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- Higher Taxes.** The legislation increases the aviation-grade kerosene tax from 21.8 cents/gallon to 35.9 cents/gallon, and increases the aviation gasoline tax from 19.3 cents/gallon to 24.1 cents/gallon.
- \$57 Billion Authorized Spending Levels.** The legislation authorizes a total of \$57.2 billion of discretionary spending over the FY 2009-FY 2012 period.
- PFC Increase.** The legislation increases the Passenger Facility Charge (PFC) from \$4.50 to \$7.00 per segment—an increase of 56%. Americans for Tax Reform (ATR), the Air Transport Association, and the National Taxpayers Union (NTU) oppose this provision. According to NTU, it will cost consumers more than \$2 billion a year.
- Protectionist Inspection Requirements.** The bill requires at least two annual inspections of foreign repair stations (that are available to U.S. carriers). This provision is a violation of the 2008 Bilateral Aviation Safety Agreement signed by the U.S. and Europe, and our trading partners have threatened to retaliate if the provision is enacted. That in turn could put at stake up to 130,000 American jobs that are supported by the FAA/EASA certified repair stations.
- \$1 Billion to the Air Traffic Controllers Union.** The legislation requires the FAA to negotiate a new contract with the air traffic controllers union, which all parties agree will cost taxpayers more money. According to CBO, this provision will cost \$1 billion over four years.
- Various Other Mandates.** The bill would require the FAA to issue new firefighting standards that 550 airports cannot currently meet. Small airports, that rely on local firefighters, would face a huge, relative increase in costs due to this federal mandate. The bill also sunsets (after three years) exemptions from antitrust laws for international aviation alliances. These alliances often benefit consumers through lower prices.

*For more details, see below.*

## H.R. 915—FAA Reauthorization Act (*Oberstar, D-MN*)

**Order of Business:** The House is scheduled to consider H.R. 915, the FAA Reauthorization Act on Thursday, May 21, 2009 under a structured rule ([H.Res. 464](#)). The rule waives all points of order against consideration of the bill, except for Clause 9 (earmark disclosure) and 10 (PAYGO) of Rule XXI, and provides one hour of debate. The rule self-enacts two amendments, both of which are analyzed in the summary of the legislation below. The rule further makes in order 12 amendments. The RSC will summarize these amendments in a separate document.

**Summary:** Highlights of the legislation are as follows:

### Cost:

- **Discretionary Spending Levels:** H.R. 915 authorizes a total of \$57.2 billion over the FY 2009-FY 2012 period.
- **Contract Authority:** H.R. 915 increases the contract authority for the Airport Improvement Program (AIP) by \$3.5 billion over ten years, which CBO scores as an increase in mandatory spending *budget authority*. Since this spending is subject to obligation limitations during the appropriations process (essentially budget caps), CBO does not project *any* effect on outlays from this increase.

*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:** This program provides funding for infrastructure and systems for communications, navigation, and radar surveillance related to air travel. H.R. 915 authorizes a total of \$10.1 billion over three years for discretionary spending for this purpose.
- **FAA Operations:** This money is used for salaries as well as other expenses to run the FAA. H.R. 915 authorizes a total of \$29.8 billion over three years for discretionary spending for this purpose.

### Other Notable Spending Provisions:

- **Reports and Studies:** According to CBO, the legislation would require appropriations of \$80 million for the various studies and reports required of the bill.
- **Essential Air Service:** The bill authorizes \$150 million (up from the current \$77 million authorization level) a year for the Essential Air Service (EAS) program. This program subsidizes flights that are often more empty than full, with taxpayers footing up to 93% of the cost of a flight (see this [article](#)). The Bush Administration's SAP for H.R. 2881 from the

110<sup>th</sup> Congress notes this as an item of concern and states: “This program is a relic of the regulatory era, subsidizes uneconomic air service and has not kept pace with consumer choices.” Past RSC budgets proposed to eliminate funding for this program.

