

reauthorization conference report, and as a result of that delay we have threats to radar, air traffic control equipment, navigation equipment, landing systems equipment that remedies air traffic control outages, Doppler radar for wind shear, research and development, advancement of explosive detection systems, human factor research, aging aircraft.

This is big. This is important legislation, and it is, over 2 years, \$19 billion for infrastructure security and safety.

This would be a senseless roll of the dice, if we did not invoke cloture this morning, bring this filibuster to a conclusion and move this legislation on through.

I remind my colleagues the House has already acted responsibly, overwhelmingly moved this legislation, and they are gone. What would be the situation if we did not bring this filibuster to a conclusion this morning? We would not have any legislation, or if we had legislation that made changes it would go back to the House and there is great concern about when or if they would be able to get action on this legislation. We should act together this morning and end this filibuster and pass this legislation.

Now, one other point. I do not understand the attacks on Federal Express. This is an outstanding company headed by an outstanding individual. They are providing services that 30 years ago we could not even comprehend. They are doing a great job, and yet they are being attacked as if they are some sort of villain. It is absolutely wrong, the rhetoric we have had to listen to over the past 3 days on a technical point.

Mr. President, I ask unanimous consent that a list of what is involved in this legislation be printed in the RECORD.

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

#### HIGHLIGHTS OF FAA REAUTHORIZATION CONFERENCE REPORT (H.R. 3539)

Reauthorization of FAA—FY 1997, \$9.7 billion; FY 1998, \$9.9 billion.

(In billions of dollars)

	Fiscal year—	
	1997	1998
Airport grants .....	\$2.3	\$2.4
Radar, air traffic control equipment, navigation equipment, landing systems (ILS) equipment that remedies air traffic control outages doppler radar for wind shear .....	2.1	2.2
Operations .....	5.2	5.4
Research and development, advancement of explosive detection systems, human factor research, aging aircraft, air traffic control safety issues .....	( <sup>1</sup> )	( <sup>2</sup> )

<sup>1</sup> \$20.8 million.

<sup>2</sup> No authorization.

Note: Research and Development levels include an additional \$31 million for security programs consistent with the Administration's emergency request for funds.

#### CONSTRUCTION: PRO-WORKER BILL

Kenai Municipal Airport, AK—Alaska Regional Aircraft Firefighting Training Center (\$8 million).

Anchorage Airport, AK—Rehabilitate runway and lighting (\$2.1 million).

Allakaket Airport, AK—Rehabilitate runway and lighting (\$5.5 million).

Deadhorse Airport, AK—Construct aircraft rescue and firefighting building (\$3.5 million).

Yuma Intl. Airport, AZ—Cargo apron expansion, cargo security, new terminal, enhanced security for new terminal.

Scottsdale Airport, AZ—Aircraft rescue and firefighting vehicle and fire station (\$1.2 million).

Phoenix Sky Harbor Intl. Airport, AZ—Construction of 3rd runway and residential soundproofing.

San Bernardino County-Chino Airport, CA—New runway construction (\$10 million).

Buchanan Airport, CA—Taxi-ways and aprons near total failure (\$5 million).

Oxnard Airport, CA—Replace aircraft rescue and firefighting vehicles (\$247,000).

Greely-Weld County Airport, CO—Construction of new runway (\$32 million).

Boulder Municipal Airport, CO—Security lighting.

Mr. LOTT. I also ask unanimous consent that an explanation of the fact that this is a technical point be printed in the RECORD.

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

FACT SHEET—CONFERENCE REPORT TO ACCOMPANY H.R. 3539, THE FEDERAL AVIATION AUTHORIZATION OF 1996

A provision is contained in the Conference Report to accompany H.R. 3539 which makes a technical correction to a drafting error which was contained in the Interstate Commerce Commission Termination Act of 1995.

The following outlines the problem, the facts and the solution:

#### PROBLEM

A drafting error in the Interstate Commerce Commission Termination Act of 1995 (P.L. 104-88) created an ambiguity affecting the status of express carriers under the Railway Labor Act.

One provision (Sec. 10501) states the intent of Congress: "the enactment of the ICC Termination Act of 1995 shall neither expand or contract coverage of the employees and employers by the Railway Labor Act. . ."

However, a second provision drops "express carriers" under the Railway Labor Act. This was clearly inadvertent and in contradiction to the stated intent of Congress.

#### FACTS

Since the inception of the Railway Labor Act, "express carriers" have come under the law's jurisdiction.

The Railway Labor Act is designed to protect the interests of employees covered by that Act and is not an "anti-labor" law.

