

the country. He served as president of that foundation from 1997 to 2009 and today is a trustee of the foundation.

One of the interesting things T. Rogers Wade did—a lot of people talk about what they want to do to reform education and help kids in need. T. Rogers Wade did it. He founded something called Tech High in Atlanta, GA, a school in an old dilapidated building that he raised the money to rehabilitate. He brought in excellent faculty in STEM math and science and opened it as a charter school approved by the State of Georgia for the most in need, free-and-reduced-lunch kids in the metropolitan city of Atlanta public school system. He began attracting those kids to that charter school. So successful has Tech High been that Arne Duncan, the Secretary of Education, chose it to be one of his first visits after he became Secretary of Education under President Obama. It still is a guiding light today of what can be done, with a focus on excellence and helping kids in need to brighten their future.

Just recently, with the election of Nathan Deal as the new Governor of Georgia, he picked one person out of our State to guide him in his transition team. It was T. Rogers Wade.

T. Rogers Wade has touched the lives of American servicemen by being on the board of the USO, Georgia businesses by being on the board of the chamber of commerce, and citizens around our State by being the president of the Public Policy Foundation.

Next Monday night, I am going to have dinner with a great Georgian and great American. And I rise at this moment on the floor of the Senate to pay tribute to T. Rogers Wade on the occasion of his 70th birthday.

I yield back the remainder of my time. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAUCUS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ESSENTIAL AIR SERVICE

Mr. BAUCUS. Madam President, I realize we are in morning business, but I rise to oppose the McCain amendment to the FAA bill, which will probably come up later when we get to the bill.

The McCain amendment will eliminate the Essential Air Service Program. I applaud my colleague for exploring ways to address our deficit, and I want to join him in looking for opportunities to control spending, but this is one program we must preserve. We won't improve the deficit by stifling local economies.

The Department of Transportation estimates that 1.1 million travelers from more than 150 communities rely

on the Essential Air Service Program. The Essential Air Service Program is a promise to rural America, which absolutely needs airports for economic development, as noted in the 2009 Journal of Rural Studies report entitled, "The Economic Importance of Air Travel in High-Amenity Rural Areas."

Nearly half of the American West consists of publicly owned lands containing mountain ranges, forests, rivers, lakes, parks, and areas for wilderness, wildlife, and grazing. Many people come to the West to visit—especially from the East—especially in the summer, to go fly fishing, camping, for tourism, and in the winter for skiing. People enjoy public lands in the West. We have so many public lands in the West, we don't have private land for development. This means we have tremendous distances between population centers, and we need reliable air travel to ensure jobs, private enterprise, and access to medical assistance.

Montana is primarily a rural State. We rank 47th in population—that is only three States with less populace than we—while being the fourth largest in land mass. To put it differently, although we are slightly larger than the country of Japan, we have fewer citizens than the State of Rhode Island, the smallest State in the Nation.

Montana has eight Essential Air Service communities: Sidney, Glendive, Wolf Point, Miles City, Glasgow, Havre, and West Yellowstone. The first seven rely on industries such as agricultural and mineral extraction—industries that are vital to America's growth and industries which exist in rural America rather than in downtown metropolitan areas. A couple of those airports also lie near Indian reservations where economic needs are paramount. Without the Essential Air Service all these areas risk isolation.

In 2008, Montana's Essential Air Service provider went out of business. We lost air travel for months. At this point, I want to read a passage from a recent Great Falls Tribune article to illustrate the impact on jobs and the economy. It says:

When Havre, a city of about 10,000 people, lost its air service . . . BNSF Railway closed its local office and moved its operation to Billings.

Think of that. Think of the irony. The railroad needs reliable air services. They didn't have them so they moved to another location. That shows how interconnected our economy is.

I want to take this opportunity to also announce that I have launched a Senate Essential Air Service Caucus. Senator COLLINS from Maine is co-chairman of the bipartisan caucus, and several other Democratic and Republican Senators have already joined us, and I encourage my other colleagues to join and stand with us.

It is important to rein in the deficit. That is clear. But let us be responsible about how we do it. Pulling the rug out from under programs such as Essential

Air Service will shrink the economy rather than shrinking the deficit. I will not turn my back on communities that rely on this program as a lifeline.

Madam President, I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROCKEFELLER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

FAA AIR TRANSPORTATION MODERNIZATION AND SAFETY IMPROVEMENT ACT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 223, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 223) to modernize the air traffic control system, improve the safety, reliability, and availability of transportation by air in the United States, provide modernization of the air traffic control system, reauthorize the Federal Aviation Administration, and for other purposes.

Pending:

Wicker modified amendment No. 14, to exclude employees of the Transportation Security Administration from the collective bargaining rights of Federal employees and provide employment rights and an employee engagement mechanism for passenger and property screeners.

Blunt amendment No. 5, to require the Under Secretary of Transportation for Security to approve applications from airports to authorize passenger and property screening to be carried out by a qualified private screening company.

Paul amendment No. 21, to reduce the total amount authorized to be appropriated for the Federal Aviation Administration for fiscal year 2011 to the total amount authorized to be appropriated for the Administration for fiscal year 2008.

Rockefeller (for Wyden) amendment No. 27, to increase the number of test sites in the National Airspace System used for unmanned aerial vehicles and to require one of those test sites to include a significant portion of public lands.

Inhofe amendment No. 7, to require the Administrator of the Federal Aviation Administration to initiate a new rulemaking proceeding with respect to the flight time limitations and rest requirements for supplemental operations before any of such limitations or requirements be altered.

Rockefeller (for Ensign) amendment No. 32, to improve provisions relating to certification and flight standards for military remotely piloted aerial systems in the National Airspace System.

McCain amendment No. 4, to repeal the Essential Air Service Program.

Rockefeller (for Leahy) amendment No. 50, to amend title 1 of the Omnibus Crime Control and Safe Streets Act of 1968 to include

nonprofit and volunteer ground and air ambulance crew members and first responders for certain benefits, and to clarify the liability protection for volunteer pilots that fly for public benefit.

Reid amendment No. 54, to allow airports that receive airport improvement grants for the purchase of land to lease the land and develop the land in a manner compatible with noise buffering purposes.

Reid amendment No. 55, to require the Secretary of the Interior to convey certain Federal land to the city of Mesquite, NV.

Udall (NM) Bingaman amendment No. 49, to authorize Dona Ana County, NM, to exchange certain land conveyed to the county for airport purposes.

