

## CBO STATEMENT ON S. 1994

Mr. PRESSLER. Madam President, I rise to submit for the RECORD an intergovernmental mandates statement, as prepared by the Congressional Budget Office [CBO], for the Federal Aviation Administration Reauthorization Act of 1996 (S. 1994). The Committee on Commerce, Science, and Transportation ordered S. 1994 reported on June 13, 1996. The CBO already has provided a Federal cost estimate and a private sector mandates statement for this bill on July 16, 1996, and both are included in Senate Report 104-333 on S. 1994.

Madam President, I now ask unanimous consent that the CBO statement be printed in the RECORD at this point.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, July 26, 1996.

Hon. LARRY PRESSLER,  
Chairman, Committee on Commerce, Science,  
and Transportation, U.S. Senate, Washing-  
ton, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed intergovernmental mandates statement for the Federal Aviation Reauthorization Act of 1996. CBO provided a federal cost estimate and a private-sector mandates statement for this bill on July 16, 1996.

The bill would impose mandates on state, local, and tribal governments as defined in Public Law 104-4.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL,  
Director.

Enclosure.

CONGRESSIONAL BUDGET OFFICE ESTIMATED  
COST OF INTERGOVERNMENTAL MANDATES

1. Bill number: Not yet assigned.
2. Bill title: Federal Aviation Reauthorization Act of 1996.
3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation on June 13, 1996.
4. Bill purpose: The bill would authorize 1997 appropriations or provide contract authority for a number of Federal Aviation Administration (FAA) programs, including the state block grant, research and development, and airport improvement programs. The bill would modify the funding for essential air service and the apportionment of airport improvement funds. In addition, it would make it more difficult for the FAA Administrator to issue regulations that result in substantial economic burdens to state, local, or tribal governments. The bill would also establish new requirements pertaining to pilot records and hiring.
5. Intergovernmental mandates contained in the bill: The bill contains one mandate on state, local, and tribal governments, and one provision that could be a mandate.
- Pilot Records. The bill would increase the amount of background information an air carrier must obtain before hiring an individual as a pilot. In doing so, it would impose a mandate on employers, including state, local, and tribal governments, that have employed the prospective pilot within the previous five years. The bill would require that employers provide to air carriers, upon their request and within 30 days, information on the work record of these individuals. Em-

ployers would have to obtain written consent from such individuals prior to releasing the information as well as notify them of the request and of their right to receive a copy of the records.

State Taxing Authority. The bill contains a provision intended as a technical correction to the section of Title 49 of the U.S. Code establishing the authority of states to levy certain aviation-related taxes. When that section of the code was recodified in 1994, it appeared to broaden the power of states to tax airlines. The correction is intended to return state taxing authority to the status quo as it existed before the recodification.

The impact of this provision, however, is unclear. A simple correction would impose no new mandates. There is concern among some tax experts, however, that the proposed change goes beyond the intended fix and would impose new preemptions on states' taxing authority. A number of state tax officials assert that the proposed correction would increase the ambiguities in the statute and could lead to an interpretation of the law that would prohibit states from imposing certain aviation-related property, income, and other taxes. This issue is unlikely to be resolved without litigation. If the provision is interpreted as the states fear it will be, it would constitute a mandate on state governments as defined by Public Law 104-4 because it would prohibit states from raising certain revenues.

6. Estimated direct costs to State, local, and tribal governments: (a) *Is the \$50 Million Annual Threshold Exceeded?* Because of the uncertainty surrounding the interpretation of section 402, dealing with state taxing authority, CBO is uncertain whether the threshold established in Public Law 104-4 would be exceeded.

(b) *Total Direct Costs of Mandates.* Depending upon the interpretation of section 402, the bill's mandate costs could exceed the \$50 million annual threshold established in Public Law 104-4. The state tax provision alone, if interpreted broadly, would have a potentially significant revenue impact that could approach or exceed the \$50 million threshold. CBO cannot estimate its exact magnitude at this time. CBO estimates that the costs to state, local, and tribal governments of the requirement to provide background records on prospective pilots would be negligible.

(c) *Estimate of Necessary Budget Authority:* Not applicable.

7. Basis of estimate: Pilot Records. Based on information from industry representatives and the Departments of Transportation and Labor, CBO estimates that state, local, and tribal governments, in aggregate, would have to respond to fewer than 5,000 requests for work records of prospective pilots every year. This assumes that many of the 10,000 pilots hired annually have held four or more jobs within the previous five years (because seasonal and part-time work is common) and that fewer than 10 percent of those positions were with state, local, or tribal governments.

CBO estimates that the costs of this mandate on state, local, and tribal employers would be insignificant. Such requests for work records would be spread across numerous state, local, and tribal government offices; thus, the additional administrative burden on any individual entity would be negligible. The bill would also allow employers to charge air carriers and prospective pilots a fee for the cost of processing the request and furnishing the records.

