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Calendar No. 563

109TH CONGRESS *2d Session*	SENATE	REPORT 109–317

AIR TRANSPORTATION TO AND FROM LOVE FIELD, TEXAS

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 3661



AUGUST 1, 2006.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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AUGUST 1, 2006.—Ordered to be printed

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

REPORT

[To accompany S. 3661]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 3661) to amend section 29 of the International Air Transportation Competition Act of 1979 relating to air transportation to and from Love Field, Texas, 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 this legislation, as reported, is to modify the provisions regarding flights to and from Love Field, in Dallas, Texas.

BACKGROUND AND NEEDS

In 1967, Southwest Airlines became an incorporated intrastate air carrier. Soon after, in 1968, the Cities of Dallas and Fort Worth (Cities) agreed to construct the Dallas-Fort Worth Regional Airport (DFW) and adopted a Regional Airport Concurrent Bond Ordinance. That ordinance required that the Cities phase-out the use of Love Field, Redbird, GSIA and Meacham Field, by Certificated Air Carrier Services and transfer air carrier operations to the Regional Airport.

In 1970, the eight carriers 1A[1] then serving the Dallas-Fort Worth area signed an agreement to serve DFW. Southwest Airlines (Southwest) had not yet begun operations and did not sign the agreement. In 1971, Southwest began service as an exclusively intrastate airline and advised the DFW Airport Board that it did not intend to serve DFW. In 1972, not being a party to the DFW deal, Southwest formally petitioned the DFW Board for an exemption from or waiver to the Concurrent Bond Ordinance, which would allow Southwest to continue operations at Love Field.

In response to Southwest's request, the Cities and the DFW Airport Board filed suit in Federal district court seeking to exclude Southwest from Love Field. Southwest counterclaimed, seeking a declaration to remain at Love Field and an injunction to protect that right. The Texas Aeronautics Commission intervened in the suit to assert its own regulatory power over exclusively intrastate air carriers. The Federal judge presiding over the case rejected the Cities joint position to deny Southwest access to Love Field, therefore ruling in Southwest's favor.

In 1974, the Cities and the DFW Airport Board appealed the decision and the U.S. Court of Appeals for the Fifth Circuit affirmed the district court ruling. The U.S. Supreme Court declined to hear an appeal.

In 1975, while the federal district court ruling was on appeal, the City of Dallas adopted an ordinance to exclude all commercial airlines from Love Field. The ordinance made it a criminal offense for a certificated airline to land or takeoff at Love Field. Southwest challenged the ordinance in Federal district court. The Federal court permanently prohibited enforcement of the ordinance against Southwest.

Concurrently, DFW through a state court sought to re-litigate the question of Southwest's right to use Love Field. The Federal court then issued an order prohibiting interested parties from relitigating the 1968 Concurrent Bond Ordinance, therefore allowing Southwest to continued use and access to Love Field.

In 1977, DFW appealed this ruling to the Fifth Circuit Court of Appeals. The Fifth Circuit affirmed the ruling of the district court. The Supreme Court again declined to hear an appeal.

In 1978, Congress passed the Airline Deregulation Act of 1978. Southwest viewed deregulation as an opportunity to become an interstate air carrier, and soon thereafter, launched its first interstate service, between Houston, Texas and New Orleans, Louisiana.

In 1979, Southwest filed an application with the now defunct Federal Civil Aeronautics Board (CAB) for authority to fly between Dallas Love Field and New Orleans. In response, DFW and American Airlines filed objections with the CAB. The CAB invoked the 1968 Concurrent Bond Ordinance as a basis for denying Southwest the right to fly between Love Field and points outside the State of Texas. However, after subsequent hearings, the CAB granted Southwest permanent authority to fly in the Love Field to New Orleans market.

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[1] American Airlines, Braniff Airways, Continental Airlines, Delta Airlines, Eastern Airlines, Frontier Airlines, Ozark Air Lines and Texas International Airlines.

In that same year, Congressman Jim Wright, then-House Majority Leader, secured an amendment to the International Air Transportation Competition Act of 1979. The amendment prohibited commercial air service between Love Field and any point outside the State of Texas. The provision was changed in conference with the Senate. The compromise, commonly known today as the "Wright Amendment," limits the geographical region which Southwest Airlines is legally permitted to serve out of its home base at Dallas Love Field.

The Wright Amendment remained in place, unchanged, until 1996, when Legend Airlines sought to begin interstate service from Love Field. Legend filed a petition to operate pursuant to the exception in the Wright Amendment that appeared to permit unrestricted interstate service by airlines operating aircraft with a seating capacity of less than 56 passengers. In response, however, the Department of Transportation's (DOT) Office of General Counsel issued an opinion stating that the Wright Amendment's exception only applied to aircraft that were originally configured to hold fewer than 56 passengers. The following year, Congress adopted what is known as the "Shelby Amendment" as part of the Department of Transportation and Related Agencies Appropriations Act of 1998.

The Shelby Amendment specifies that the Wright Amendment's 56 passenger exception includes "any aircraft, except aircraft exceeding gross aircraft weight of 300,000 pounds, reconfigured to accommodate 56 or fewer passengers if the total number of passenger seats installed on the aircraft does not exceed 56." In addition, the Shelby Amendment added Kansas, Alabama and Mississippi to the list of States previously included by the Wright Amendment. On November 30, 2005, the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act of 2006 was enacted and signed into law. (P.L. 109–115). Section 181 of that law amended section 29(c) of the International Air Transportation Competition Act of 1979, adding the State of Missouri to the list of Wright Amendment exempted states.