- **PFC Eligibility for Bike Storage:** H.R. 915 opens up Passenger Facility Charge (PFC) funding for bike storage facilities and requires the FAA to submit a report to Congress on “the progress being made by airports to install bicycle parking for airport customers and airport employees.” This is intended to increase access to airports for bicycles.
- **Federal Cost Share for Airport Improvement Program (AIP):** H.R. 915 increases the federal cost share from 90 to 95 percent for AIP projects in certain economically distressed communities.

#### **Tax Increases/Revenue Provisions:**

- **Passenger Facility Fee Increase:** The Passenger Facility Charge (PFC) is currently set at a maximum of \$4.50 per trip segment. H.R. 915 would allow an increase to a maximum of \$7.00, which is a 56 percent increase from the maximum provided by current law. This increases revenues to local governments—the fee is collected by airport agencies and used to fund airport infrastructure. CBO estimates that this provision will *decrease* federal revenues by \$285 million over ten years. This projected revenue decrease results from CBO’s calculation that the higher fee will result in “increased tax-exempt financing for airport construction and related projects and, consequently, reduce federal revenues.”
- **Tax Increases on Aviation-Grade Kerosene:** The rule self-enacts an amendment that increases the aviation-grade kerosene tax from 21.8 cents/gallon to 35.9 cents/gallon.
- **Tax Increase on Aviation Gasoline:** The rule self-enacts an amendment that increases the tax on aviation gasoline from 19.3 cents/gallon to 24.1 cents/gallon.
- **Extension of all current air transportation and aviation fuel taxes:** The bill extends all current air transportation and aviation fuel taxes for three years. These taxes would otherwise expire on September 30, 2009. This provision would be scored as having no revenue effect, since the continuation of these taxes is assumed in CBO’s baseline.
- **Overflight Fees:** The legislation requires the FAA to change overflight fees to reflect the costs to the FAA of servicing these flights and to implement the new fees on May 1, 2010. An overflight is a flight that neither takes off nor lands in the U.S. but flies over U.S. airspace. CBO estimates that the cost to the FAA of supporting overflights currently exceeds revenues from fees by \$19 million annually, and that eliminating the shortfall would increase revenues by \$42 million over the FY 2010-FY 2012 period.

***Democrat Inconsistency Alert!***

**Tax Increases on the Middle-Class:** President Obama said he would not increase taxes on those making under \$250,000 a year, yet the PFC, which many conservatives see as a tax increase, would affect millions of people of all income levels (especially those requiring connecting flights).

**Air Traffic Controllers Compensation:**

- **Overturms Current Air Traffic Controllers Contract:** Section 601 of the bill would repeal the FAA’s changes to air traffic controllers compensation enacted in April 2006, after a breakdown in negotiations between the union and the FAA. Section 601 is championed by the air traffic controllers union, who want to prevent the current FAA compensation policy from staying in effect and want to renegotiate a new contract. Both the FAA and the union agree that Section 601 will lead to higher compensation for the air traffic controllers at a resulting higher cost to the taxpayers. CBO estimates that Section 601 of the bill would require \$1 billion over four years of additional spending subject to appropriation. The Minority Views section of the committee report points out that the air traffic controllers are already very well compensated—earning more than \$160,000 a year on average (including benefits).

**Other Items of Note:**

- **New Inspection Requirements on Foreign Repair Stations:** Section 303 of the bill requires at least two annual inspections of foreign repair stations available to the U.S. carriers. Opponents of the provision argue that this violates the 2008 Bilateral Aviation Safety Agreement signed by the United States and Europe, and our trading partners have threatened to retaliate if the provision is enacted into law—which could threaten up to 130,000 American jobs. 54 Members of Congress [sent](#) a letter to Chairman Oberstar opposing this language, which spells out the specific concerns on this provision in more detail.
- **Firefighter Standards:** The legislation requires the Administrator of the FAA to initiate a rulemaking process to issue regulations that is consistent with “voluntary consensus standards.” Most airports do not meet these standards. According to CBO, “many smaller airports that rely on local fire departments would need to hire new staff, which would result in higher personnel costs. Nearly 550 publicly owned airports would be subject to the regulations.”
- **OSHA Regulations:** H.R. 915 requires the FAA Administrator to establish benchmarks in coordination with the OSHA Administrator, on issues related to the work environment in an airplane cabin.
- **Anti-Trust Provision:** The legislation includes the text of [H.R. 831](#), which sunsets, after three years, international aviation alliances by international carriers. Opponents of this