Udall (NM) amendment No. 51, to require that all advanced imaging technology used as a primary screening method for passengers be equipped with automatic target recognition software.

Nelson (NE) amendment No. 58, to impose a criminal penalty for unauthorized recording or distribution of images produced using advanced imaging technology during screenings of individuals at airports and upon entry to Federal buildings.

Paul amendment No. 18, to strike the provisions relating to clarifying a memorandum of understanding between the Federal Aviation Administration and the Occupational Safety and Health Administration.

Rockefeller (for Baucus) modified amendment No. 75, of a perfecting nature.

The ACTING PRESIDENT pro tempore. I understand the Senator from Montana wants to make a modification?

Mr. BAUCUS. That is correct.

AMENDMENT NO. 75, AS FURTHER MODIFIED

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Madam President, I ask that my amendment No. 75 be modified further with the changes that are at the desk.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

The amendment, as further modified, is as follows:

Strike title VIII and insert the following:

TITLE VIII—AIRPORT AND AIRWAY TRUST FUND PROVISIONS AND RELATED TAXES
SEC. 800. AMENDMENT OF 1986 CODE.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 801. EXTENSION OF TAXES FUNDING AIRPORT AND AIRWAY TRUST FUND.

(a) **FUEL TAXES.**—Subparagraph (B) of section 4081(d)(2) is amended by striking “March 31, 2011” and inserting “September 30, 2013”.

(b) **TICKET TAXES.**—

(1) **PERSONS.**—Clause (ii) of section 4261(j)(1)(A) is amended by striking “March 31, 2011” and inserting “September 30, 2013”.

(2) **PROPERTY.**—Clause (ii) of section 4271(d)(1)(A) is amended by striking “March 31, 2011” and inserting “September 30, 2013”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on April 1, 2011.

SEC. 802. EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDITURE AUTHORITY.

(a) **IN GENERAL.**—Paragraph (1) of section 9502(d) is amended—

(1) by striking “April 1, 2011” in the matter preceding subparagraph (A) and inserting “October 1, 2013”, and

(2) by striking the semicolon at the end of subparagraph (A) and inserting “or the FAA Air Transportation Modernization and Safety Improvement Act;”.

(b) **CONFORMING AMENDMENT.**—Paragraph (2) of section 9502(e) is amended by striking “April 1, 2011” and inserting “October 1, 2013”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on April 1, 2011.

SEC. 803. MODIFICATION OF EXCISE TAX ON KEROSENE USED IN AVIATION.

(a) **RATE OF TAX ON AVIATION-GRADE KEROSENE.**—

(1) **IN GENERAL.**—Subparagraph (A) of section 4081(a)(2) is amended by striking “and” at the end of clause (ii), by striking the period at the end of clause (iii) and inserting “, and”, and by adding at the end the following new clause:

“(iv) in the case of aviation-grade kerosene, 35.9 cents per gallon.”.

(2) **FUEL REMOVED DIRECTLY INTO FUEL TANK OF AIRPLANE USED IN NONCOMMERCIAL AVIATION.**—Subparagraph (C) of section 4081(a)(2) is amended to read as follows:

“(C) **TAXES IMPOSED ON FUEL USED IN COMMERCIAL AVIATION.**—In the case of aviation-grade kerosene which is removed from any refinery or terminal directly into the fuel tank of an aircraft for use in commercial aviation by a person registered for such use under section 4101, the rate of tax under subparagraph (A)(iv) shall be 4.3 cents per gallon.”.

(3) **EXEMPTION FOR AVIATION-GRADE KEROSENE REMOVED INTO AN AIRCRAFT.**—Subsection (e) of section 4082 is amended—

(A) by striking “kerosene” and inserting “aviation-grade kerosene”,

(B) by striking “section 4081(a)(2)(A)(iii)” and inserting “section 4081(a)(2)(A)(iv)”, and

(C) by striking “KEROSENE” in the heading and inserting “AVIATION-GRADE KEROSENE”.

(4) **CONFORMING AMENDMENTS.**—

(A) Clause (iii) of section 4081(a)(2)(A) is amended by inserting “other than aviation-grade kerosene” after “kerosene”.

(B) The following provisions are each amended by striking “kerosene” and inserting “aviation-grade kerosene”:

(i) Section 4081(a)(3)(A)(ii).

(ii) Section 4081(a)(3)(A)(iv).

(iii) Section 4081(a)(3)(D).

(C) Subparagraph (D) of section 4081(a)(3) is amended—

(i) by striking “paragraph (2)(C)(i)” in clause (i) and inserting “paragraph (2)(C)”, and

(ii) by striking “paragraph (2)(C)(ii)” in clause (ii) and inserting “paragraph (2)(A)(iv)”.

(D) Paragraph (4) of section 4081(a) is amended—

(i) by striking “KEROSENE” in the heading and inserting “AVIATION-GRADE KEROSENE”, and

(ii) by striking “paragraph (2)(C)(i)” and inserting “paragraph (2)(C)”.

(E) Paragraph (2) of section 4081(d) is amended by striking “(a)(2)(C)(ii)” and inserting “(a)(2)(A)(iv)”.

(b) **RETAIL TAX ON AVIATION FUEL.**—

(1) **EXEMPTION FOR PREVIOUSLY TAXED FUEL.**—Paragraph (2) of section 4041(c) is amended by inserting “at the rate specified in subsection (a)(2)(A)(iv) thereof” after “section 4081”.

(2) **RATE OF TAX.**—Paragraph (3) of section 4041(c) is amended to read as follows:

“(3) **RATE OF TAX.**—The rate of tax imposed by this subsection shall be the rate of tax in effect under section 4081(a)(2)(A)(iv) (4.3 cents per gallon with respect to any sale or use for commercial aviation).”.

(c) **REFUNDS RELATING TO AVIATION-GRADE KEROSENE.**—

(1) **AVIATION-GRADE KEROSENE USED IN COMMERCIAL AVIATION.**—Clause (ii) of section 6427(l)(4)(A) is amended by striking “specified in section 4041(c) or 4081(a)(2)(A)(iii), as the case may be,” and inserting “so imposed”.

(2) **KEROSENE USED IN AVIATION.**—Paragraph (4) of section 6427(l) is amended by striking subparagraphs (B) and (C) and inserting the following new subparagraph:

“(B) **PAYMENTS TO ULTIMATE, REGISTERED VENDOR.**—With respect to any kerosene used in aviation (other than kerosene to which paragraph (6) applies), if the ultimate purchaser of such kerosene waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph (1) and assigns such right to the ultimate vendor, then the Secretary shall pay (without interest) the amount which would be paid under paragraph (1) to such ultimate vendor, but only if such ultimate vendor—

“(i) is registered under section 4101, and

“(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).”.