In March 2006, at the urging of some members of Congress, the Cities of Dallas and Fort Worth passed resolutions requesting Congress provide them time to develop a local solution. As this dispute has been debated for many years in Congress, Members believed that a local solution was needed, requiring input from all of the stakeholders. On June 15, 2006, the mayors of Dallas and Fort Worth and other officials held a press conference to announce that the Cities, the DFW Airport Board, Southwest, and American Airlines had reached an agreement that would lead to the repeal of the Wright Amendment.

On July 11, 2006, representatives of the Cities, DFW International Airport Board, American Airlines, and Southwest signed, executed and finalized the local agreement.

THE LOVE FIELD AGREEMENT

> WHEREAS, certain Members of the United States Congress have introduced legislation to either repeal or further modify the restrictions of the Wright Amendment, as amended by the 1997 Shelby Amendment and the 2005

Amendment (herein referred to as the "Wright Amendment"), or prohibit commercial air passenger service at Dallas Love Field Airport ("Love Field"); and

WHEREAS, certain Congressional leaders informed the Cities of Dallas and Fort Worth (collectively, the "Cities") that it would be preferable for the Cities to present a local solution for addressing airport issues in the North Central Texas region and particularly, in the Dallas/Fort Worth metropolitan area, prior to any further action being taken by Congress that would directly impact aviation services in the region; and

WHEREAS, in response to various pending and proposed Congressional actions that would further affect, modify, or repeal the Wright Amendment, the City Councils of Dallas and Fort Worth, on March 8, 2006 and March 7, 2006, respectively, passed a Concurrent Resolution (identified as Dallas Resolution No. 06–0870 and Fort Worth Resolution No. 3319–03–2006), requesting members of the United States Congress to refrain from taking any action regarding, or making any further amendments to, the Wright Amendment in order to allow the Cities an opportunity to work towards a local solution for addressing airport issues in the North Central Texas region, and to present a mutually agreed upon plan to the Congress for its consideration; and

WHEREAS, the City of Dallas, pursuant to Resolution No. 06–0997, adopted April 6, 2006, commissioned an Impact Analysis/Master Plan Update for Love Field by DMJM Aviation, Inc., to provide updated information and analysis as to aircraft noise, air quality, traffic impact, and economic impact at Love Field if the Wright Amendment were repealed or substantially modified; and

WHEREAS, the Love Field Impact Analysis Update prepared by DMJM Aviation, Inc. and GRA, Inc. found that, in the absence of the Wright Amendment, the overall impacts of operating 20 gates at Love Field under a "No Wright Amendment scenario" are the most comparable to the environmental thresholds agreed to and established in the 2001 Master Plan/Impact Analysis 32 gate scenario with the Wright Amendment in place; and

WHEREAS, earlier this year, the Honorable Laura Miller, Mayor of Dallas, and the Honorable Mike Moncrief, Mayor of Fort Worth, held a series of meetings with interested parties in an effort to reach a local agreement regarding Love Field that would end the prolonged and divisive controversies between the two Cities and that would serve and protect the interests of all citizens of the Dallas-Fort Worth area, including residents living in the vicinity of Love Field, as well as business, consumer, and other constituencies affected by the Love Field controversies; and

WHEREAS, after investigation and analysis of the available facts and giving due consideration to the economic, environmental, and personal welfare and interests of their respective residents, the general public, and the holders of DFW Airport Joint Revenue Bonds, the Cities of Dallas

and Fort Worth conferred, deliberated, and agreed to a local solution regarding the Wright Amendment and related matters that best serves such interests given the likelihood that Congress could take action to repeal or substantially modify the Wright Amendment; and

WHEREAS, the Mayors, in consultation with other leaders in the two cities, first were able to reach a basic agreement between themselves and with representatives of the Dallas/Fort Worth International Airport Board ("DFW Board"); and

WHEREAS, the Mayors, representatives of the DFW Board, and other governmental officials then met separately with Southwest Airlines and American Airlines to advise those airlines that the local governments would announce a local solution and recommend it to Congress and that they wanted the airlines to consent to, and endorse, the local solution; and

WHEREAS, the Mayors and representatives of the DFW Board thereafter conducted certain limited negotiations separately with Southwest Airlines and American Airlines; and

WHEREAS, Southwest Airlines and American Airlines concluded, separately, that the local solution reached among, and urged upon them by, the local governments would be favorably received by the Congress, and that under the circumstances presented, the airlines should support the effort of the Cities and the DFW Board and acquiesce in, and agree to support, the local solution; and

WHEREAS, the City Councils of Dallas and Fort Worth, on June 28, 2006 and July 11, 2006, respectively, passed a Concurrent Resolution (identified as Dallas Resolution No. 06–1838 and Fort Worth Resolution No. 3386–07–2006) and the DFW Board on June 29, 2006 passed Resolution No. 2006–06–210, approving the Joint Statement signed by the City of Dallas, City of Fort Worth, Southwest Airlines, American Airlines, and the DFW Board on June 15, 2006, authorizing the execution of this Contract between the Parties incorporating the substance of the Joint Statement, and requesting the United States Congress to enact legislation consistent therewith;

Therefore, the Parties agree as follows:

ARTICLE I

1. The City of Dallas, the City of Fort Worth, Southwest Airlines, American Airlines, and DFW Board, (herein, the "Parties,") agree to seek the enactment of legislation to allow for the full implementation of this Contract including, but not limited to, amending section 29 of the International Air Transportation Competition Act of 1979, more commonly known as the "Wright Amendment" and ultimately effect its repeal as follows:

a. To immediately allow airlines serving Love Field to offer through ticketing between Love Field and any destinations (including international destinations) through any point in Texas, New Mexico, Oklahoma,

Kansas, Arkansas, Louisiana, Mississippi, Missouri, and Alabama, and to market such services;

b. Except as provided herein, to eliminate all the remaining restrictions on air service from Love Field after eight years from the enactment of legislation; and

c. To limit charter flights as set forth in Article II, Section 16 of this Contract.

