

Calendar No. 462

117TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 117-138

PREVENTING PFAS RUNOFF AT AIRPORTS
ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 3662



AUGUST 2, 2022.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

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PREVENTING PFAS RUNOFF AT AIRPORTS ACT

AUGUST 2, 2022.—Ordered to be printed

Ms. CANTWELL, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 3662]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 3662) to temporarily increase the cost share authority for aqueous film forming foam input-based testing equipment, 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 the Preventing PFAS Runoff at Airports Act, S. 3662, is to increase temporarily the Federal cost share under the Federal Aviation Administration's (FAA) Airport Improvement Program (AIP) for the acquisition of equipment that enables commercial airports to avoid the non-emergency discharge of firefighting foam containing toxic per- and polyfluoroalkyl substances (PFAS) into the environment.

BACKGROUND AND NEEDS

Airports with qualifying commercial operations (commercial airports) are subject to FAA requirements under part 139 of title 14 of the Code of Federal Regulations (part 139).¹ Part 139 requires commercial airports to obtain various equipment, including aircraft

¹ 14 CFR 139.1.

rescue and firefighting (ARFF) equipment.² More specifically, part 139 requires commercial airport ARFF systems to use aqueous film forming foam (AFFF)—a type of firefighting foam suitable for fuel fires—that satisfies performance standards established by the Department of Defense.³ To date, the only AFFF that meet these standards contain PFAS.⁴

Furthermore, the FAA requires commercial airports to regularly test their firefighting equipment. Previously, this involved discharging PFAS-containing AFFF into the environment.⁵ As of January 17, 2019, however, the FAA began allowing airports to conduct these tests using input-based testing equipment which avoids discharging AFFF into the environment.⁶ Subsequently, on June 10, 2019, the FAA made the acquisition and installation of input-based testing equipment eligible for AIP funding until November 1, 2021,⁷ which was later extended until November 1, 2023.⁸ Therefore, the FAA will cover 70–95 percent of the cost of acquiring and installing this equipment, in accordance with Federal law.⁹

As a result of these policies, under current law, commercial airports may use Federal funding to acquire equipment that eliminates unnecessary toxic AFFF discharges, except in the rare event of fuel fires. However, not all commercial airports have acquired the equipment. This means that some commercial airports across the country are discharging toxic PFAS-containing firefighting foam into the environment unnecessarily. S. 3662 would increase the Federal cost share under AIP from 70–95 percent to 100 percent of the cost of acquiring and installing the input-based testing equipment.

SUMMARY OF PROVISIONS

If enacted, S. 3662 would do the following:

- Increase the Federal cost share under AIP to 100 percent, on a temporary basis, for the acquisition and installation of input-based testing equipment that enables commercial airports to test their ARFF vehicles without discharging PFAS-containing AFFF into the environment.
- Require the Administrator of the FAA to conduct outreach to commercial airports to inform them about the temporary increase in the Federal cost share.
- Require the Administrator of the FAA to brief the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives about the possibility of reimbursing commercial airports that acquired eligible equipment be-

²Federal Aviation Administration, *CertAlert on Aqueous Film Forming Foam (AFFF) Testing at Certificated Part 139 Airports*, January 17, 2019 (https://www.faa.gov/airports/airport_safety/certalerts/media/part-139-cert-alert-19-01-AFFF.pdf).

³Ibid.

⁴Ibid.

⁵Ibid.

⁶Ibid.

⁷Federal Aviation Administration, Memorandum on PGL 19–01: Aqueous Film Forming Foam (AFFF) Input-Based Testing Equipment, June 10, 2019 (https://www.faa.gov/airports/aip/guidance_letters/media/aip-pgl-19-01-AFFF-Testing-Equipment.pdf).

⁸Federal Aviation Administration, Memorandum on PGL 21–01: Extension of Eligibility for Stand-alone Acquisition of Input-based Testing Equipment and Truck Modification, October 5, 2021 (https://www.faa.gov/airports/aip/guidance_letters/media/aip-PGL-21-01-AFFF-Input-Based-Testing-Equipment.pdf).

⁹See 49 U.S.C. 47109.

fore the enactment of the temporary increase in the Federal cost share, among other issues.

LEGISLATIVE HISTORY

S. 3662 was introduced on February 16, 2022, by Senator Peters (for himself and Senators Moran, Duckworth, Capito, Klobuchar, and Lummis) and was referred to the Committee on Commerce, Science, and Transportation of the Senate. On March 22, 2022, the Committee met in open Executive Session and, by voice vote, ordered S. 3662 reported favorably with an amendment (in the nature of a substitute with amendments).

ESTIMATED COSTS

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 24, 2022.

Hon. MARIA CANTWELL,
*Chair, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MADAM CHAIR: The Congressional Budget Office has prepared the enclosed cost estimate for S. 3662, the Preventing PFAS Runoff at Airports Act.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 3662, Preventing PFAS Runoff at Airports Act			
As ordered reported by the Senate Committee on Commerce, Science, and Transportation on March 22, 2022			
By Fiscal Year, Millions of Dollars	2022	2022-2027	2022-2032
Direct Spending (Outlays)	*	*	*
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	*	*	*
Spending Subject to Appropriation (Outlays)	*	*	*
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2033?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

S. 3662 would have the Federal Aviation Administration (FAA) pay 100 percent of the cost for airports to acquire stand-alone, input-based equipment to test certain fire suppression systems. Under current law, the FAA's Airport Improvement Program and Airport Infrastructure Grants program provide grants for capital improvements at airports and, depending on the type of airport, generally cover 75 percent to 90 percent of the costs for eligible projects. Under current agency guidance, airports' acquisitions of those systems can be reimbursed through November 1, 2023.