(3) **AVIATION-GRADE KEROSENE NOT USED IN AVIATION.**—Subsection (1) of section 6427 is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

“(5) **REFUNDS FOR AVIATION-GRADE KEROSENE NOT USED IN AVIATION.**—If tax has been imposed under section 4081 at the rate specified in section 4081(a)(2)(A)(iv) and the fuel is used other than in an aircraft, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the amount of tax imposed on such fuel reduced by the amount of tax that would be imposed under section 4041 if no tax under section 4081 had been imposed.”.

(4) **CONFORMING AMENDMENTS.**—

(A) Subparagraph (B) of section 4082(d)(2) is amended by striking “6427(l)(5)(B)” and inserting “6427(l)(6)(B)”.

(B) Paragraph (4) of section 6427(i) is amended—

(i) by striking “(4)(C) or (5)” and inserting “(4)(B) or (6)”, and

(ii) by striking “, (1)(4)(C)(ii), and (1)(5)” and inserting “and (1)(6)”.

(C) Subsection (1) of section 6427 is amended by striking “DIESEL FUEL AND KEROSENE” in the heading and inserting “DIESEL FUEL, KEROSENE, AND AVIATION FUEL”.

(D) Paragraph (1) of section 6427(l) is amended by striking “paragraph (4)(C)(i)” and inserting “paragraph (4)(B)”.

(E) Paragraph (4) of section 6427(l) is amended—

(i) by striking “KEROSENE USED IN AVIATION” in the heading and inserting “AVIATION-GRADE KEROSENE USED IN COMMERCIAL AVIATION”, and

(ii) in subparagraph (A)—

(I) by striking “kerosene” and inserting “aviation-grade kerosene”,

(II) by striking “KEROSENE USED IN COMMERCIAL AVIATION” in the heading and inserting “IN GENERAL”.

(d) **TRANSFERS TO THE AIRPORT AND AIRWAY TRUST FUND.**—

(1) **IN GENERAL.**—Subparagraph (C) of section 9502(b)(1) is amended to read as follows: “(C) section 4081 with respect to aviation gasoline and aviation-grade kerosene, and”.

(2) **TRANSFERS ON ACCOUNT OF CERTAIN REFUNDS.**—

(A) **IN GENERAL.**—Subsection (d) of section 9502 is amended—

(i) by striking “(other than subsection (1)(4) thereof)” in paragraph (2), and

(ii) by striking “(other than payments made by reason of paragraph (4) of section 6427(l))” in paragraph (3).

(B) **CONFORMING AMENDMENTS.**—

(i) Paragraph (4) of section 9503(b) is amended by striking “or” at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting a comma, and by inserting after subparagraph (D) the following new subparagraphs:

“(E) section 4081 to the extent attributable to the rate specified in clause (ii) or (iv) of section 4081(a)(2)(A), or

“(F) section 4041(c).”

(ii) Subsection (c) of section 9503 is amended by striking paragraph (5).

(iii) Subsection (a) of section 9502 is amended—

(I) by striking “appropriated, credited, or paid into” and inserting “appropriated or credited to”, and

(II) by striking “, section 9503(c)(5).”

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to fuels removed, entered, or sold after March 31, 2011.

(f) **FLOOR STOCKS TAX.**—

(1) **IMPOSITION OF TAX.**—In the case of aviation-grade kerosene fuel which is held on April 1, 2011, by any person, there is hereby imposed a floor stocks tax on aviation-grade kerosene equal to—

(A) the tax which would have been imposed before such date on such kerosene had the amendments made by this section been in effect at all times before such date, reduced by

(B) the tax imposed before such date on such kerosene under section 4081 of the Internal Revenue Code of 1986, as in effect on such date.

(2) **LIABILITY FOR TAX AND METHOD OF PAYMENT.**—

(A) **LIABILITY FOR TAX.**—A person holding aviation-grade kerosene on April 1, 2011, shall be liable for such tax.

(B) **TIME AND METHOD OF PAYMENT.**—The tax imposed by paragraph (1) shall be paid at such time and in such manner as the Secretary of the Treasury shall prescribe.

(3) **TRANSFER OF FLOOR STOCK TAX REVENUES TO TRUST FUNDS.**—For purposes of determining the amount transferred to the Airport and Airway Trust Fund, the tax imposed by this subsection shall be treated as imposed by section 4081(a)(2)(A)(iv) of the Internal Revenue Code of 1986.

(4) **DEFINITIONS.**—For purposes of this subsection—

(A) **AVIATION-GRADE KEROSENE.**—The term “aviation-grade kerosene” means aviation-grade kerosene as such term is used within the meaning of section 4081 of the Internal Revenue Code of 1986.

(B) **HELD BY A PERSON.**—Aviation-grade kerosene shall be considered as held by a person if title thereto has passed to such person (whether or not delivery to the person has been made).

(C) **SECRETARY.**—The term “Secretary” means the Secretary of the Treasury or the Secretary’s delegate.

(5) **EXCEPTION FOR EXEMPT USES.**—The tax imposed by paragraph (1) shall not apply to any aviation-grade kerosene held by any person exclusively for any use to the extent a credit or refund of the tax is allowable under the Internal Revenue Code of 1986 for such use.

(6) **EXCEPTION FOR CERTAIN AMOUNTS OF AVIATION-GRADE KEROSENE.**—

(A) **IN GENERAL.**—No tax shall be imposed by paragraph (1) on any aviation-grade kerosene held on April 1, 2011, by any person if the aggregate amount of such aviation-grade kerosene held by such person on such date does not exceed 2,000 gallons. The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this subparagraph.

(B) **EXEMPT AVIATION-GRADE KEROSENE.**—For purposes of subparagraph (A), there shall

not be taken into account any aviation-grade kerosene held by any person which is exempt from the tax imposed by paragraph (1) by reason of paragraph (5).

(C) **CONTROLLED GROUPS.**—For purposes of this subsection—

(i) **CORPORATIONS.**—

(I) **IN GENERAL.**—All persons treated as a controlled group shall be treated as 1 person.

(II) **CONTROLLED GROUP.**—The term “controlled group” has the meaning given to such term by subsection (a) of section 1563 of the Internal Revenue Code of 1986; except that for such purposes the phrase “more than 50 percent” shall be substituted for the phrase “at least 80 percent” each place it appears in such subsection.