2. The Parties agree that non-stop international commercial passenger service to and from the Dallas-Fort Worth area shall be limited exclusively to DFW International Airport ("DFW Airport"). The Cities shall work jointly to encourage all such flights into DFW Airport.

3. The Parties agree that consistent with a revised Love Field Master Plan, based upon the 2006 Love Field Impact Analysis Update prepared by DMJM Aviation, Inc., the number of gates available for passenger air service at Love Field will be, as soon as practicable, reduced from the 32 gates envisioned in the 2001 Love Field Master Plan to 20 gates and that Love Field will thereafter be limited permanently to a maximum of 20 gates.

a. Airlines may not subdivide a "gate." A gate shall consist of one passenger hold room and one passenger loading jet bridge supporting one aircraft parking space, and no hardstand operations, except as allowed herein, shall be permitted. Nothing shall preclude any airline from utilizing hardstands for RON parking, maintenance, training, or for irregular operations (i.e. flights that were scheduled originally for one of the twenty available gates and cannot be accommodated thereon due to weather, maintenance or unforeseen emergencies), or other uses that do not involve passenger air service.

b. American Airlines and Southwest Airlines agree to voluntarily surrender gate rights under existing leases in order to reduce the number of gates as necessary to implement this agreement. During the four year period from the date the legislation as provided herein is signed into law: Southwest Airlines shall have the preferential use of 15 gates under its existing lease to be used for passenger operations; American Airlines shall have the preferential use of 3 gates under its existing lease to be used for passenger operations; and ExpressJet Airlines, Inc., shall have the preferential use of 2 gates under its existing lease to be used for passenger operations. Thereafter, Southwest Airlines shall have the preferential use of 16 gates under its existing lease to be used for passenger operations; American Airlines shall have the preferential use of 2 gates under its existing lease to be used for passenger operations; and ExpressJet Airlines, Inc., shall have the preferential use of 2 gates under its existing lease to be used for passenger operations. In consideration of Southwest Airlines' substantial divestment of gates at Love Field and the

need to renovate or reconstruct significant portions of the concourses, Southwest Airlines shall have the sole discretion (after consultation with the City) to determine which of its gates it uses within its existing leasehold at Love Field during all phases of reconstruction. Upon the earlier of (i) the completion of the concourse renovation, or (ii) 4 years from the date the legislation as provided herein is signed into law, all Parties agree that facilities will be modified as necessary, up to and including demolition, to ensure that Love Field can accommodate only 20 gates for passenger service. To the extent a new entrant carrier seeks to enter Love Field, the City of Dallas will seek voluntary accommodation from its existing carriers to accommodate the new entrant service. If the existing carriers are not able or are not willing to accommodate the new entrant service, then the City of Dallas agrees to require the sharing of preferential lease gates, pursuant to Dallas' existing lease agreements. To the extent that any existing airline gates leased at Love Field revert to the City of Dallas, these gates shall be converted to common use during the existing term of the lease.

4. The City of Dallas agrees that it will negotiate a voluntary noise curfew at Love Field precluding scheduling passenger airline flights between 11 p.m. and 6 a.m. Southwest Airlines and American Airlines shall enter into agreements with respect thereto with the City of Dallas.

5. The City of Dallas agrees that it will significantly redevelop portions of Love Field, including the modernization of the main terminal, consistent with a revised Love Field Master Plan based upon the Love Field Impact Analysis Update prepared by DMJM Aviation, Inc. (the "Love Field Modernization Program" or "LFMP"). In addition, the City agrees that it will acquire all or a portion of the lease on the Lemmon Avenue facility, up to and including condemnation, necessary to fulfill its obligations under this Contract. The City of Dallas further agrees to the demolition of the gates at the Lemmon Avenue facility immediately upon acquisition of the current lease to ensure that that facility can never again be used for passenger service.

The Parties agree that a minimum investment of $150 million and up to a maximum of $200 million in 2006 dollars (the "Spending Cap"), as adjusted for inflation, will be made by the City of Dallas for the LFMP, and that the capital and operating costs for the LFMP may be recovered through increased landing fees, space rental charges, or Passenger Facility Charges ("PFCs"). The Parties contemplate that financing the LFMP will include both the retirement of existing debt and the issuance of new debt for the LFMP.