State Taxing Authority. Based on information from several states, CBO believes that, if amended by this bill, certain subsections of 49 U.S.C. 40116 could be read together to limit states to taxing only those aviation-re-

lated goods and services for which a direct nexus to flights taking off or landing in the state could be established. Current law does not require that states show such a flight connection when levying property, income, sales, use, and other taxes on air carriers or other providers of aviation services. Many states use apportionment formulas to calculate these taxes, and it is possible that the proposed change could preclude this practice.

Based on a survey of state tax officials and information from the Multistate Tax Commission, CBO estimates that the bill could result in tax preemptions in as many as half of the states. Depending upon the interpretation of the proposed change, some states could face annual revenue losses in the millions of dollars. Ambiguities in both the existing recodified statute and the proposed change, however, make it difficult to predict the extent of the possible preemption, if any, and to quantify the revenue losses that might result from it. CBO estimates that, if interpreted broadly, the provision would have a potentially significant revenue impact that could approach or exceed the \$50 million threshold.

8. Appropriation or other Federal financial assistance provided in bill to cover mandate costs: None.

9. Other impacts on State, local, and tribal governments: Pilot Records and State Department of Motor Vehicles. The bill would require air carriers to obtain information on a prospective pilot's motor vehicle driving record. State departments of motor vehicles (DMVs) would have to provide information from the National Driver Register within 30 days of receiving such a request from an air carrier. The bill would require DMV officials to obtain written consent from individuals prior to releasing such information and to notify them of the request and of their right to receive a copy of records.

Because the National Driver Register program is a voluntary federal program, these requirements would not constitute mandates as defined by Public Law 104-4. They would, however, result in some costs to states. The bill would allow states to charge the air carriers and prospective pilots a fee for the cost of processing the request and furnishing the records. Based on information from the Department of Transportation, state DMVs, and airline industry representatives, CBO estimates that the administrative costs to states of complying with this requirement would be insignificant.

Essential Air Service. The bill would benefit approximately 100 rural communities across the United States that are served by the essential air service program. The bill would replace the provision in current law that requires reauthorization of funding for the program after 1998 with a new and increased source of funding. The bill would raise the authorization to \$50 million annually for the program (almost twice the fiscal year 1996 authorization) to be paid out of new fees on foreign air service. Spending on the program would, however, continue to be subject to appropriation. The bill would also allow the Secretary, not earlier than two years and 30 days after enactment of the bill, to require that state and local governments provide matching funds of up to 10 percent for payments they receive under the program.

FAA Regulations. The bill would prohibit the FAA Administration from issuing regulations that would cost state, local, and tribal governments, in aggregate, more than \$50 million a year without the approval of the Secretary of Transportation. In addition, the bill would require periodic reviews of all regulations issued after enactment of the bill that result in aggregate costs of state, local,

and tribal governments of \$25 million or more a year.

Alaskan Aviation. The bill would provide FAA a new, one-year authorization of \$10 million to be spend on improving aviation safety in Alaska. The bill would also direct the Administrator to take Alaska's unique transportation needs into consideration when amending aviation regulations.

10. Previous CBO estimates: CBO provided a preliminary analysis of the bill's mandates on state, local, and tribal governments as part of the federal cost estimate dated July 16, 1996. The initial conclusions presented in that estimate have not changed.

On July 22, 1996, CBO transmitted an inter-governmental mandates statement on H.R. 3539, the Federal Aviation Authorization Act of 1996, as ordered reported by the House Committee on Transportation and Infrastructure on June 6, 1996. Both bills would reauthorize major FAA programs and amend the section of Title 49 of the U.S. Code dealing with state taxation, but they differ in several other respects. The two estimates reflect those differences.

On July 11, 1996, CBO transmitted a cost estimate and mandates statement on H.R. 3536, the Airline Pilot Hiring and Safety Act of 1996, as ordered reported by the House Committee on Transportation and Infrastructure on June 6, 1996. H.R. 3536 is similar to the title in this bill pertaining to background information on prospective pilots. H.R. 3536 would not, however, require state, local, and tribal government employers to provide information on the work records of prospective pilots.

11. Estimate prepared by: Karen McVey.

12. Estimate approved by: Robert A. Sunshine (for Paul N. Van de Water, Assistant Director for Budget Analysis).

#### THE ANNUAL CHINA MFN DEBATE

Mr. THOMAS. Madam President, the theater that is the annual China MFN debate has once again—predictably—fully run its course. The President recommended extension, United States business and our Asian trading partners held their collective breath, there was a lot of rhetoric on the floor of the House condemning China for a variety of serious misdeeds, and in the end a vast majority of the House voted to renew MFN yet again. In the wake of the debate, I believe that we should take a serious look at scrapping this annual drama and replacing it with a more pragmatic and workable solution.

That the yearly MFN debate should be scrapped seems evident from an examination of its relative pros and cons. What is gained by the annual debate? Aside from an opportunity for some in Congress to air their grievances with the PRC, not much. What is lost, on the other hand? Quite a bit.