(ii) **NONINCORPORATED PERSONS UNDER COMMON CONTROL.**—Under regulations prescribed by the Secretary, principles similar to the principles of subparagraph (A) shall apply to a group of persons under common control if 1 or more of such persons is not a corporation.

(7) **OTHER LAWS APPLICABLE.**—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of the Internal Revenue Code of 1986 on the aviation-grade kerosene involved shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section.

SEC. 804. AIR TRAFFIC CONTROL SYSTEM MODERNIZATION ACCOUNT.

(a) **IN GENERAL.**—Section 9502 is amended by adding at the end the following new subsection:

“(f) **ESTABLISHMENT OF AIR TRAFFIC CONTROL SYSTEM MODERNIZATION ACCOUNT.**—

“(1) **CREATION OF ACCOUNT.**—There is established in the Airport and Airway Trust Fund a separate account to be known as the ‘Air Traffic Control System Modernization Account’ consisting of such amounts as may be transferred or credited to the Air Traffic Control System Modernization Account as provided in this subsection or section 9602(b).

“(2) **TRANSFERS TO AIR TRAFFIC CONTROL SYSTEM MODERNIZATION ACCOUNT.**—On October 1, 2011, and annually thereafter the Secretary shall transfer \$400,000,000 to the Air Traffic Control System Modernization Account from amounts appropriated to the Airport and Airway Trust Fund under subsection (b) which are attributable to taxes on aviation-grade kerosene.

“(3) **EXPENDITURES FROM ACCOUNT.**—Amounts in the Air Traffic Control System Modernization Account shall be available subject to appropriation for expenditures relating to the modernization of the air traffic control system (including facility and equipment account expenditures).”

(b) **CONFORMING AMENDMENT.**—Paragraph (1) of section 9502(d) is amended by striking “Amounts” and inserting “Except as provided in subsection (f), amounts”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 805. TREATMENT OF FRACTIONAL AIRCRAFT OWNERSHIP PROGRAMS.

(a) **FUEL SURTAX.**—

(1) **IN GENERAL.**—Subchapter B of chapter 31 is amended by adding at the end the following new section:

“SEC. 4043. SURTAX ON FUEL USED IN AIRCRAFT PART OF A FRACTIONAL OWNERSHIP PROGRAM.

“(a) **IN GENERAL.**—There is hereby imposed a tax on any liquid used during any calendar quarter by any person as a fuel in an aircraft which is—

“(1) registered in the United States, and

“(2) part of a fractional ownership aircraft program.

“(b) **AMOUNT OF TAX.**—The rate of tax imposed by subsection (a) is 14.1 cents per gallon.

“(c) **FRACTIONAL OWNERSHIP AIRCRAFT PROGRAM.**—For purposes of this section—

“(1) **IN GENERAL.**—The term ‘fractional ownership aircraft program’ means a program under which—

“(A) a single fractional ownership program manager provides fractional ownership program management services on behalf of the fractional owners,

“(B) 2 or more airworthy aircraft are part of the program,

“(C) there are 1 or more fractional owners per program aircraft, with at least 1 program aircraft having more than 1 owner,

“(D) each fractional owner possesses at least a minimum fractional ownership interest in 1 or more program aircraft,

“(E) there exists a dry-lease aircraft exchange arrangement among all of the fractional owners, and

“(F) there are multi-year program agreements covering the fractional ownership, fractional ownership program management services, and dry-lease aircraft exchange aspects of the program.

“(2) **MINIMUM FRACTIONAL OWNERSHIP INTEREST.**—

“(A) **IN GENERAL.**—The term ‘minimum fractional ownership interest’ means, with respect to each type of aircraft—

“(i) a fractional ownership interest equal to or greater than $\frac{1}{16}$ of at least 1 subsonic, fixed wing or powered lift program aircraft, or

“(ii) a fractional ownership interest equal to or greater than $\frac{1}{32}$ of at least 1 rotorcraft program aircraft.

“(B) **FRACTIONAL OWNERSHIP INTEREST.**—The term ‘fractional ownership interest’ means—

“(i) the ownership of an interest in a program aircraft,

“(ii) the holding of a multi-year leasehold interest in a program aircraft, or

“(iii) the holding of a multi-year leasehold interest which is convertible into an ownership interest in a program aircraft.

“(3) **DRY-LEASE AIRCRAFT EXCHANGE.**—The term ‘dry-lease aircraft exchange’ means an agreement, documented by the written program agreements, under which the program aircraft are available, on an as needed basis without crew, to each fractional owner.

“(d) **TERMINATION.**—This section shall not apply to liquids used as a fuel in an aircraft after September 30, 2013.”

(2) **CONFORMING AMENDMENT.**—Subsection (e) of section 4082 is amended by inserting “(other than an aircraft described in section 4043(a))” after “an aircraft”.

(3) **TRANSFER OF REVENUES TO AIRPORT AND AIRWAY TRUST FUND.**—Subsection (1) of section 9502(b) is amended by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively, and by inserting after subparagraph (A) the following new subparagraph:

“(B) section 4043 (relating to surtax on fuel used in aircraft part of a fractional ownership program).”

(4) **CLERICAL AMENDMENT.**—The table of sections for subchapter B of chapter 31 is amended by adding at the end the following new item:

“Sec. 4043. Surtax on fuel used in aircraft part of a fractional ownership program.”

(b) **FRACTIONAL OWNERSHIP PROGRAMS TREATED AS NON-COMMERCIAL AVIATION.**—Subsection (b) of section 4083 is amended by adding at the end the following new sentence: “For uses of aircraft before October 1, 2013, such term shall not include the use of any aircraft which is part of a fractional

ownership aircraft program (as defined by section 4043(c)).”.

(c) **EXEMPTION FROM TAX ON TRANSPORTATION OF PERSONS.**—Section 4261, as amended by this Act, is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

“(j) **EXEMPTION FOR AIRCRAFT IN FRACTIONAL OWNERSHIP AIRCRAFT PROGRAMS.**—No tax shall be imposed by this section or section 4271 on any air transportation provided before October 1, 2013, by an aircraft which is part of a fractional ownership aircraft program (as defined by section 4043(c)).”.

(d) **EFFECTIVE DATES.**—

(1) **SUBSECTION (a).**—The amendments made by subsection (a) shall apply to fuel used after March 31, 2011.

(2) **SUBSECTION (b).**—The amendment made by subsection (b) shall apply to uses of aircraft after March 31, 2011.