The Spending Cap shall be exclusive of the costs connected with the acquisition and demolition of the Lemmon Avenue gates and of the capital costs associated with the development and construction of a "people mover" con-

nector to the DART mass transit system ("the Connector"). The costs for the acquisition and demolition of the Lemmon Avenue gates will be recovered from airport users, but the capital costs for the Connector may not be included in airline terminal rents or landing fees, except as expressly provided for herein below. The City of Dallas may seek approval to use PFC revenues for the Connector, and Southwest Airlines agrees to support such application. The City of Dallas shall, in addition, seek State, Federal, DART, and any other available public funds to supplement such PFC funds; provided, however, that nothing herein shall obligate the City of Dallas to undertake the Connector project. Notwithstanding the preceding, in the event PFC funds are not approved for the Connector, the City of Dallas may use airport funds for the Connector; provided, however, if airport funds are used for the Connector, the City of Dallas shall be obligated to apply for, and use, PFCs to pay for PFC eligible portions of the LFMP. In any event, the combined total spending for both the LFMP and the Connector, exclusive of PFCs, shall not exceed the Spending Cap, except as provided immediately below.

In the event that PFCs are not approved for either the Connector or the LFMP, as provided herein, terminal rents and landing fees may be used for such improvements, thus exceeding the Spending Cap; provided, however, that the City shall use its best efforts to seek and use PFCs, State, Federal, DART, and any other available public funds (other than City of Dallas general funds) as the only sources of funding for the Connector and to avoid impacting terminal rents and landing fees.

Except as otherwise provided herein, capital costs in excess of the aforementioned Spending Cap that impact terminal rents and landing fees shall be subject to agreement between Southwest Airlines and the City of Dallas, except that, following consultation with Southwest Airlines, the City of Dallas may proceed with necessary projects required for reasons of safety, security, normal maintenance and repair, or Federal mandate, and such costs may be included in terminal rents and landing fees. The operating reserve of Love Field shall never exceed one year's operating costs (operating and maintenance plus debt service) during the term of Southwest Airlines' lease.

To recover the costs of the LFMP, the City of Dallas shall negotiate amendments of the Leases of Terminal Building Premises previously entered into with Southwest Airlines, American Airlines, and ExpressJet Airlines, Inc., and will also adopt City ordinances modifying the terminal rents and landing fees to be paid by airline users of Love Field.

Southwest Airlines and the City of Dallas shall agree on a phase-in of the LFMP and will decide which party will fund and manage the construction of the LFMP. Southwest Airlines' expenditures for its share of the LFMP's capital costs shall be credited toward the minimum and maximum

requirements. To the extent possible, the LFMP shall be completed by the expiration of the 8-year period.

6. The Cities agree that they will both oppose efforts to initiate commercial passenger air service at any area airport other than DFW Airport (and Love Field, subject to the provisions contained herein) during the eight-year period. "Commercial passenger air service" does not include a spaceport or air taxi service as defined by Part 135 of the Federal Aviation Regulations. The Cities agree to jointly oppose any attempts to repeal or further modify the Wright Amendment earlier than the eight-year period. To the extent any other airport within an eighty-mile radius of Love Field seeks to initiate scheduled commercial passenger service within this eight-year period, both the Cities agree to work diligently to bring that service to DFW Airport, or if that effort fails, then to airports owned by the Cities of Dallas and/or Fort Worth.

7. The continuation of this Contract beyond December 31, 2006, is conditioned on Congress having enacted legislation prior thereto, allowing the Parties to implement the terms and spirit of this Contract. It is the position of the Parties that Congress should not exempt additional States from the Wright Amendment during the eight-year period before it is eliminated.

8. This Contract shall not be modified except upon mutual agreement of all of the Parties.

9. The Cities acknowledge their outstanding DFW Airport bond covenants, to the extent such covenants are legally enforceable, and nothing in this Contract is intended to nor shall contravene such covenants. By the execution of this Contract, Southwest Airlines does not surrender any of its rights to operate at Love Field except as explicitly outlined in this Contract.

10. If Southwest Airlines or its affiliate or code share partner (except for published/scheduled code share service from DFW Airport to Midway Airport as of June 14, 2006) chooses to operate passenger service from another airport within an 80-mile radius of Love Field in addition to its operations at Love Field, then for every such gate which Southwest Airlines, its affiliate or code share partner, operates or uses at another airport within this radius, Southwest Airlines will voluntarily relinquish control of an equivalent number of gates at Love Field, up to 8 gates and such gates shall be made available to other carriers. If other carriers are not interested in these gates, then they can be made available to Southwest Airlines for its use on a common use basis. This requirement to relinquish gates shall expire in 2025. This provision shall not apply to a code share partner not operating under Southwest Airlines' or its affiliates' code at an airport within this 80-mile radius.

11. If American Airlines or its affiliate or code share partner chooses to operate passenger service from another airport within an 80-mile radius of Love Field in addition to its operations at DFW Airport and Love Field, then for

every such gate which American Airlines, its affiliate or code share partner, operates or uses at another airport within this radius except for DFW Airport and Love Field, American Airlines will voluntarily relinquish control of an equivalent number of gates at Love Field, up to one and one-half gates and such gates shall be made available to other carriers. If other carriers are not interested in these gates, then they can be made available to American Airlines for its use on a common use basis. This requirement to relinquish gates shall expire in 2025. This provision shall not apply to a code share partner not operating under American Airlines' or its affiliates' code at an airport within this 80-mile radius.

12. Each carrier shall enter into separate agreements and take such actions, as necessary or appropriate, to implement its obligations under this Contract. Similarly, the Cities shall enter into such agreements and take such actions, as necessary or appropriate, to implement the Contract. All such agreements and actions are subject to the requirements of law. Such agreements shall include amendments to: (i) American Airlines' Love Field terminal lease; and (ii) Southwest Airlines' Love Field terminal lease. The City of Dallas shall develop a revised Love Field Master Plan consistent with this Contract.

