and the FAA to develop a joint student loan program for full-time students enrolled in an undergraduate or post-graduate program leading to an advanced degree in an aerospace related field of endeavor, and allows NASA and FAA to provide temporary internships to such students. It authorizes such sum as necessary to NASA and FAA to carry out this section in FY 2004, and requires a report to Congress to advise whether this program should be extended with a budget and plan for con-

ducting the program. The Committee expects to continue to review this section to best address ways to encourage people to enter the aviation safety and aerospace workforce.

SUBTITLE C—FAA RESEARCH, ENGINEERING, AND DEVELOPMENT

Sec. 661. Research Program To Improve Airfield Pavements

This section directs the FAA to continue the airfield pavement research program by which grants, cooperative agreements or other incentives may be provided to nonprofit concrete and asphalt pavement research foundations that are tasked with improving the safety and efficiency of runway planning, building and repair.

Sec. 662. Ensuring Appropriate Standards for Airfield Pavements

This section requires the FAA Administrator to review and determine whether FAA's standards regarding airfield pavements meet current life-cycle requirements, and if not, FAA must provide for the necessary adjustments to achieve these standards. Within 1 year of passage of this legislation, the FAA must report the results of this review to Congress.

Sec. 663. Assessment of Wake Turbulence Research and Development Program

This section instructs the FAA to enter into an arrangement with the National Research Council to assess the FAA's proposed wake turbulence research and development program. It authorizes $500,000 for FY 2004.

Sec. 664. Cabin Air Quality Research Program

This section provides the FAA the option of establishing a research program to address issues regarding the cabin air quality of passenger aircraft, including airborne diseases.

Sec. 665. International Role of the FAA

This section directs the FAA to bolster its role in international aviation safety through working with their foreign counterparts and the private sector to improve global aviation safety.

Sec. 666. FAA Report on Other Nations' Safety and Technologies Advancements

This section requires the FAA to issue a report on other nations' safety and technological advancements and how these advancements might be used in the United States.

Sec. 667. Development of Analytical Tools and Certification

This section directs the FAA to conduct research to improve existing certification methods and to reduce the overall costs for the certification of new aviation-related products.

Sec. 668. Pilot Program To Provide Incentives for Development of New Technologies

This section permits the FAA to conduct a pilot program to provide operating incentives to users of the national airspace for the deployment of new technologies, including technologies to facilitate

expedited flight routing and sequencing of take-offs and landings. It authorizes $500,000 for FY 2004.

Sec. 669. FAA Center for Excellence for Applied Research and Training in the Use of Advanced Materials in Transport Aircraft

This section requires the FAA to develop a center for excellence for applied research and training in the use of advanced materials in transport aircraft to promote and facilitate collaboration between FAA, academia, and industry. It authorizes $500,000 for FY 2004.

Sec. 670. FAA Certification of Design Organization

This section directs the FAA to submit a plan to Congress for the development of a system for certification of aircraft design organizations and to implement that plan within 5 years of the passage of the bill.

Sec. 671. Report on Long Term Environmental Improvements

This section requires the FAA, NASA, and the Office of Aerospace and Aviation Liaison to submit a study on ways to reduce aircraft noise and emissions and to increase aircraft fuel efficiency within 1 year after passage of the bill. It authorizes $500,000 for FY 2004.

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. 2039:

Senator Ensign offered an amendment, to the amendment (in the nature of a substitute) offered by Senator McCain, to increase the number of extraperimeter slots at Ronald Reagan Washington National Airport. By rollcall vote of 11 yeas and 11 nays as follows, the amendment was defeated:

YEAS—11	NAYS—11
Mr. Stevens[1]	Ms. Snowe[1]
Mr. Burns	Mr. Fitzgerald[1]
Mr. Lott	Mr. Allen
Mrs. Hutchison[1]	Mr. Hollings
Mr. Brownback[1]	Mr. Inouye[1]
Mr. Smith	Mr. Rockefeller
Mr. Ensign	Mr. Kerry[1]
Mr. Wyden	Mr. Breaux[1]
Mrs. Boxer	Mr. Dorgan
Ms. Cantwell	Mr. Nelson
Mr. McCain	Mr. Lautenberg

[1]By proxy

Senator Boxer offered an amendment, to the amendment (in the nature of a substitute) offered by Senator McCain, to improve the training requirements for and require the certification of cabin crew members. By rollcall vote of 12 yeas and 10 nays as follows, the amendment was adopted:

YEAS—12	NAYS—10
Mr. Smith	Mr. Burns

Mr. Hollings
Mr. Inouye[1]
Mr. Rockefeller[1]
Mr. Kerry[1]
Mr. Breaux[1]
Mr. Dorgan[1]
Mr. Wyden[1]
Mrs. Boxer
Mr. Nelson
Ms. Cantwell
Mr. McCain
Mr. Lott
Mrs. Hutchison
Ms. Snowe[1]
Mr. Brownback
Mr. Fitzgerald[1]
Mr. Ensign
Mr. Allen
Mr. Sununu
Mr. Lautenberg

[1]By proxy

Mr. Hollings made a motion to reconsider the vote by which the Ensign amendment was defeated. By rollcall vote of 12 yeas and 10 nays as follows, Mr. McCain voting present, the motion carried:

YEAS—12

Mr. Stevens[1]
Mr. Burns
Mr. Lott
Mrs. Hutchison
Mr. Brownback
Mr. Smith
Mr. Ensign
Mr. Sununu
Mr. Hollings
Mr. Wyden[1]
Mrs. Boxer
Ms. Cantwell

NAYS—10

Ms. Snowe[1]
Mr. Fitzgerald[1]
Mr. Allen
Mr. Inouye[1]
Mr. Rockefeller[1]
Mr. Kerry[1]
Mr. Breaux[1]
Mr. Dorgan[1]
Mr. Nelson
Mr. Lautenberg

[1]By proxy

The Committee reconsidered the vote by which the Ensign amendment was defeated. By rollcall vote of 12 yeas and 11 nays as follows, the amendment was adopted:

YEAS—12

Mr. Stevens[1]
Mr. Burns
Mr. Lott
Mrs. Hutchison
Mr. Brownback
Mr. Smith
Mr. Ensign
Mr. Sununu
Mr. Wyden[1]
Mrs. Boxer[1]
Ms. Cantwell
Mr. McCain

NAYS—11

Ms. Snowe[1]
Mr. Fitzgerald[1]
Mr. Allen
Mr. Hollings
Mr. Inouye[1]
Mr. Rockefeller
Mr. Kerry[1]
Mr. Breaux[1]
Mr. Dorgan[1]
Mr. Nelson
Mr. Lautenberg

[1]By proxy

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that, in its opinion, it

is necessary to dispense with the requirements of that paragraph in order to expedite the business of the Senate.

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