(3) **SUBSECTION (c).**—The amendments made by subsection (c) shall apply to taxable transportation provided after March 31, 2011.

SEC. 806. TERMINATION OF EXEMPTION FOR SMALL JET AIRCRAFT ON NON-ESTABLISHED LINES.

(a) **IN GENERAL.**—the first sentence of section 4281 is amended by inserting “or when such aircraft is a turbine engine powered aircraft” after “an established line”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable transportation provided after March 31, 2011.

SEC. 807. TRANSPARENCY IN PASSENGER TAX DISCLOSURES.

(a) **IN GENERAL.**—Section 7275 (relating to penalty for offenses relating to certain airline tickets and advertising) is amended—

(1) by redesignating subsection (c) as subsection (d),

(2) by striking “subsection (a) or (b)” in subsection (d), as so redesignated, and inserting “subsection (a), (b), or (c)”, and

(3) by inserting after subsection (b) the following new subsection:

“(c) **NON-TAX CHARGES.**—

“(1) **IN GENERAL.**—In the case of transportation by air for which disclosure on the ticket or advertising for such transportation of the amounts paid for passenger taxes is required by subsection (a)(2) or (b)(1)(B), if such amounts are separately disclosed, it shall be unlawful for the disclosure of such amounts to include any amounts not attributable to such taxes.

“(2) **INCLUSION IN TRANSPORTATION COST.**—Nothing in this subsection shall prohibit the inclusion of amounts not attributable to the taxes imposed by subsection (a), (b), or (c) of section 4261 in the disclosure of the amount paid for transportation as required by subsection (a)(1) or (b)(1)(A), or in a separate disclosure of amounts not attributable to such taxes.”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable transportation provided after March 31, 2011.

SEC. 808. TAX-EXEMPT BOND FINANCING FOR FIXED-WING EMERGENCY MEDICAL AIRCRAFT.

(a) **IN GENERAL.**—Subsection (e) of section 147 is amended by adding at the end the following new sentence: “The preceding sentence shall not apply to any fixed-wing aircraft equipped for, and exclusively dedicated to providing, acute care emergency medical services (within the meaning of 4261(g)(2)).”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to obligations issued after the date of the enactment of this Act.

SEC. 809. PROTECTION OF AIRPORT AND AIRWAY TRUST FUND SOLVENCY.

(a) **IN GENERAL.**—Paragraph (1) of section 9502(d) is amended by adding at the end the

following new sentence: “Unless otherwise provided by this section, for purposes of this paragraph for fiscal year 2012 or 2013, the amount available for making expenditures for such fiscal year shall not exceed 90 percent of the receipts of the Airport and Airway Trust Fund plus interest credited to such Trust Fund for such fiscal year as estimated by the Secretary of the Treasury.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to fiscal years beginning after September 30, 2011.

Mr. BAUCUS. I thank my friend from West Virginia. He is a good man.

Mr. ROCKEFELLER. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. SHAHEEN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. TESTER.) Without objection, it is so ordered.

Mrs. SHAHEEN. Mr. President, I am here to speak on the legislation that is pending before us. We all know this country faces big challenges. We face a declining infrastructure that is critical to our business. We need safe, reliable transportation if we are going to keep the flow of commerce moving. But as President Obama mentioned in his State of the Union Address, when American engineers took a look at our transportation infrastructure, they gave us a “D” grade. That is not quite failing, but it is certainly not very good.

Our declining infrastructure threatens not only our safety but also our global economic competitiveness. America is falling behind economic competitors such as Europe and China which are making significantly more robust investments in their infrastructure. In the United States, we currently spend about 2 percent of our GDP on infrastructure. That is a 50-percent decline since 1960. China and Europe, on the other hand, spend close to 9 percent for China and 5 percent for Europe of their GDP respectively on infrastructure. We need to make the kind of smart investments that will help keep America competitive.

That is why I am very glad we are moving forward with this bipartisan FAA reauthorization bill. It has been almost 4 years since Congress passed an FAA bill, and in that time our economic competitors have continued to invest in their 21st century aviation systems.

Airports are critical to commerce and economic activity in all of our States. The major airport in my home State of New Hampshire, Manchester Airport, generates over \$1.2 billion in economic activity every year. Much of that comes from out-of-State residents and foreign travelers. Without that airport, without that air infrastructure, we would not be able to generate that kind of economic activity. The aviation industry in New Hampshire and across the country also provides good

jobs for pilots, flight attendants, mechanics, air travel controllers, and so many others. Manchester Airport alone provides over 1,900 jobs.

The FAA legislation that is now before us will accomplish the long overdue task of upgrading one critical component of our aviation infrastructure, the air traffic control system. It will upgrade the system to an efficient 21st-century system called NextGen.

I do not think very many people realize that when they get into an airplane, the pilots and the air traffic controllers are using 20th-century technology to navigate the skies. I was just at a meeting of the High Tech Council in New Hampshire and having this conversation with them. They did not realize that that is the kind of aviation system we use to fly our planes.

So although our cell phones and cars have GPS systems, our multimillion-dollar airplanes use World War II era radar systems. The system we have now is inefficient. It wastes the time and money of everyone involved in the aviation industry. As Chairman ROCKEFELLER has pointed out so many times, even Mongolia has a more advanced air traffic control system than we do. That is unacceptable.

Not surprisingly, our outdated system is at capacity. According to the FAA, delays resulting from the constraints on the system cost the United States over \$9 billion every year. That number is going to continue to rise if we do nothing.

We need to take action. The FAA forecasts that the aviation system will carry more than 1 billion airline passengers annually by 2023. We cannot afford to let such an important part of our 21st-century economy languish with 20th-century technology.

By investing in NextGen, our air traffic controllers will finally have the 21st-century technologies they need to make our system more efficient. Let me give an example of the progress NextGen would make. Right now, air traffic controllers give all of their commands to pilots over the radio. They tell them when and where they will be landing. Now, because all of the pilots in the area are listening, there is the potential for miscommunication sometimes. Our pilots and controllers are very professional. They do their jobs well. But sometimes people talk over each other and pilots hear the wrong information. This system we currently have wastes time, and it puts the flying public in jeopardy. Once NextGen is in place, controllers will be able to type a command and send it directly to the plane. To all of us who use e-mail, this sounds pretty basic, but it is an example of the kinds of upgrades that are needed to make our aviation system more efficient and safer.