13. In the event that Congress at any time, enacts legislation that repeals the Wright Amendment sooner than the eight years identified in paragraph 1.b. of Article I. herein, or authorizes service (except for through ticketing service as contemplated by paragraph 1.a. of Article I. herein) between Love Field and one or more domestic or international destinations other than those currently allowed under the Wright Amendment during the eight year period, and if Southwest Airlines or its affiliate or code share partner commences non-stop service to or from Love Field to a destination not currently allowed under the Wright Amendment, then Southwest Airlines will voluntarily relinquish control of 8 gates and such gates will be made available to other carriers. If other carriers are not interested in these gates, then they can be made available to Southwest Airlines for their use on a common use basis. This provision shall not apply to a code share partner not operating under Southwest Airlines' or its affiliates' code. Likewise, in the event that Congress, at any time, enacts legislation that repeals the Wright Amendment sooner than the eight years identified in paragraph 1.b. of Article I. herein, or authorizes service (except for through ticketing service as contemplated by paragraph 1.a. of Article I. herein) between Love Field and one or more domestic or international destinations other than those currently allowed under the Wright Amendment during the eight year period, and if American Airlines or its affiliate or code share partner commences non-stop service to or from Love Field to a destination not currently allowed under the Wright Amendment, then American Airlines will voluntarily relinquish control of half of its gates and such gates

will be made available to other carriers. If other carriers are not interested in these gates, then they can be made available to American Airlines for its use on a common use basis. This provision shall not apply to a code share partner not operating under American Airlines' or its affiliates' code.

14. The Parties hereby represent to the Congress of the United States, and to the Citizens of the Dallas-Fort Worth area that they approve of and support the local solution as set forth in this Contract. The Parties each separately covenant that they will support, encourage and seek the passage of legislation necessary and appropriate to implement the terms and spirit of this Contract. The Parties each separately covenant that they will oppose any legislative effort that is inconsistent with the terms of this Contract.

15. The Parties agree that the final documentation to implement this local solution shall be consistent with all Federal rules, regulations and laws. The Parties agree that for this Contract to be binding, it must be executed by all parties no later than July 15th, 2006.

16. If the U.S. Congress does not enact legislation by December 31, 2006, that would allow the Parties to implement the terms and spirit of this Contract, including, but not limited to, the 20 gate restriction at Love Field, then this Contract is null and void unless all parties agree to extend this Contract.

17. As part of this Contract, the City of Dallas agrees to grant American Airlines and Southwest Airlines options to extend their existing terminal leases until 2028.

ARTICLE II. ADDITIONAL PROVISIONS

1. SUBJECT TO FEDERAL GRANT ASSURANCES, ETC.—Nothing in this Contract shall require the City of Dallas, the City of Fort Worth or the DFW Airport Board to take any action that would result in (i) the loss of eligibility for future Federal airport grants for either city or the DFW Airport Board or (ii) FAA disapproval of any Passenger Facility Charge (PFC) application for either city or the DFW Airport Board, or (iii) either city or the DFW Airport Board being found to be in non-compliance with its existing obligations under Federal aviation law.

2. FUNDING.—Any capital spending obligations of the City of Dallas under this Contract for airport projects that require the expenditure of public funds or the creation of any monetary obligation shall be limited obligations, payable solely from airport revenues or the proceeds of airport revenue bonds issued by or on behalf of the City of Dallas, such revenue bonds being payable and secured by the revenues derived from the ownership and operation of Love Field. In order to satisfy its obligations hereunder, the City of Dallas agrees to use best efforts to issue and sell revenue bonds in such amounts and on terms that are commercially reasonable in the credit markets. Southwest Airlines and American Airlines hereby each agree to enter

into such additional agreements that are necessary to facilitate the issuance of such revenue bonds, provided, however, nothing herein shall obligate either airline to be an obligor or guarantor of such bonds. Neither the obligations under this Contract nor the obligations with respect to such revenue bonds shall constitute a debt of the City of Dallas payable from, or require the payment or expenditure of funds of the City of Dallas from, ad valorem or other taxes imposed by the City of Dallas.

3. VENUE.—The Parties agree that in the event of any litigation in connection with this Contract, or should any legal action be necessary to enforce the terms of this Contract, exclusive venue shall lie in either Dallas County, Texas or Tarrant County, Texas.

4. NON-LIABILITY FOR OTHER PARTIES' OBLIGATIONS, COSTS, AND ATTORNEYS FEES.—Each Party hereunder shall only be responsible and liable for its own obligations, costs, and attorneys fees in connection with the performance of this Contract, or any dispute or litigation that may arise in connection with this Contract.

5. APPLICABLE LAWS AND REPRESENTATIONS.—This Contract is made subject to the provisions of the Charter and ordinances of the cities of Dallas and Fort Worth, in existence as of the date hereof, and all applicable State and Federal laws. Each City, as to itself only, represents and warrants that its existing Charter and ordinances do not preclude such City from executing this Contract or performing its obligations under this Contract in accordance with its terms. American Airlines, Southwest Airlines and the DFW Board, each as to itself only, represent and warrant that it has the full power and authority to enter into this Contract and perform its obligations under this Contract in accordance with its terms.

6. EFFECTIVE DATE.—Notwithstanding anything to the contrary herein, the Parties agree that (i) Sections 1, 7, 8, 9, 14, 15, and 16 of Article I. and all Sections of Article II. shall take effect as of the last date of execution of this Contract by any of the Parties and (ii) the remaining Sections of Article I. shall take effect on the date that legislation that would allow the Parties to implement the terms and spirit of this Contract is signed into law.