provision argue that, contrary to the intended purpose of anti-trust law, preventing these airline alliances will reduce consumer choice and increase prices.

- **FedEx Express Union Provision:** H.R. 915 changes the labor laws applicable to one company, FedEx Express. FedEx Express was created as an airline and, as a result, under current law is subject to the Railway Labor Act. This provision would put FedEx Express under the National Labor Relations Act. The main difference between the two labor laws is that the Railway Labor Act requires unions to organize nationally, while the National Labor Relations Act allows unions to organize locally. The Railway Labor Act requires unions to organize nationally, instead of locally, because of the impact a local strike would have on the company's entire national transportation system.
- **Judicial Review of Denial of Airman Certificates:** The legislation allows certain individuals to seek judicial review of National Transportation Safety Board (NTSB) decisions.
- **Advisory Committee for Aviation Consumer Protection:** The legislation establishes an "advisory committee for aviation consumer protection," which is to consist of 8 members appointed by the Secretary of Transportation. The commission is intended to advise the Secretary of Transportation on air passenger service agreements.
- **Prohibition on Voice Communications During Flights:** The legislation prohibits individuals from engaging in "voice communications using a mobile communications device" (for example a cell phone) during a flight.
- **Extension of Aviation Insurance:** Under current law, the FAA offers two insurance programs that insure against losses resulting from terrorist attacks. One program serves commercial air carriers, and the other serves air carriers that participate in the Civil Reserve Air Fleet (CRAF). H.R. 915 would extend both programs, currently set to expire on December 31, 2013 through the December 31, 2019. CBO estimates that this extension would reduce mandatory spending by \$20 million over the next ten years, but increases net mandatory spending beyond 2019.
- **Air Carrier Citizenship:** H.R. 915 requires that in order for an airline to be classified as under the "actual control of citizens of the United States," U.S. citizens have to be in control of all matters related to the business and the structure of the airline. The Bush Administration's SAP for H.R. 915 in the 110<sup>th</sup> Congress argued that this provision is harmful to the U.S. negotiating position under the United States/ European Union "open skies plus" agreement.
- **Next Generation:** H.R. 915 requires the FAA Administrator to develop and publish a "NextGen Implementation Plan." The legislation establishes various reporting requirements on the Secretary of Transportation on progress establishing and implementing NextGen. The legislation also requires the FAA Administrator to establish a NextGen Research and Development Center of Excellence.

**Potential Conservative Concerns:** Many conservatives have expressed concerns about H.R. 915. Some of these concerns are as follows:

- **Higher Taxes:** The legislation increases the aviation-grade kerosene tax from 21.8 cents/gallon to 35.9 cents/gallon, and increases the aviation gasoline tax from 19.3 cents/gallon to 24.1 cents/gallon.
- **PFC Increase:** The legislation increases the Passenger Facility Charge (PFC) from \$4.50 to \$7.00 per trip segment—an increase of 56%. Americans for Tax Reform (ATR), the American Transport Association, and the National Taxpayers Union (NTU) oppose this provision. According to NTU, 20% of the cost of a ticket consists of federal taxes, and the PFC increase would cost consumers an extra \$2 billion a year (though it should be noted that the provision actually *reduces* federal revenue according to CBO).
- **New Inspection Requirements for Foreign Repair Stations:** This provision requires at least two annual inspections of foreign repair stations available to the U.S. carriers. The provision violates the 2008 Bilateral Aviation Safety Agreement signed by the United States and Europe, and our trading partners have threatened to retaliate if the provision is enacted into law. Some conservatives may believe that this provision is a protectionist measure that could threaten up to 130,000 American jobs supported by American repair stations. 54 Members of Congress [sent](#) a letter to Chairman Oberstar opposing this language, which spells some objections to this provision in more detail.
- **H.R. 915 Overturns the Air Traffic Controllers Contract:** Section 601 of the bill repeals the FAA's changes to air traffic controllers' compensation, which were enacted in April 2006 after a breakdown in negotiations between the union and the FAA. This provision in the bill is championed by the air traffic controllers union, which wants to prevent the current FAA compensation policy from staying in effect and to instead require the FAA and National Air Traffic Controllers Association (NATCA) to renegotiate a new contract. Both the FAA and NATCA agree that Section 601 will lead to higher compensation for the air traffic controllers at a resulting higher cost to the taxpayers. CBO estimates the provision will cost \$1 billion over four years.
- **FedEx Express Union Provision:** H.R. 915 changes the labor laws applicable to one company, FedEx Express. This provision would put FedEx Express under the National Labor Relations Act (instead of the Railway Labor Act), which allows unions to organize locally. The Railway Labor Act requires unions to organize nationally, instead of locally, because of the impact a local strike would have on the company's entire national transportation system.
- **The Bill Imposes Various Other Mandates and Regulations:** The legislation imposes new fire safety standards that, according to CBO will impact 550 airports. Smaller airports, which rely on local firefighters, would face an enormous, relative increase in costs under this mandate. In addition, the legislation sunsets, within three years, exemptions from antitrust laws for international aviation alliances by international carriers. Many conservatives may believe that this provision is an abuse of antitrust law, since it would be harmful to

consumers (who often benefit from these agreements in the form of lower prices and more travel options).

**Committee Action:** The legislation was introduced on February 9, 2009 and referred to the House Transportation and Infrastructure Committee, which, on March 5, 2009, marked up and ordered the bill reported (as amended) to the full House by voice vote (though many Republican Members of the committee oppose the legislation, and included extension concerns in the Minority Views section of the committee report).

**Administration Position:** A Statement of Administration Policy (SAP) for H.R. 915 is not available at press time.

**Cost to Taxpayers:** [CBO](#) estimates that H.R. 915, as reported from the House Transportation and Infrastructure Committee, would authorize a total of \$57.2 billion over five years, increase entitlement spending by \$46 million over four years (and increase entitlement spending budget authority by \$1.6 billion over the same period), and decrease federal revenue by \$14 million. The rule, with the self-enacted tax increasing amendments, will cause this score to change.

**Does the Bill Expand the Size and Scope of the Federal Government?:** Yes. The bill increases authorized discretionary spending levels and contains various private-sector mandates.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** Yes. According to CBO, the bill contains both private-sector and intergovernmental mandates that exceed the thresholds established under Unfunded Mandates Reform Act (UMRA).

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** The House Transportation and Infrastructure Committee, in House Report [111-119](#) states that the legislation “may” contain earmarks (sections 810 and 815 of the legislation). The committee report describes these two sections as follows:

“Section 810, which was requested by Representative Steven C. LaTourette, allows the Lake County, Ohio, to purchase the Lost Nation Airport from the City of Willoughby, Ohio. The provision authorizes the Secretary to make an AIP grant to assist in this purchase. Section 815, which was requested by Representative Don Young, allows the release of certain restrictions for specific airport land, without monetary consideration, to the town of Anchorage, Alaska, for construction or reconstruction of a federally subsidized highway project.”

**Constitutional Authority:** The House Transportation and Infrastructure Committee, in House Report [111-119](#), cites constitutional authority in Article I, Section 8 of the Constitution.

**Outside Groups Opposed to Legislation:** Americans for Tax Reform (ATR) and the National Taxpayers Union (NTU) are opposed to the legislation.

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