S. 3662 would not provide additional budget authority for airport grants or increase existing obligation limitations. However, the bill could affect direct spending from the expenditure of previously appropriated amounts that CBO does not expect to be spent over the 2022–2032 period under current law. Using information from the FAA about previous grants for similar equipment, CBO expects that the FAA would spend a small amount of those balances. Thus, we estimate that enacting the bill would increase direct spending by less than \$500,000 over the 2022–2032 period.

S. 3662 would require the FAA to notify airports of the cost-sharing increase and to report to the Congress on those efforts. Based on the cost of similar activities, CBO estimates that the cost to implement those provisions would not be significant over the 2022–2032 period; such spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Aaron Krupkin. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of 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:

NUMBER OF PERSONS COVERED

S. 3662, as reported, would not impose any new significant regulatory requirements, and, therefore, would not subject any individuals or businesses to new significant regulations.

ECONOMIC IMPACT

S. 3662, as reported, is not expected to have any significant adverse impacts on the Nation's economy.

PRIVACY

S. 3662, as reported, will not have any adverse impact on the privacy of individuals.

PAPERWORK

S. 3662, as reported, would not impose a substantial paperwork burden on individuals or businesses.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions

contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section. 1. Short title

This section would provide that the legislation may be cited as the “Preventing PFAS Runoff at Airports Act”.

Section 2. Temporary increased cost share authority for aqueous film forming input-based testing equipment

Subsection (a) would temporarily increase the Federal cost share under AIP to 100 percent for the acquisition and installation of covered equipment; under current law, the Federal cost share generally ranges from 70–95 percent.¹⁰ Subsection (a) defines covered equipment to mean equipment that is eligible for AIP funding pursuant to the FAA’s program guidance letter (PGL) dated October 5, 2021, “Extension of Eligibility for Stand-alone Acquisition of Input-based Testing Equipment and Truck Modification” (PGL 21–01)¹¹—or successor guidance. PGL 21–01 extended an earlier PGL (PGL 19–01) through November 1, 2023. PGL 19–01 made certain equipment temporarily eligible for AIP funding;¹² the equipment enables commercial airports to test their ARFF vehicles without discharging PFAS-containing AFFF into the environment. Subsection (a) would sunset the 100 percent Federal cost share authority on the earlier of: (1) 180 days after the FAA rescinds the eligibility of covered equipment for AIP funding, or (2) 5 years after the date of enactment of the legislation.

Subsection (b) would direct the Administrator of the FAA, within 90 days after enactment, to conduct outreach to commercial airports in order to make them aware of the 100 percent Federal cost share authority for covered equipment.

Subsection (c) would direct the Administrator of the FAA, within 18 months after enactment, to conduct a briefing for the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives. The briefing would inform the Committees about options for reimbursing commercial airports that already acquired covered equipment, with or without Federal funding, as well as information relevant to estimating the cost of such reimbursement, the status of the Administrator’s outreach efforts under subsection (b), and any other information the Administrator considers appropriate.

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

¹⁰ Ibid.

¹¹ Federal Aviation Administration, Memorandum on PGL 21–01: Extension of Eligibility for Stand-alone Acquisition of Input-based Testing Equipment and Truck Modification, October 5, 2021 (https://www.faa.gov/airports/aip/guidance_letters/media/aip-PGL-21-01-AFFF-Input-Based-Testing-Equipment.pdf).

¹² Federal Aviation Administration, Memorandum on PGL 19–01: Aqueous Film Forming Foam (AFFF) Input-Based Testing Equipment, June 10, 2019 (https://www.faa.gov/airports/aip/guidance_letters/media/aip-pgl-19-01-AFFF-Testing-Equipment.pdf).

is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

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TITLE 49—TRANSPORTATION

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Subtitle VII—Aviation Programs

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PART B—AIRPORT DEVELOPMENT AND NOISE

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CHAPTER 471—AIRPORT DEVELOPMENT

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Subchapter I—Airport Improvement

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§ 47109. United States Government’s share of project costs

- (a) * * *
- (g) *SPECIAL RULE FOR COVERED EQUIPMENT.—*
 - (1) *IN GENERAL.—The Government’s share of allowable project costs for covered equipment and its installation shall be 100 percent.*
 - (2) *DEFINITION OF COVERED EQUIPMENT.—For purposes of this subsection, the term “covered equipment” means aqueous film forming foam input-based testing equipment that is eligible for Airport Improvement Program funding based on Federal Aviation Administration PGL 21-01, titled “Extension of Eligibility for stand-alone acquisition of input-based testing equipment and truck modification”, dated October 5, 2021 (or any other successor program guidance letter).*
 - (3) *SUNSET.—The higher cost share authority established in this subsection shall terminate on the earlier of—*
 - (A) *180 days after the date on which the eligibility of covered equipment for Airport Improvement Program funding under the authority described in paragraph (2) terminates or is discontinued by the Administrator; or*
 - (B) *5 years after the date of enactment of this subsection.*

* * * * *