7. NON-SEVERABILITY.

(a) The terms of this Contract are not severable. Therefore, in the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then this Contract shall be considered null and void and unenforceable, except as otherwise may be agreed to by all Parties.

(b) Notwithstanding paragraph (a) hereof, each Party shall use its best efforts to restore or replace the affected provisions so as to effectuate the original intent of the Parties.

8. COUNTERPARTS.—This Contract may be executed in any number of counterparts, each of which shall be

deemed an original and constitute one and the same instrument.

9. CAPTIONS.—The captions to the various clauses of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.

10. SUCCESSORS AND ASSIGNS; SUBLESSEES.—This Contract shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Further, the Parties agree that any sublessee or other entity who subleases or uses either American Airlines' or Southwest Airlines' gates at Love Field is subject to and bound by the terms of this Contract, including, but not limited to, paragraph 13 of Article I.

11. NO THIRD PARTY BENEFICIARIES.—The provisions of this Contract are solely for the benefit of the Parties hereto; and nothing in this Contract, express or implied, shall create or grant any benefit, or any legal or equitable right, remedy, or claim hereunder, contractual or otherwise, to any other person or entity.

12. NOTICES.—All notices required or permitted under this Contract shall be personally delivered or mailed to the respective Parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until the Parties are otherwise notified in writing of a new address by any Party. Mailed notices shall be deemed communicated as of five days after mailing.

13. PARTIAL WAIVER OF GOVERNMENTAL IMMUNITY.—The Cities and the DFW Board, by signing this Contract and to the extent permitted by law, waive their respective immunity from suit by the Parties, but only with respect to a suit to enforce this Contract by a Party seeking a restraining order, preliminary or permanent injunctive relief, specific performance, mandamus, or declaratory relief. The Cities and the DFW Board do not waive any other defense or bar against suit available to the Cities or the DFW Board.

14. NO INDIVIDUAL LIABILITY.—To the extent allowed by law, no officer, agent, employee, or representative of any of the Parties shall be liable in his or her individual capacity, nor shall such person be subject to personal liability arising under this Contract.

15. LIMITATION OF REMEDIES.—Under no circumstances shall any party be liable to any other party hereunder, in contract or in tort, for monetary damages resulting in whole or in part for any breach by such party, whether negligent or with or without fault on its part, of any provision of this contract. Provided, however (and in exchange for the foregoing sentence), in the event of any such breach or threatened breach by any party, all parties agree that each non-breaching party will be entitled to seek all equitable remedies including, without limitation, decrees of specific performance, restraining orders, writs of preliminary and permanent injunction and mandamus, as well as declaratory relief, to enforce this contract. Provided, fur-

ther, as a prerequisite to the filing of any lawsuit by any party, all parties shall in good faith submit any dispute to non-binding mediation, which must be completed within 60 days from the date notice requesting mediation is communicated pursuant to section 12 of article ii of this contract.

16. LOVE FIELD GENERAL AVIATION, U.S. GOVERNMENT FLIGHTS AND CHARTER FLIGHTS.—Nothing in this Contract is intended to affect general aviation service at Love Field, including, but not limited to, flights to or from Love Field by general aviation aircraft for air taxi service, private or sport flying, aerial photography, crop dusting, business flying, medical evacuation, flight training, police or fire fighting, and similar general aviation purposes, or by aircraft operated by any agency of the U.S. Government or by any airline under contract to any agency of the U.S. Government. Charter flights at Love Field shall be limited to destinations within the 50 United States and the District of Columbia and shall be limited to no more than ten per month per air carrier except as otherwise permitted by Section 29(c) of the Wright Amendment. All flights operated by air carriers that lease terminal gate space shall depart from and arrive at one of those leased gates. Charter flights operated by air carriers that do not lease terminal space may operate from non-terminal facilities or one of the 20 terminal gates. For the purposes of this Contract, "charter flight" shall have the meaning currently given in 14 C.F.R. 212.2 (2006). This limitation shall remain in effect permanently.

17. ENTIRE AGREEMENT.—This Contract embodies the complete agreement of the Parties hereto relating to the matters in this Contract; and except as otherwise provided herein, cannot be modified without written agreement of all the Parties, to be attached to and made a part of this Contract.

EXECUTED as of this the 11th day of July, 2006.

LEGISLATIVE HISTORY

On November 10, 2005, the Aviation Subcommittee held a hearing to examine the economic, regional, and national impacts that repeal of the Wright Amendment would have on the U.S. aviation system. Those testifying before the Subcommittee were representatives of American Airlines, Southwest, DFW, the North Dallas Chamber of Commerce, Love Field Citizens Action Committee, the Campbell-Hill Aviation Group, Inc., and Eclat Consulting.

On July 13, 2006, Senator Hutchison introduced S. 3661, "A bill to amend section 29 of the International Air Transportation Competition Act of 1979 relating to air transportation to and from Love Field, Texas." Senators Cornyn, Inhofe and Harkin originally cosponsored the bill.

On July 19, 2006, the Commerce, Science, and Transportation Committee met in Executive Session, and the bill, S. 3661, was ordered to be reported favorably with an amendment in the nature of a substitute by a roll call vote of 21–1.

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.

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:

JULY 21, 2006.

Hon. TED STEVENS,
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. 3661, a bill to amend section 29 of the International Air Transportation Competition Act of 1979 relating to air transportation to and from Love Field, Texas.