By funding NextGen, this bill will bring our air traffic control system into the 21st century. NextGen will reduce congestion by allowing planes to fly more direct routes, it will conserve energy, and it will make flying safer for everyone.

Of course, some flight delays are unavoidable. We cannot control the weather, as we all know. But when delays cannot be avoided, we can make sure airlines are treating their customers fairly. That is another critical component of this legislation. That is why this bill includes the passengers' bill of rights.

I cosponsored the passengers' bill of rights after a businesswoman from Bedford, NH—a woman named Jennifer Shirkani—told me her stories of being stuck on tarmacs for hours without access to food or water. These experiences were so frustrating to Jennifer that she became a leader in the movement to get this legislation passed. Unfortunately, her stories have been all too common in recent years. According to the Department of Transportation, hundreds of thousands of passengers have been stuck on a tarmac for more than 3 hours. This bill will codify protections put in place last year by the Department of Transportation so we will not go back to the days when airlines left travelers on the tarmac.

I wish to commend Chairman ROCKEFELLER and Ranking Member HUTCHISON for producing a strong bill, and I look forward to being able to support this legislation with all of my colleagues and pass it very soon so we can upgrade our transportation system to compete with the rest of the world.

Mr. President, I yield the floor.

Mr. ROCKEFELLER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mrs. HUTCHISON. Mr. President, we are working very hard to have an amendment on the perimeter rule that would accommodate all the concerns of western Senators who do not have easy access to Reagan Washington National Airport and the concerns of the Virginia Senators who are concerned about congestion and other Senators from the Far West who want to try to have a better chance at a direct flight.

Senator ROCKEFELLER and I have filed an amendment that we think is a fair approach. We did this because we did not have enough consensus, and we are trying to drive that consensus. So I would like to ask that the amendment be brought up. It is our intention then to set it aside for Senator NELSON's amendment, which is scheduled for a vote. I have informed everyone that I am going to ask the Chair to call up amendment No. 84, the Rockefeller-Hutchison amendment on the perimeter rule.

The PRESIDING OFFICER. Is there objection?

Ms. CANTWELL. Mr. President, reserving the right to object, I know my colleagues, the ranking member and

the chairman of the committee, have been working diligently to try to resolve this issue. It certainly is a thorny one, given the history of the Commerce Committee and previous votes on this issue.

For me, the issue is that I certainly do want access to the West, and I certainly want to make sure the Nation's Capital is accessible to all parts of the country, but we also want to make sure there is a fair process, that a decision to open access to National Airport is run through the Department of Transportation in an FAA process, that we do not handpick here on the Senate floor any of the people who would be winners in this process but that we make the decision on how much access is available.

I would say to my colleagues that the whole issue here about airports is that anytime you have a limited footprint, you have had discussion about how to give access to that through a process of the FAA.

So I would say to my colleague, let's keep dialoguing and working on this issue. But a process and an amendment that includes conversion; that is to say, that a predominant carrier out of National Airport can continue to hold that dominance in the marketplace, I think is the wrong approach. I look at what is happening now with what the Department of Justice has said about the Delta-US Air swap between New York and DCA. It basically said they have too much market share and they ought to divest if they want to engage in that kind of swap behavior. So any kind of conversion process that would allow slots to be converted is like saying, if you own real estate around the Capitol, then you can buy more real estate around the Capitol.

So I hope we can come up with a process that puts the FAA in charge of this, opens up how much access, but not make the decision here on the Senate floor; allow the FAA and DOT to do their job, as they have on this issue in the past. So at this point in time, I object to the Senator's proposal.

The PRESIDING OFFICER. Objection is heard.

The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent to have 1 minute to respond to the objection.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mrs. HUTCHISON. Mr. President, the reason for the conversions was to accommodate the needs of the Washington National Airport people and to also understand that the incumbent carriers—of which there are four—have mostly paid the lion's share of the cost of the additions to Washington National Airport.

We do want a fair process. That is why we have separated the new entrants, which would be five, to accommodate carriers that have no presence but also have conversions of flights that are already in place, so there

would be fewer new flights into Washington National and there would be a fair process with the incumbent carriers who have paid such a lion's share of the cost at the airport to keep it competitive and fair.

So, with that, we will continue to discuss. We hope we will have an amendment that can be voted on, and I think it is imperative that we vote on this issue so there is a Senate position. Mr. President, I yield the floor.

AMENDMENT NO. 58

The PRESIDING OFFICER. Under the previous order, there will now be 20 minutes of debate equally divided on the Nelson amendment No. 58.

The Senator from Nebraska.

Mr. NELSON of Nebraska. Mr. President, the amendment which Senators SCHUMER, AKAKA, SHAHEEN, TESTER—our Presiding Officer—WHITEHOUSE, MENENDEZ, BILL NELSON of Florida, and I have offered, which we will be voting on shortly, is a commonsense approach to addressing the serious issue of protecting an individual's privacy when they pass through security checkpoints at airports and public buildings.

Nebraskans and Americans understand that every step must be taken to keep Federal buildings and air travel safe in America, particularly after the 9/11 attacks. However, as we promote security, safeguards are necessary to protect everybody's privacy from misuse of images generated by body scanning machines.

Our legislation sends a commonsense message: We will not ignore people's privacy as we make sure air travel and Federal buildings are safe. The amendment is very straightforward.

It would, No. 1, make it a crime to photograph or record a body scan image or distribute a body scan image, taken at either an airport or any Federal building, without express authorization to do so either by law or regulation.

Second, it imposes a penalty of up to 1 year in prison and \$100,000 fine on violators.

Third, we provide an exception from prosecution if the actions taken occur while an individual is engaged in their official duties during the course of an authorized intelligence investigation or criminal prosecution. This language, which was worked out with officials at the FBI and DNI, is important. This is not an abstract concern. There has already been a case where these images have been taken and posted on line inappropriately. So it is my hope that by creating a very strong deterrent and establishing criminal penalties for those who take and distribute body scan images inappropriately, we will help prevent that from occurring again.

By adopting this amendment, we are telling our constituents we are not going to ignore their privacy in the process of making sure we have safe airports and Federal buildings.

I ask my colleagues to support our amendment.

AMENDMENT NO. 85, AS MODIFIED, TO
AMENDMENT NO. 58

Mr. NELSON of Nebraska. Mr. President, I call up my second-degree amendment No. 85 which is at the desk and ask unanimous consent that it be modified with the changes that are at the desk.

