



Legislative Bulletin.....February 3, 2012

Contents:

H.R. 658 Conference Report —FAA Reauthorization and Reform Act

Key Take-Away Points

- **Authorizations Levels.** The Conference Report authorizes \$63 billion from FY 2012 through FY2015 for federal aviation programs. The legislation provides in total approximately \$13.4 billion for the Airport Improvement Program, \$38.3 billion for FAA Operations, \$672 million for Research, Engineering & Development, and \$10.9 billion for FAA’s Facilities & Equipment account. The House passed bill authorized \$15.1 billion annually over four years. The Senate bill authorized \$17.5 billion annually over two years.
- **National Mediation Board Rule (NMB).** The Conference Report keeps intact the NMB ruling that makes it easier for rail and airline workers to unionize. The Conference report also increases the proportion of eligible members needed to petition for new union elections from 35% to 50% along with several other requirements. Some conservatives may be concerned that the House passed bill contained a provision that nullified the NMB rulemaking provision pertaining to union election rules.
- **Essential Airport Services Program.** The Conference report will authorize \$515 million from FY 2012 through FY2015 for the EAS program, which provides subsidies for airlines to fly to rural airports / small communities. The legislation eliminates some subsidies within EAS. The House passed bill phased out the EAS Program over three years. The EAS program would have also been eliminated in the RSC Spending Reduction Act. The Senate passed bill proposed to increase appropriations for EAS.

For more details, see below.

H.R. 658 Conference Report - FAA Reauthorization and Reform Act (Mica, R-FL)

Order of Business: The bill is may be considered on Friday, February 3, 2012. The rule waives all points of order against the conference report and against its consideration. The rule provides one hour of debate and provides one motion to recommit with or without instructions.

Summary: Highlights of the legislation are as follows:

Cost:

- **Discretionary Spending Levels:** H.R. 658 Conference Report authorizes \$50.48 billion for the FY 2012-FY 2015 period, which is almost \$ 3 billion more than the House passed bill.
- **Contract Authority:** The Conference Report allows for \$13.4 billion in contract authority from the aviation trust fund for the Airport Improvement Program (AIP), which provides grants to airports for various projects, including airport planning and development, and noise compatibility programs. The bill authorizes \$3.35 billion for FY 2012 through FY 2015.

Note: Transportation spending is unique in that it is both mandatory and discretionary spending—its contract authority (a form of budget authority) is mandatory but the outlays are discretionary.

Notable Discretionary Program Authorization Levels:

- **Air Navigation Facilities and Equipment:** \$10.7 billion from the aviation trust fund for the Facilities and Equipment account, including \$2.7 billion annually from FY 2012-FY 2015.
- **FAA Operations:** \$38.4 billion for the main FAA Operations account, including \$9.65 billion in FY 2012, \$9.53 billion in FY 2013, \$9.59 billion in FY 2014, and \$9.65 billion in FY 2015.

Other Notable Spending Provisions:

- **Research Engineering and Development:** \$672 million over four years for the Research, Engineering and Development account, including \$168 million in each of FY 2012 through FY 2015.
- **Essential Air Service (EAS):** The Conference Report authorizes \$54.6 million for a five and a half month period beginning on Oct. 1, 2011 through February 17, 2012. The legislation also authorizes \$143 million EAS program, which provides air service to remote or underserved regions, in FY 2012, \$118 million in FY 2013, \$107 million in FY 2014, and \$93 million in FY 2015.

Tax /Revenue Provisions:

- **Passenger Facility Fee:** The passenger facility fee remains at a maximum of \$4.50 per trip segment.

- **Tax Extension on Aviation-Grade Kerosene and Aviation Gasoline:** The measure also extends the following taxes until October 1, 2015:
 - the tax on non-commercial aviation gasoline would remain at the current 19.3 cents-per-gallon;
 - the tax rate for aviation-grade kerosene used for non-commercial aviation purposes will remain at a rate of 21.8 cents-per-gallon;
 - the 7.5% ticket tax;
 - the tax on commercial aviation fuel would remain at 4.3 cents-per-gallon;
 - the tax on each flight segment, which is adjusted annually for inflation and is currently around \$3.70;
 - the tax on international flights, which is adjusted annually for inflation and is currently around \$16.30; and
 - the 6.25% tax on air cargo.

- **Extension of Trust Fund:** The measure also extends, through FY 2015, the authority to expend amounts in the Airport and Airway Trust Fund, and allows money in the trust fund to be used for purposes authorized by the bill.