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

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

S. 3661—A bill to amend section 29 of the International Air Transportation Competition Act of 1979 relating to air transportation to and from Love Field, Texas

S. 3661 would amend provisions of federal law that set certain restrictions on commercial air transportation to and from Love Field, an airport located near the cities of Dallas and Forth Worth, Texas. Based on information from the Department of Transportation, CBO estimates enacting S. 3661 would have no significant impact on the federal budget. The bill would not affect direct spending or revenues.

S. 3661 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. The bill would make the necessary changes in federal law to implement an agreement among the cities of Dallas and Forth Worth and American and Southwest Airlines. Any costs to those cities or the state of Texas would be incurred voluntarily.

The CBO staff contact for this estimate is Megan Carroll. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

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

Because S. 3661 does not create any new programs, the legislation would have no regulatory impact. The legislation, as reported, would provide a one-time safety review and notification option to Congress from the Federal Aviation Administration (FAA) on the

affected airport and airspace, within a 30-day period. The legislation, as reported, would have no further affect on the number or types of individuals and businesses regulated.

NUMBER OF PERSONS COVERED

S. 3661 is expected to increase the air traffic out of the affected airport, with a resulting increase in passenger traffic slightly above current levels.

ECONOMIC IMPACT

No negative impact to taxpayers is expected from the enactment of S. 3661.

PRIVACY

S. 3661 would not have an adverse effect on the personal privacy of any individuals that would be impacted by this legislation.

PAPERWORK

The Committee does not anticipate any significant increase in paperwork burdens as a result of S. 3661.

SECTION-BY-SECTION ANALYSIS

Section 1. Findings

The findings are a brief review of historical facts surrounding and leading to the legislation along with an explanation of the unique and local circumstances surrounding the issue. The findings in the Committee-passed legislation were as follows:

(1) The Dallas-Fort Worth region is served by two large airports, Dallas-Fort Worth International Airport and Love Field. American Airlines and Southwest each have their headquarters, respectively, at these two airports.

(2) Dallas-Fort Worth International Airport ranks fourth nationally and had more than 28 million enplanements in 2005. Love Field ranks fifty-sixth and had nearly 3 million enplanements in 2005.

(3) The history of the development and creation of the Dallas-Fort Worth International Airport and the subsequent use of Love Field has been one of continuous disagreement, frequent litigation, and constant uncertainty within the local communities. As a result of these factors, this has been the only time that Congress has intervened, with the consent of the local communities, to promulgate specific rules relating to the scope of a locally owned airport. Having done so, the dispute cannot end without a change in federal statutes. Therefore, Congress recognizes the completely unique historical circumstances involving these two airport and cities and the previous unprecedented history of legislation. This legislation is based on the compelling consensus of the civic parties to resolve the dispute on a permanent basis, assure the end of litigation, and establish long-term stability.

(4) In 1979, Congress intervened and passed legislation known as the Wright Amendment which imposed restric-

tions at Love Field limiting service from the airport to points within the State of Texas and States contiguous to Texas. Congress has since allowed service to the additional States of Alabama, Kansas, Mississippi, and Missouri. At the urging of Congressional leaders, local community leaders have reached consensus on a proposal for eliminating the restrictions at Love Field in a manner deemed equitable by the involved parties. That consensus is reflected in an agreement dated July 11, 2006.

(5) The agreement dated July 11, 2006, does not limit an air carrier's access to the Dallas Fort Worth metropolitan area, and in fact may increase access opportunities to other carriers and communities. It is not Congressional intent to limit any air carrier's access to either airport.

(6) At the urging of the Civil Aeronautics Board (CAB), the communities originally intended to create one large international airport, and close Love Field to commercial air transportation. Funding for the new airport was, in part, predicated on the closing of Love Field to commercial service, and was agreed to by the carriers then serving Love Field. Southwest, created after the local decision was made, asserted its rights and as a result a new international airport was built, and Love Field remained open.

(7) Congress also recognizes that the agreement, dated July 11, 2006, does not harm any city that is currently being served by these airports, and thus the agreement does not adversely affect the airline industry or other communities that are currently receiving service, or hope to receive service in the future.

(8) Congress finds that the agreement, dated July 11, 2006, furthers the public interest as consumers in, and accessing, the Dallas and Fort Worth areas should benefit from increased competition.

(9) Congress also recognizes that each of the parties was forced to make concessions to reach an agreement. The two carriers, Southwest and American Airlines, did so independently, determining what is in each of their interests separately. The negotiations between the two communities forced each carrier to respond, individually, to a host of options, which ultimately were included, as part of the agreement dated July 11, 2006.

(10) Nothing in the agreement dated July 11, 2006, is intended to eliminate the jurisdiction of DOT, the Federal Aviation Administration and the Transportation Security Administration with respect to the aviation safety and security responsibilities of those agencies.

Section 2. Modification of provisions regarding flights to and from Love Field

The Wright amendment is modified to allow air carriers to immediately provide ticketing from Love Field to any U.S. or foreign destination through any other point in Texas, New Mexico, Oklahoma, Kansas, Arkansas, Louisiana, Mississippi, Missouri, and Alabama.

In addition, the Wright amendment in its entirety would be repealed eight years after the date of enactment. The provisions of this Act remain in effect.

Section 3. Treatment of international non-stop flights to and from Love Field

This section states that non-stop international flights may not arrive or depart from Love Field.