For 62 years, employers and employees have been successfully governed by the provisions of the Railway Labor Act.

#### SOLUTION

A provision in the Conference Report to accompany H.R. 3539, the Federal Aviation Authorization Act of 1995, states that if an express company was under the Railway Labor Act prior to the enactment of the ICC Termination Act, then that express company shall remain under the purview of the Railway Labor Act.

Mr. LOTT. It is a small point. It reaffirms what has been the law for 62 years. This is not a grab. This is not an effort to stomp somebody. This is an effort to be fair, to correct a clear oversight; a mistake was made. We are trying to correct that. That is all.

This is so important. We should this morning act together to stop the filibuster, pass this legislation and go home for the sake of the American people. I urge my colleagues, let us vote together. Let us invoke cloture and

pass the legislation in an expeditious manner.

I yield the floor, Mr. President. I ask for the yeas and nays.

The PRESIDING OFFICER. The Chair wishes to advise the distinguish leader that under rule XXII the yeas and nays are automatic.

Mr. LOTT. I thank the Chair.

#### CLOTURE MOTION

The PRESIDING OFFICER. The clerk, under the previous order, will report the motion to invoke cloture.

The assistant legislative clerk read as follows.

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the conference report to accompany H.R. 3539, the Federal Aviation Reauthorization bill:

Trent Lott, Don Nickles, Strom Thurmond, Jon Kyl, Judd Gregg, Slade Gorton, Paul D. Coverdell, Frank H. Murkowski, Craig Thomas, Harry Reid, Wendell Ford, Conrad Burns, Kay Bailey Hutchison, John Breaux, Tom Daschle, Arlen Specter.

#### CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum has been waived.

#### VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the conference report accompanying H.R. 3539, an act to amend title 49, United States Code, to reauthorize programs of the Federal Aviation Administration shall be brought to a close? The yeas and nays are automatic under rule XXII. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Indiana [Mr. COATS], is necessarily absent.

I also announce that the Senator from Colorado [Mr. CAMPBELL], is absent due to illness.

Mr. FORD. I announce that the Senator from Vermont [Mr. LEAHY], is absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The yeas and nays resulted—yeas 66, nays 31, as follows:

[Rollcall Vote No. 304 Leg.]

#### YEAS—66

Abraham	D'Amato	Hatch
Ashcroft	Daschle	Hatfield
Baucus	DeWine	Heflin
Bennett	Domenici	Helms
Bond	Dorgan	Hollings
Breaux	Faircloth	Hutchison
Brown	Feinstein	Inhofe
Bryan	Ford	Inouye
Bumpers	Frahm	Jeffords
Burns	Frist	Johnston
Chafee	Gorton	Kassebaum
Cochran	Graham	Kempthorne
Cohen	Gramm	Kyl
Conrad	Grams	Lott
Coverdell	Grassley	Lugar
Craig	Gregg	Mack

McCain  
McConnell  
Murkowski  
Nickles  
Nunn  
Pressler

Pryor  
Reid  
Roth  
Shelby  
Simpson  
Smith

Snowe  
Stevens  
Thomas  
Thompson  
Thurmond  
Warner

#### NAYS—31

Akaka  
Biden  
Bingaman  
Boxer  
Bradley  
Byrd  
Dodd  
Exon  
Feingold  
Glenn  
Harkin

Kennedy  
Kerrey  
Kerry  
Kohl  
Lautenberg  
Levin  
Lieberman  
Mikulski  
Moseley-Braun  
Moynihan  
Murray

Pell  
Robb  
Rockefeller  
Santorum  
Sarbanes  
Simon  
Specter  
Wellstone  
Wyden

#### NOT VOTING—3

Campbell

Coats

Leahy

The PRESIDING OFFICER. On this vote, the yeas are 66, the nays are 31. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader, Senator LOTT, is recognized.

#### POINT OF ORDER

Mr. LOTT. Mr. President, I understand that if a point of order were raised that the pending FAA conference report exceeds the scope of the conference committee, that the Chair would rule that the conferees did exceed the scope with respect to the so-called Federal Express provision. If the point of order is raised and sustained, the conference report would then fall.

This would mean, as we pointed out earlier, billions of dollars lost in construction funds, hundreds of thousands of lost jobs, and a significant reduction in air traffic safety. That would be jeopardized.

Needless to say, the Senate should not let this vital piece of legislation be killed on this point of order, and having just had a vote of 66 to 31 to cut off the filibuster. In order to facilitate the vote, I raise a point of order that the conference report exceeds the scope of the conference committee and ask unanimous consent that there now be 20 minutes for debate prior to the Chair's ruling, to be equally divided between Senators KENNEDY and STEVENS. Senator MCCAIN will participate in that. I have discussed this with Senator KENNEDY. He understands that I would make this point of order.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Reserving the right to object.