- **New Tax Provisions:** Imposes 14.1 cents per gallon surtax on fuel used in aircraft which are part of a fractional ownership program. Allows commercial airline employees who had participated in a commercial airline's tax-exempt defined benefit pension plan that was terminated or otherwise restricted to transfer to a traditional individual retirement account (IRA) any amount received from the airline (including a qualified rollover to a Roth IRA) resulting from a bankruptcy proceeding filed between September 11, 2001, and January 1, 2007. Allows exclusion from the gross income of such employees any such amount (including a qualified rollover to a Roth IRA) received from an airline that has been transferred under this Act to a traditional IRA. Allows tax-exempt private activity bond financing for fixed-wing aircraft equipped for, and exclusively dedicated to providing, acute care emergency medical services. Prohibits inclusion in mandatory disclosures of passenger excise taxes on airline tickets of any amounts not attributable to such taxes. Terminates the exemption from air transportation excise taxes for turbine engine powered aircraft (small jet aircraft) operated on non-established lines.

- **Overflight Fees:** The bill requires the FAA to guarantee that the overflight fees are reasonably related to the costs for providing air traffic services — including air traffic control, weather services, navigation, training and emergency services — and to adjust the fees accordingly.

- **Registration Fees:** The bill requires the FAA to establish fees for certain registration and certification activities. The 11 covered activities include:
 - registering or replacing an aircraft registration;
 - issuance of aircraft certificates;
 - issuance of special registrations;
 - recording security interests;
 - replacing or issuing airman certificates;
 - and legal opinions for aircraft registration or recordation.

Other Items of Note:

- **Airport Improvement Program:** The legislation amends the current law regarding the program, which provides grants to airports that are included in the National Plan of Integrated Airport Systems.
 - **Contract Tower Program:** The legislation extends the Contract Tower Program and authorizes to the program \$10.35 million annually from FY 2012 to FY 2015.
 - **Grant Assurances & Allowable Costs:** The bill will make two changes to current law regarding mandatory grant assurances for AIP projects:
 - It allows airport operators to use their AIP formula entitlement funds to relocate or replace facilities when such action is outside the control of the owner, such as new design standards;
 - It amends current law regarding allowable costs to provide greater flexibility for states with short construction seasons so they would not lose their grant eligibility;
 - Both measures must be agreed to by sponsors when they accept grant funds.
 - **Government Share of Project Costs:** The bill allows certain airports in economically distressed communities that participate in the Essential Air Service program and that meet certain unemployment or other economic criteria to qualify for a 95% cost-share. The measure also allows airports that are reclassified from small-hub to medium-hub to retain their eligibility for a 90% federal cost-share for two fiscal years.

- ***Other AIP Provisions:***
 - The bill extends through FY 2015 the authority of the Marshall Islands, Micronesia, and Palau to receive grants from the AIP discretionary fund and the Small Airport Fund;
 - It repeals provisions of current law that prohibit the Transportation Department from approving an application from the Metropolitan Washington Airports Authority for an airport project development grant or authority to impose a passenger facility charge at Dulles or Ronald Reagan Washington National airports;
 - The measure extends, through September 2015, grant authority for compatible land use planning and projects by state and local governments. It also extends through Oct. 1, 2015, the authorization for funding airport development at Midway Island Airport;
 - It also creates a preference for the use of small businesses owned by disabled veterans when carrying out airport development projects, and it changes the definition of veterans eligible for employment preference on AIP projects to include veterans from the Afghanistan/Iraq wars and Persian Gulf War;
 - The Conference Report requires that not later than 1 year after the date of enactment, the Secretary establishes a mandatory training program for minority and women owned businesses seeking to do business in airport-related markets across the nation to provide streamlined training on certifying whether a small business concern qualifies as a small business concern owned and controlled by socially and economically disadvantaged individuals. For each of fiscal years 2013 through 2015, the Inspector General of the Department of Transportation shall submit to Congress a report on the number of new small business concerns owned and controlled by socially and economically disadvantaged individuals, including those owned by veterans, that participated in the programs and activities funded using the amounts made available under this Act.

➤ **NEXTGEN Air Transportation System and Air Traffic Control**

Modernization: The legislation requires the FAA administrator to appoint a chief NextGen Officer for a term of five years.

- ***Acceleration of NextGen:*** The bill directs the FAA to develop an implementation plan to put in place NextGen navigation procedures to

maximize the efficiency and capacity of commercial operations at the 35 busiest airports in the United States by 2015.