The amendment is as follows:

Beginning on page 2 of the amendment, strike line 18 and all that follows through page 3, line 21, and insert the following:

“(b) EXCEPTION.—The prohibition under subsection (a) shall not apply to an individual who, while engaged in or on account of the performance of official duties, distributes, photographs, or otherwise records an image described in subsection (a) during the course of authorized intelligence activities, a Federal, State, or local criminal investigation or prosecution, or other lawful activities by Federal, State, or local authorities, including training for intelligence or law enforcement purposes.

“(c) PENALTY.—An individual who violates the prohibition in subsection (a) shall be fined under this title, imprisoned for not more than 1 year, or both.

“(d) ADVANCED IMAGING TECHNOLOGY DEFINED.—In this section, the term ‘advanced imaging technology’—

“(1) means a device that creates a visual image of an individual showing the surface of the skin beneath clothing and revealing other objects on the body that are covered by clothing;

“(2) may include devices using backscatter x-rays or millimeter waves and devices referred to as ‘whole-body imaging technology’ or ‘body scanning’; and

“(3) does not include a device equipped with software that produces a generic representation of the human form instead of a visual image of an individual.”.

The PRESIDING OFFICER. Under the previous order, the second-degree amendment, as modified, is agreed to.

(The amendment (No. 85), as modified, was agreed to.

Mr. NELSON of Nebraska. Mr. President, I ask my colleagues to support our amendment, and I ask for the yeas and nays. I believe other colleagues are here to respond.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. NELSON of Nebraska. Mr. President, I believe other colleagues are here to speak. I notice Senator SCHUMER is here. I appreciate very much his support. Working together very carefully with total collaboration, we have been able to, with our colleagues, bring about what I think is important privacy legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Thank you, Mr. President.

First I wish to congratulate my good friend and hunting buddy, the Senator from Nebraska, for the great work he has done. It has been a pleasure to work with him. We have had parallel interests and his amendment hopefully will solve a problem that has arisen lately because of the full-body scanners that are being installed at airports.

As everyone knows, late last year the TSA began installing full-body advanced imaging scanners at airports across the country. These new scanners are better able to quickly and accurately detect explosives than the older scanners and would likely have thwarted the Christmas Day bomber before he had even gotten on the plane.

But from the get-go, legitimate questions popped up about the potential for privacy violations from the use of these scanners. What happens if a rogue TSA employee disseminates your full-body image? What happens if a fellow passenger or reporter takes pictures of body scan images with his phone and e-mails it to his friends or places the pictures on a Web site or in a newspaper? Are there safeguards to prevent such abuses? If it happens, what are the consequences?

Obviously, airline safety is our paramount concern. We can oftentimes, by carefully legislating, have our cake and eat it too—to make sure safety stays No. 1, but to also make sure, as the Senator from Nebraska and I are trying to do, that privacy is protected whenever possible. That is why Senator NELSON and I teamed up to work with TSA and privacy advocates to devise a sensible solution to the problem—a solution that would protect privacy without sacrificing safety.

The legislation we came up with, which Senator NELSON is now offering as an amendment to the FAA bill, strikes just the right balance. First and foremost, the amendment makes it a Federal crime to record and disseminate images from airport scanners. It provides a sentence of up to 1 year in prison and a fine of up to \$100,000 per violation to anyone who is convicted of violating the law.

I should note the amendment not only covers the misuse of the original images recorded from the scanners but also photographs of scans taken by security personnel, airline employees, passengers, or anybody else.

Americans want to know when they take to the skies that every possible precaution has been taken for their safety. At the same time, they want to know that precautions have been taken to ensure their privacy. The amendment would offer the flying public that much-needed assistance.

Again, I applaud Senator NELSON, who is a member of the Emerging Threats and Capabilities Subcommittee, for his leadership on this issue. I urge my colleagues to support the smart, practical amendment we are offering today, and I urge that it be passed as quickly as possible by this body.

Mr. President, I yield the floor, and I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. NELSON of Nebraska. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. NELSON of Nebraska. Mr. President, I ask unanimous consent to add Senator BILL NELSON of Florida to amendment No. 58 as an original cosponsor.

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

Mr. NELSON of Nebraska. I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. ROCKEFELLER. Mr. President, I wish to say, very briefly, that I strongly support the Nelson amendment for a whole variety of reasons, all of which are very logical, extremely well ordered, and which I do not have time to give.

The yeas and nays have been ordered. Perhaps we can proceed with the vote.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I too wish to say I support the Nelson amendment and appreciate his working with the Intelligence Committee and the Judiciary Committee to assure all the bases are covered. I will be supporting it as well.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 58, as amended. The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KERRY) and the Senator from Arkansas (Mr. PRYOR) are necessarily absent.

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

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 16 Leg.]

YEAS—98

Akaka	Crapo	Lee
Alexander	DeMint	Levin
Ayotte	Durbin	Lieberman
Barrasso	Ensign	Lugar
Baucus	Enzi	Manchin
Begich	Feinstein	McCain
Bennet	Franken	McCaskill
Bingaman	Gillibrand	McConnell
Blumenthal	Graham	Menendez
Blunt	Grassley	Merkley
Boozman	Hagan	Mikulski
Boxer	Harkin	Moran
Brown (MA)	Hatch	Murkowski
Brown (OH)	Hoeven	Murray
Burr	Hutchison	Nelson (NE)
Cantwell	Inhofe	Nelson (FL)
Cardin	Inouye	Paul
Carper	Isakson	Portman
Casey	Johanns	Reed
Chambliss	Johnson (SD)	Reid
Coats	Johnson (WI)	Risch
Coburn	Kirk	Roberts
Cochran	Klobuchar	Rockefeller
Collins	Kohl	Rubio
Conrad	Kyl	Sanders
Coons	Landrieu	Schumer
Corker	Lautenberg	Sessions
Cornyn	Leahy	Shaheen

Shelby	Toomey	Webb
Snowe	Udall (CO)	Whitehouse
Stabenow	Udall (NM)	Wicker
Tester	Vitter	Wyden
Thune	Warner	

NOT VOTING—2

Kerry Pryor

The amendment (No. 58), as amended, was agreed to.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table.

VOTE EXPLANATION

• Mr. KERRY. Mr. President, I was necessarily absent for the vote on Nelson of Nebraska amendment No. 58, as amended, to the FAA reauthorization bill. If I had attended today's session, I would have voted in support of that amendment.●

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that at 2:15 p.m. on this day there be 20 minutes of debate equally divided in the usual form on the Wicker amendment prior to the vote in relation to the Wicker amendment, and that the remaining provisions of the previous order remain in effect.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until 2:15 p.m.