Section 4. Charter flights at Love Field

This section states that charter flights at Love Field would be treated in the same manner in which they are treated under the current Wright Amendment and would be treated in that manner in perpetuity.

The Committee notes that the "commercial passenger air service" restriction referred to in section 6 of the agreement does not include Class IV Part 139 commercial passenger air service as defined by the Federal Aviation Regulation. The Committee notes that since "commercial passenger air service" is not clearly defined, this section is not intended to allow the parties of the agreement to work against service at airports seeking to engage in unscheduled charter passenger operations for their communities.

Section 5. Agreement of the parties

Subsection (a) states that the agreement of the parties would be deemed to comply with title 49, United States Code, and any other competition laws. Subsection (b) would limit statutory construction so that nothing in this section shall be construed (1) to limit the obligation of the parties under existing programs of DOT and FAA relating to aviation safety, labor, environmental, national historic preservation, civil rights, small business concerns, veteran's preference, and disability access, (2) to limit the obligation of the parties under the existing aviation security programs of the U.S. Department of Homeland Security and the Transportation Security Administration at Love Field, Texas, or (3) to authorize the parties to offer marketing incentives that are in violation of Federal laws, rules, orders, agreements, and other requirements. Subsection (c) would set the number of gates at Love Field to a maximum of 20. Subsection (d) would ensure that nothing in the agreement would affect general aviation. Subsection (e) would prohibit DOT or FAA from taking any action that is inconsistent with the provisions of the agreement.

The Committee notes that the Act and this section are not intended to affect efforts by other communities within an 80-mile radius of Love Field in seeking to develop their airport infrastructure, obtain Federal grants or other Federal funding, obtain Part 139 certification or meet other Federal requirements to obtain commercial air service.

Section 6. Jurisdiction

This section states that DOT would have exclusive jurisdiction with respect to the agreement described in section 5(a).

Section 7. Applicability

Subsection (a) states that this Act would apply only to actions taken with respect to Love Field, Texas, or transportation to or from Love Field, Texas, under the agreement described in section 5(a), and would have no other application to any other airport. Subsection (b) states that the provisions of this Act would not take effect, if within 30 days after the date of enactment; the Administrator of the FAA would determine and notify Congress that aviation operations in the airspace of Love Field cannot be accommodated in compliance with FAA safety standards.

ROLLCALL VOTES IN COMMITTEE

Senator Hutchison offered an amendment in the nature of a substitute. On a rollcall vote of 21 yeas and 1 nay as follows, the amendment was adopted:

YEAS—21	NAYS—1
Mr. McCain[1]	Mr. Rockefeller
Mr. Burns	
Mr. Lott	
Mrs. Hutchison	
Ms. Snowe	
Mr. Smith[1]	
Mr. Ensign	
Mr. Allen	
Mr. Sununu[1]	
Mr. DeMint[1]	
Mr. Vitter[1]	
Mr. Inouye	
Mr. Kerry[1]	
Mr. Dorgan[1]	
Mrs. Boxer	
Mr. Nelson of Florida[1]	
Ms. Cantwell	
Mr. Lautenberg[1]	
Mr. Nelson of Nebraska	
Mr. Pryor	
Mr. Stevens	

[1]By proxy

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):

INTERNATIONAL AIR TRANSPORTATION COMPETITION ACT OF 1979

SEC. 29. (a) Except as provided in subsection (c), notwithstanding any other provision of law, neither the Secretary of Transportation, the Civil Aeronautics Board, nor any other officer or employee of the United States shall issue, reissue, amend, revise, or otherwise

modify (either by action or inaction) any certificate or other authority to permit or otherwise authorize any person to provide the transportation of individuals, by air, as a common carrier for compensation or hire between Love Field, Texas, and one or more points outside the State of Texas, except (1) charter air transportation not to exceed ten flights per month, and (2) air transportation provided by commuter airlines operating aircraft with a passenger capacity of 56 passengers or less.

(b) Except as provided in subsections (a) and (c), notwithstanding any other provision of law, or any certificate or other authority heretofore or hereafter issued thereunder, no person shall provide or offer to provide the transportation of individuals, by air, for compensation or hire as a common carrier between Love Field, Texas, and one or more points outside the State of Texas, except that a person providing service to a point outside of Texas from Love Field on November 1, 1979, may continue to provide service to such point.

(c) Subsections (a) and (b) shall not apply with respect to, and it is found consistent with the public convenience and necessity to authorize, transportation of individuals, by air, on a flight between Love Field, Texas, and one or more points within the States of Louisiana, Arkansas, Oklahoma, New Mexico, Missouri, and Texas by an air [carrier, if (1) such air carrier does not offer or provide any through service or ticketing with another air carrier or foreign air carrier, and (2) such air carrier does not offer for sale transportation to or from, and the flight or aircraft does not serve, any point which is outside any such State. Nothing in this subsection shall be construed to give authority not otherwise provided by law to the Secretary of Transportation, the Civil Aeronautics Board, any other officer or employee of the United States, or any other person.] *carrier. Air carriers and, with regard to foreign air transportation, foreign air carriers, may offer for sale and provide through service and ticketing to or from Love Field, Texas, and any domestic or foreign destination through any point within Texas, New Mexico, Oklahoma, Kansas, Arkansas, Louisiana, Mississippi, Missouri, or Alabama.*

(d) This section shall not take effect if enacted after the enactment of the Aviation Safety and Noise Abatement Act of 1979. [2]

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[2] Section 29 would be repealed 8 years after the date of enactment of the bill.