- ***Performance Metrics:*** The bill requires the FAA to establish and track National Air System performance metrics that include:
 - actual arrival and departure rates per hour measured against the currently published aircraft arrival rate and aircraft departure rate for the 35 operational evolution partnership airports;
 - average gate-to-gate times;
 - fuel burned between key cities;
 - operations using the advanced navigation procedures, including performance based navigation procedures;
 - the average distance flown between key cities;
 - the time between pushing back from the gate and taking off;
 - continuous climb or descent; average gate arrival delay for all arrivals;
 - flown versus filed flight times for key city pairs;
 - implementation of NextGen Implementation Plan or any successor document; and
 - runway safety, including runway incursions, operational errors, and loss of standard separation events;
 - The bill requires the FAA to consult with industry stakeholders, make the data available in a public format, and submit an annual report to Congress on NextGen progress.
- ***Satellite Broadcast Technology:*** The FAA plans to use new automatic dependent surveillance-broadcast (ADS-B) technology that uses data from satellites, rather than from radars.

➤ **FAA Safety**

- ***Repair Stations & Maintenance:*** The bill requires the FAA to inspect certified foreign repair stations where identified risks warrant inspection. It also requires drug and alcohol testing for repair station employees in accordance with agreements with foreign governments developed by the State Department.

- ***Air Ambulances:*** The bill requires that the FAA conduct a rulemaking proceeding to improve the safety of flight crewmembers, medical personnel, and passengers aboard helicopters providing air ambulance services under federal regulations.
- ***Unmanned Aerial Systems:*** The bill requires the Transportation Department, working with the aviation industry, to develop a comprehensive plan for integrating unmanned aerial systems into the national airspace system.
- ***Pilot Licenses:*** The bill requires the FAA to provide improved pilot licenses that are tamper-resistant, include a photograph, and are capable of accommodating a digital photograph, a biometric identifier, or any other unique identifier. The FAA also would be required to develop methods to determine whether a license has been tampered with, counterfeited, or altered.

➤ **Essential Air Service**

- ***Essential Air Service & Small Community Air Development Program:*** The bill limits the EAS to locations that average fewer than 10 enplanements per day during the most recent fiscal year beginning after September 30, 2012 with the exception of Alaska and Hawaii. Exemptions are also available to locations more than 175 driving miles from the nearest largest or medium hub airport.

The Transportation Secretary has the ability to issue waivers for FY 2013 with respect to a location if the location demonstrates the location averages fewer than 10 enplanements per day is due to a temporary decline in enplanements. EAS eligibility is only granted to communities that at any time during the period between September 30, 2010 and September 30, 2011 received EAS for which compensation was provided to an air carrier or received a 90-day notice of intent to terminate EAS and the Secretary required the air carrier to continue to provide such service to the community.

The legislation requires the Transportation Secretary to give communities notice of termination of eligibility for EAS on the 45th day before issuing any final decision to end payment. The legislation also gives steps for restoration of eligibility of EAS after being deemed ineligible. The legislation also gives parameters for adjustments to compensation for significantly increased costs.

The legislation repeals the EAS local participation program that establishes a pilot program under which not more than 10 designated EAS communities located in proximity to hub airports are required to assume 10 percent of their EAS subsidy costs for a 4-year period.

- ***Small Community Air Service:*** The bill amends the Small Community Air Service program, and gives priority to multiple communities that cooperate to submit a regional or multi-state application to improve air service. The bill authorizes \$6 million annually for FY 2012 through FY 2014 for the Small Community Air Service program.

➤ **Passenger Air Service Improvements**

- ***Emergency Contingency Plans:*** The bill requires air carriers using aircraft with more than 30 seats participating in commercial air transport at medium-hub or large-hub airports, as well as each operator of a medium- or large-hub airport, to have emergency contingency plans.
- ***Consumer Complaints:*** The bill requires the Transportation Department to publicize and maintain a hotline for consumer complaints, and print the phone number on plane tickets. It also allows the department to investigate consumer complaints.
- ***Flight Restrictions at Ronald Reagan Washington National Airport:*** The bill allows an additional 16 nonstop flights beyond the 1,250-mile perimeter limit generally applied at Ronald Reagan Washington National Airport.

➤ **Environmental Streamlining:**

- ***Aviation Noise Complaints:*** The bill requires all large-hub airports to list on their websites a number that individuals may call to report airport noise.
- ***Noise Levels:*** The bill prohibits operation after Dec. 31, 2015, of civil subsonic jets weighing 75,000 pounds or less unless the jets comply with "stage 3" noise levels.
- ***Park Air Tour Management Program:*** The bill permits exemptions for parks with 50 or fewer commercial air tour flights per year, unless it is determined that a management plan or voluntary plan is needed to protect resources.
- ***Other Provisions:*** The bill also includes environmental provisions that:
 - Incorporate services of consultants to facilitate the timely processing, review and completion of environmental activities associated with an airport development project. The consultants also are required to:
 - conduct special environmental studies related to an airport project funded with Federal funds.