Thereupon, at 12:30 p.m., the Senate recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. WEBB).

FAA AIR TRANSPORTATION MODERNIZATION AND SAFETY IMPROVEMENT ACT—Continued

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I ask unanimous consent I speak on my amendment and ask the time not be counted or charged from either side.

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

AMENDMENT NO. 4

Mr. MCCAIN. Mr. President, a few days ago I offered an amendment that would eliminate the Essential Air Service Program, which is at least authorized in this bill at about \$200 million. I had no idea we would approach the end of Western civilization as we know it if we eliminated this obviously outdated and unnecessary \$200 million of the taxpayers' money.

I am reminded of a comment once made by President Ronald Reagan. To paraphrase what he said: The closest thing to eternal life here on Earth is a government program. There is nothing that illustrates that point more than the Essential Air Service Program.

I ask unanimous consent that three letters be printed in the RECORD. One is

from FreedomWorks, one from the National Taxpayers Union, and another is from the Citizens Against Government Waste.

I ask unanimous consent they be printed in the RECORD.

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

FREEDOMWORKS,

Washington, DC, February 14, 2011.

DEAR SENATOR, On behalf of over a million FreedomWorks members nationwide, I urge you to vote YES on Sen. McCain's (R-Ariz.) amendment to S. 223 the Federal Aviation Administration (FAA) Air Transportation Modernization and Safety Improvement Act which would eliminate the Essential Air Service (EAS). The EAS was created in the 1970's to help a small number of rural communities retain access to air service after airline deregulation. Like so many other government programs, Congress initially enacted it to be a relatively small and temporary ten year program costing several million dollars annually. However, the needless program has continued for 23 years while costing taxpayers \$200 million every year.

Along with many fiscally conservative groups, even the Government Accountability Office (GAO) questioned the usefulness of the EAS by stating "current conditions raise concerns about whether the program can continue to operate as it has . . . the growth of air service especially by low-cost carriers—weighted against the relatively high fares and inconvenience of EAS flights." Los Angeles Times reports that taxpayers are forced to subsidize airline service to small communities at a loss. Most of the money provides service to rural airports with fewer than 30 passengers a day.

The ESA is a prime example of wasteful spending. A graph produced by the FAA shows that 99.95 percent of all Americans live within 120 miles of a major public airport. Airports should operate where there are consumers to support such an airport. Taxpayers should not be forced to subsidize rural airports with too little demand to justify their existence. I urge you to repeal the EAS to save taxpayers \$1 billion over the next five years. It's a step in the right direction to cut excessive spending wherever we find it.

This, however, is a modest step and should be easily supported by anyone serious about reining in the federal government. In order to produce even more savings, Congress should look into privatizing airports to allow private capital to flow in. Many other countries have successfully and fully privatized some of their airports including Britain, Italy and Australia. The private sector has produced more efficient airports which have led to an increase in airport revenue. The privatization of airports has been beneficial for consumers, airlines and taxpayers.

We will count your vote on Sen. McCain's amendment to the FAA Air Transportation Modernization and Safety Improvement Act as a KEY VOTE when calculating the FreedomWorks Economic Freedom Scorecard for 2011. The Economic Freedom Scorecard is used to determine eligibility for the Jefferson Award, which recognizes members of Congress with voting records that support economic freedom.

Sincerely,

MATT KIBBE,
President and CEO.

NATIONAL TAXPAYERS UNION,
Alexandria, VA, February 15, 2011.

DEAR SENATOR: On behalf of the 362,000-member National Taxpayers Union (NTU), I

urge you to vote "Yes" on Senator John McCain's amendment to S. 223, the Federal Aviation Administration (FAA) Reauthorization Bill. Approving this amendment, which would repeal the Essential Air Service (EAS) program, is an ideal way for the Senate to demonstrate its commitment toward eliminating low-priority expenditures and beginning to restore fiscal responsibility to the federal budget.

Created in 1978 as a 10-year venture that would ease the transition to a more market-driven commercial aviation sector, EAS has, like many other federal programs, engendered constituencies that have kept the program alive far beyond any demonstrable purpose. Indeed, NTU questioned the need for EAS in the first place, given the fact that robust and competitive air services would fulfill consumers' needs more efficiently than any government subsidization scheme. Unfortunately, many of the taxpayers' worst fears about EAS have come true. The program now operates in more than 100 areas of the country, even as air travelers' choices are numerous. In fact, the Government Accountability Office concluded in 2009 that many Americans are shunning EAS-subsidized flights and airports in favor of lower-cost fares offered at hubs that are still reasonably accessible by automobile. This free-market evolution can be encouraged by easing tax and regulatory burdens on airlines and customers.

Just as other federal transportation programs like Amtrak pour tax dollars into unprofitable and low-traveled routes which consumers bypass out of preference for other commercial alternatives, EAS seems to operate more out of satisfying political considerations than addressing any perceived market defects. Your colleague Senator Coburn provided a vivid illustration of these flaws in a report, Wastebook 2010, late last year:

The cities of Macon and Athens, Georgia are both less than a 90-minute drive from Atlanta's Hartsfield-Jackson International airport. Despite this, the U.S. Department of Transportation subsidized 26 flights per week to and from each city at a clip of \$464 per passenger for Macon and \$135 for Athens. Passengers pay \$39 each for a seat on the 50-minute flight. . . . The local newspaper reports that the Macon [service] averaged 10 passengers a day, while Athens averaged 12 EAS-subsidized flights. By law, the Department of Transportation subsidies are capped at \$200 for flights to airports less than 210 miles from a large or medium hub, which Atlanta is.

EAS's justification may always have been dubious, but in today's fiscal environment its continued existence is even less defensible. The savings at stake from passage of the McCain Amendment—\$200 million—certainly won't erase the current fiscal year's projected \$1.5 trillion deficit, but if the Senate cannot eliminate this blatant example of low-priority spending, taxpayers will have every right to question Congress's sincerity in the vital endeavor of bringing the budget back under control.

NTU has expressed concerns over several portions of the FAA bill, including the threat of higher Passenger Facility Charges and a lack of progress in moving toward a private sector-driven model for air traffic control. Senator McCain's proposal provides a key opportunity to break from the tax-and-spend philosophy that has dominated past FAA legislation and to recognize the role of commercial aviation in America's economic recovery. Once again, NTU asks that you support the McCain Amendment; roll call votes pertaining to this measure