First, the debate regularly disrupts our bilateral relationship by making the Chinese feel unfairly singled out, and not without reason. Most favored nation is a misnomer. Although the phrase implies some special treatment that the United States passes out discriminately, it is actually the normal trading status with all our trade partners. Only seven countries, the majority of which we consider pariah states, are not accorded that status: Afghanistan, Azerbaijan, Cuba, Laos,

North Korea, Vietnam, and Serbia. In addition, one of the main reasons given by proponents of revoking China's MFN status is that country's arguably abysmal human rights record. But while other countries have equally disturbing human rights records, no one has moved to revoke their MFN status. Turkey has long persecuted its Kurdish minority; Russia has killed hundreds of civilians in Chechnya; Indonesia invaded East Timor and continues to occupy the island illegally, jailing and killing Timorese dissidents; Nigeria jails and executes opponents of the Government—yet all four enjoy most favored nation trading status.

Second, the annual debate is damaging to the interests of U.S. companies doing business in the PRC. Companies find it very difficult to make long-term investment plans when they have to worry every year that the MFN rug might be yanked out from under them. From the Chinese side, the annual MFN renewal requirement raises the risk of doing business with U.S. firms; so instead, they have a strong incentive to do business with our European competitors who have no such constraints.

Third, the threat of revoking China's MFN—an empty threat in my view—is not an effective foreign policy tool. Revoking China's MFN status would hurt us more than the Chinese—the economic equivalent of cutting off your nose to spite your face. In 1995, United States exports to China directly supported around 200,000 American jobs. Revoking MFN, and the Chinese retaliation that would surely follow, would only serve to deprive us of a rapidly growing market. China is perfectly capable of shopping elsewhere for its needs, and our allies are more than happy to fill any void we leave. We recently saw a prime example of that willingness; last month Premier Li Peng traveled to France where he signed a \$2 billion contract to buy 33 Airbus—a contract that Boeing thought it was going to get.

Fourth, instead of using MFN as a carrot-and-stick with the PRC, I believe the best way to influence the growth of democratic ideals, human rights, and the rule of law in China is through continued and reliable economic contacts. I think anybody who has been to China, especially over the course of the last 15 years, has seen that for themselves—most dramatically in southern and eastern China. It is clear that economic development and contact with the West through trade has let a genie out of the bottle that the regime in Beijing will never be able to put back. We must continue to encourage that trend as we turn the corner to a new century.

The whole MFN renewal issue is an outdated relic of the cold war—a war that's over. The Jackson-Vanik amendment, the basis for the yearly MFN renewal requirement, was not designed with China in mind and was not created as a way to better a country's

overall human rights record or its adherence to international or bilateral trade or nuclear proliferation agreements. Rather, it was originally designed to pressure the Soviet Union to allow the free emigration of Soviet Jews to Israel and other countries. Over the years, its application has moved from covering freedom of emigration from any country with a command or nonmarket economy to a tool for expressing United States displeasure with a variety of China's sins. It is somewhat ironic that of all the different issues raised by Members of Congress arguing to revoke the PRC's MFN status, I have never heard China's emigration policies mentioned even once.

With the demise of the cold war, and changing world realities, we would do better to repeal Jackson-Vanik and replace it with a more workable and pragmatic alternative. We should extend permanent MFN status to China, retaining of course the option of revoking that status should the need truly arise. That extension would remove a series of irritants from our relationship, but would not adversely affect our ability to address China's various transgressions.

We retain a whole series of options to deal with the many areas of friction in our bilateral relationship that are more narrowly tailored—and therefore more effective—than the overkill method of MFN revocation. For example, a wide variety of unfair trade practices can be addressed through provisions of the Trade Act of 1974—commonly called the Special 301 provision—as with the recent intellectual property rights dispute. Similar legislation is in place to deal with nuclear or other weapons proliferation.

I am not an apologist for the PRC—far from it. The Chinese are failing to honor many of their commitments to us, such as intellectual property rights and nuclear proliferation—note the recent well-founded allegations that the PRC has assisted Pakistan in building a missile production facility. They want to gain entry to the WTO on their own, not the WTO's terms. Their progress on the human rights front has been negligible at best, as evidenced by a rash of recent crackdowns in Tibet and Xinjiang. They are actively pursuing the purchase of Russian SS-18 ICBMs and MIRV technology. They have laid claim to the vast majority of the South China Sea, to the consternation of five other claimant countries. They have conducted a series of aggressive and inflammatory military exercises this year off the coast of Taiwan.

But despite all these issues, the revocation of China's MFN status is not a constructive remedy. It is high time that scrap this annual ritual, and replace it with a more thoughtful and pragmatic approach that builds on our efforts, rather than tears at this important relationship. I was glad to see during the latest debate that acceptance of this position seems to be growing among Members of Congress.