- to conduct special studies or reviews to support approved noise compatibility measures.
- conduct special studies or reviews to support environmental mitigation in a record of decision or finding of no significant impact by the FAA.
- facilitate the timely processing, review and completion of environmental activities associated with new or amended flight procedures, including performance-based navigation procedures, such as required navigation performance procedures and area navigation procedures

➤ **FAA Employees**

- ***Dispute Resolution:*** The bill creates a new dispute resolution process for FAA employees. Under the process, if the FAA and one of its bargaining units do not reach agreement, the services of the Federal Mediation and Conciliation Service (FMCS) would be used or the parties would agree to an alternative dispute resolution procedure. If mediation between the parties with the assistance of the FMCS is unsuccessful, bargaining impasses would be submitted to binding interest arbitration before a three-person board appointed under authority of the Federal Service Impasses Panel (FSIP).
- ***National Mediation Board:*** The bill retains the 2010 rule of the National Mediation Board that changed union election procedures by allowing union certification where only a majority of the employees who actually vote in the election vote for certification. Previous rules required that a majority of all airline workers, including those who do not cast a vote, vote in favor of union representation to gain union certification.

The previous rule had been in place for 75 years and the board's statutory mandate is to maintain stable labor relations in the airline and railroad industries. The previous rule maintained that stability by ensuring a majority of the votes cast was for union representation and the new rule allows a minority of employees to have the ability to vote for union representation and assumes that a failure to vote is a "yes" vote. The legislation does increase the proportion of eligible members needed to petition for new union elections, from 35 percent to 50 percent.

➤ **Research Provisions**

- ***Research Programs*** the measure does the following:
 - Requires the FAA to enter into an independent external review of FAA energy-related and environmental-related research;

- Directs the FAA to conduct research programs related to developing and certifying jet fuel from alternative sources such as coal, natural gas, biomass, ethanol, butanol, and hydrogen.

➤ **Other Provisions**

- **Aviation Insurance:** The bill extends the current FAA aviation insurance program. The program is intended to provide insurance to domestic airlines that cannot be provided through the commercial insurance market. The bill extends existing policies through Sept. 30, 2013, and allows the FAA to extend the policies until Dec. 31, 2013.
- The bill extends through Dec. 31, 2013, the Transportation Department's authority to limit to \$100 million an air carrier's third-party liability that arises out of acts of terrorism.
- The bill allows the FAA to use independent claims adjusters to underwrite insurance or adjust claims.
- The bill orders the FAA to submit to Congress no later than 2 years after date of enactment and every 2 years thereafter, a report listing all obsolete, redundant or unnecessary reports FAA is required by law to submit.

Background: The FAA currently has four main accounts — the Operations account, the grant-providing Airport Improvement Program, the Facilities and Equipment Program, and the Research, Engineering and Development Program. The last full FAA reauthorization (PL 108-176) expired in September 2007 and has since been authorized through more than a dozen short-term extensions. While many FAA programs can continue without a reauthorization in place, the Airport Improvement Program is funded by contract authority provided in authorization bills.

Potential Conservative Concerns: Members may be concerned that the Essential Air Service program provides subsidies to airlines that serve rural and smaller communities where demand for airline service is often weak. This program pays up to 93% of the cost of flights that are in many cases nearly empty. The RSC Spending Reduction Act would eliminate the Essential Air Service Program.

Members may be concerned that the legislation no longer repeals the National Mediation Board rule pertaining to union election rules. Thus the new rule allows a minority of employees to have the ability to vote for union representation and assumes that a failure to vote is a "yes" vote.

Also, some conservatives may be concerned that the legislation no longer contains the expansion of the privatization program such as the Contract Tower Program.

Lastly, the Conference Report authorizes \$50.48 billion for the FY 2012-FY 2015 period, which is almost \$ 3 billion more than the House passed bill.

Committee Action: H.R. 658 Conference Report was filed by Rep. John Mica (R-FL) on February 1, 2011. The Committee amended the bill on March 10, 2011 and the passed the bill by voice vote. On March 16, 2011 the committee agreed to a supplemental report by majority vote. On April 7, the Senate the legislation with an amend amendment by Unanimous Consent.

Administration Position: No SAP was available by press time.

Cost to Taxpayers: No CBO report was available.

Does the Bill Expand the Size and Scope of the Federal Government?: No

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates: Yes.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: A committee report citing compliance with rules regarding earmarks, limited tax benefits, or limited tariff benefits is not available. The legislation has no Earmarks.

Constitutional Authority: According the author, “Congress has the power to enact this legislation pursuant to the following: Article I, Section 8 of the United States Constitution, specifically Clause 1, Clause 3, and Clause 18.”

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