The PRESIDING OFFICER. Objection is heard.

Mr. KENNEDY. Reserving.

The PRESIDING OFFICER. Reserving.

Mr. KENNEDY. I do not intend to object. I want to point out that the rejection of the conference report does not mean the loss of money or jobs or safety. If the report is rejected, the Senate can quickly and unanimously pass the bill that is at the desk, enacting the

FAA bill without the Federal Express provision. The House is still in session to receive and pass that bill. Having made that point of order, I have no objection to the unanimous consent request.

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

Mr. LOTT. Parliamentary inquiry. I understand there would be the debate time which would be followed by a ruling from the Chair.

The PRESIDING OFFICER. That is correct.

Mr. LOTT. I yield the floor, Mr. President.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. As I understand it, I have 10 minutes. Is that correct?

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for a period not to exceed 10 minutes.

Mr. KENNEDY. Mr. President, we are moving toward the conclusion of this issue. But this is an extremely important issue, and I would invite our colleagues' attention.

Mr. President, in just a few moments the Chair will rule whether this particular provision is inside the scope or outside the scope of the conference. I have every expectation that the Chair will rule that it was outside the scope of the conference. Then we are going to be asked whether we are going to sustain the Chair or overrule the Chair. I would like to address that issue and what it means in terms of the future of this institution and the future of various conference reports.

Mr. President, I want to remind my colleagues of the long-term significance of a vote to overturn the ruling of the Chair on this important point. Last year the junior Senator from Texas, Senator HUTCHISON, offered an amendment regarding the Endangered Species Act to an appropriations bill. The Chair ruled that the amendment would constitute legislation on an appropriations bill, but the body overturned the ruling of the Chair.

That vote set a precedent. As a result of that vote, a point of order that an amendment constitutes legislation on an appropriations bill is no longer available to Senators. To pass that single amendment, the Senate gave up an important aspect of our rules, one that has served to protect the rights of all Members of this body. The point of order before us right now provides an even more important protection to all Members.

The rule that a conference committee cannot include extraneous matter is central to the way that the Senate conducts its business. When we send a bill to conference we do so knowing that the conference committee's work is likely to become law. Conference reports are privileged. Motions to proceed to them cannot be debated, and such reports cannot be amended.

So conference committees are already very powerful. But if conference

committees are permitted to add completely extraneous matters in conference, that is, if the point of order against such conduct becomes a dead letter, conferees will acquire unprecedented power. They will acquire the power to legislate in a privileged, unreviewable fashion on virtually any subject. They will be able to completely bypass the deliberative process of the Senate.

Mr. President, this is a highly dangerous situation. It will make all of us less willing to send bills to conference and leave all of us vulnerable to passage of controversial, extraneous legislation any time a bill goes to conference.

I hope the Senate will not go down this road. Today the narrow issue is the status of one corporation under the labor laws. But tomorrow the issue might be civil rights, States' rights, health care, education, or anything else. It might be a matter much more sweeping than the labor law issue that is before us today.

So for this vital institutional reason, I strongly urge the Senate to uphold the ruling of the Chair on the point of order. This vote is not about the FAA, and it is not even about Federal Express; it is a vote about whether this body is going to be governed by a neutral set of rules that protect the rights of all Members, and by extension, the rights of all Americans. If the rules of the Senate can be twisted and broke and overridden to achieve a momentary legislative goal we will have diminished the institution itself.

The PRESIDING OFFICER. The Chair recognizes the Senator from Alaska.

Mr. STEVENS. Mr. President, this is a rather difficult situation. We have just passed, recently, a Defense appropriations bill. I was the chairman of that conference. Before it was over, we had a whole series of other bills, a series of legislative items. It was not necessary to raise a point of order. Everybody knew we exceeded the scope of the conference.

I ask any chairman of a conference if he or she has ever really been totally restricted by this rule? This is an extraordinary time where we are in the last hours of this Congress. When the leader became aware that Senator KENNEDY was going to raise this point of order, the leader determined to raise it himself. I take it that having done that, there is no question this is a rather significant occasion. I hope it will be a rather narrow precedent.

I point out to the Senate that this provision is not the only matter that exceeds the scope of the conference. We had to include, at the administration's request, special authority for the executive branch to purchase and deploy explosive detection devices. We put in here the provisions that pertain to the rights of survivors of victims of air crashes. We put in provisions requiring passenger screening companies to be certified by the FAA. That is not required under any existing law. We put