



## Legislative Bulletin.....July 10, 2002

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**H.R. 4635**—Arming Pilots Against Terrorism Act

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### **H.R. 4635—Arming Pilots Against Terrorism Act (Young of Alaska)**

**Order of Business:** The bill is scheduled to be considered on Wednesday, July 10<sup>th</sup>, subject to a modified open rule that makes in order only those amendments that are printed in the *Congressional Record* or are pro forma amendments for the purpose of debate.

**Summary:** H.R. 4635 would establish (within the Transportation Security Administration) a test “Federal Flight Deck Officer Program,” in which pilots of air carriers would volunteer to be **deputized as federal law enforcement officers** to “defend the flight decks of aircraft of such air carriers against acts of criminal violence or air piracy.” Participating pilots would be authorized to carry and use firearms in the course of their duties as federal flight deck officers. The Program would commence between two and four months after this bill’s enactment.

The Under Secretary of Transportation for Security would be charged with developing the procedural requirements addressing:

- The type of firearm to be used;
- The type of ammunition to be used;
- The standards and training needed to qualify and re-qualify for the Program;
- The placement of the firearm on board the aircraft;
- The risk of catastrophic failure of an aircraft as a result of the discharge of a firearm on board the aircraft;
- The division of responsibility between pilots in the event of an act of criminal violence or air piracy, if only one pilot is a federal flight deck officer and if both pilots are federal flight deck officers;
- Procedures for ensuring that the firearm of a federal flight deck officer does not leave the cockpit if there is a disturbance in the passenger cabin or if the pilot leaves the cockpit for personal reasons;
- Interaction between a federal flight deck officer and a federal air marshal on board the aircraft;
- The process for determining the fitness of pilots to participate in the Program;
- Storage and transportation of firearms between flights, including international flights, to ensure the security of the firearms;

- Methods for ensuring that airport security personnel will be able to identify whether a pilot is authorized to carry a firearm under the Program;
- Methods for ensuring that pilots (including federal flight deck officers) will be able to identify whether a passenger is a law enforcement officer who is authorized to carry a firearm aboard the aircraft; and
- Any other issues that the Under Secretary considers necessary.

Pilots who are former military or law enforcement personnel would be given priority for participation in the Program.

The Transportation Security Administration (TSA) would provide the training (including firearms training and other training similar to that of federal air marshals), supervision, and equipment necessary for a pilot to be a federal flight deck officer **at no expense to the pilot or the air carrier employing the pilot**. Participating pilots could receive no compensation from the federal government and air carriers would not be obligated to compensate participating pilots for any portion of their participation in the Program (including training).

The maximum number of pilots that may become federal flight deck officers may not exceed 2% of the total number of pilots that are employed by air carriers engaged in air transportation or intrastate transportation on the date of enactment of this legislation.

The Under Secretary could revoke a pilot's deputization as a federal flight deck officer at any time if the pilot is no longer qualified to be such an officer.

Federal flight deck officers would be absolved from liability in federal or state courts for any action (or inaction) while defending the flight deck (unless the officer is guilty of gross negligence or willful misconduct). Participating air carriers would be absolved from liability in federal or state courts for a federal flight deck officer's use or failure to use a firearm. For purposes of an action against the United States with respect to an act or omission of a federal flight deck officer, the officer would be treated as an employee of the federal government.

The Program would be in effect for two years beginning on the date that the 250th pilot is deputized as a federal flight deck officer. If at the end of that period the Under Secretary determines that the risks of the Program outweigh the benefits, the Program would be terminated. If however the Under Secretary determines that the benefits outweigh the risks, then the Program would continue, subject to certain new rule-making and re-evaluation after an additional three years.

### Crew Training

H.R. 4635 would also add further requirements for flight-crew training under TSA. In updating training guidance, the Under Secretary of Transportation for Security would be directed to issue a rule to:

- 1) require both classroom and hands-on situational training in the following elements of self defense:

- recognizing suspicious activities and determining the seriousness of an occurrence;
  - deterring a passenger who might present a problem;
  - crew communication and coordination;
  - the proper commands to give to passengers and attackers;
  - methods to restrain an attacker;
  - use of available items aboard the aircraft for self-defense;
  - appropriate responses to defend oneself, including the use of force against an attacker;
  - use of protective FAA- or TSA-approved devices assigned to crew members;
  - the psychology of terrorists to cope with their behavior and passenger responses to that behavior;
  - how to respond to aircraft maneuvers that may be authorized to defend against an act of criminal violence or air piracy;
- 2) require training in the proper conduct of a cabin search;
- 3) establish the required number of hours of training and the qualifications for the training instructors;
- 4) establish the intervals, amount, and elements of recurrent training;
- 5) ensure that air carriers provide the initial training required by this legislation within 24 months of the date of this legislation's enactment; and
- 6) ensure that no person is required to participate in any hands-on training activity that that person believes will have an adverse impact on his or her health or safety.

### Study

Lastly, H.R. 4635 would direct the Secretary of Transportation to study and report to Congress within six months of this bill's enactment on:

- The number of armed federal law enforcement officers (other than federal air marshals), who travel on commercial airliners annually and the frequency of their travel;
- The cost and resources necessary to provide such officers with supplemental training in aircraft anti-terrorism training that is comparable to the training that federal air marshals receive;
- The cost of establishing a program at a federal law enforcement training center for the purpose of providing new federal law enforcement recruits with standardized training comparable to the training that federal air marshals are provided;
- The feasibility of implementing a certification program designed for the purpose of ensuring that federal law enforcement officers have completed their training and of tracking their travel over a 6-month period; and
- The feasibility of staggering the flights of such officers to ensure the maximum amount of flights have a certified trained federal officer on board.

### **Possible Amendments:**

**#1 Paul.** Mr. Paul of Texas may offer an amendment that would make the Federal Flight Deck Officer Program permanent, remove the risk-benefit assessment and re-evaluation

procedures, and strike the cap on the number of pilots who may participate in the Program at any one time.

**#2 Barton.** Mr. Barton of Texas may offer an amendment that would direct the Under Secretary to deputize into the Program any qualified pilot who applied and would strike the cap on the maximum number of pilots that may become federal flight deck officers.

**#3 Barton.** Mr. Barton of Texas may also offer an amendment that would grant the President (in consultation with the Under Secretary) the power to determine whether the Program should continue at the end of two years. The amendment would also strike the language regarding new rule-making, in the case that the Program is continued beyond two years.

**#4 Cunningham.** Mr. Cunningham of California may offer an amendment that would raise the cap on the maximum number of pilots that may become federal flight deck officers from 2% of the total number of pilots that are employed by air carriers to 25%.

**#5 DeFazio.** Mr. DeFazio of Oregon may offer an amendment that would require that the training and deputizing of federal flight deck officers begin two months after this bill's enactment (thereby striking the exception allowing it all to start four months after enactment). The amendment would clarify that the Under Secretary is not to "select" who to train but to train and deputize qualified applicants. The amendment would also strike the cap on the maximum number of pilots that may become federal flight deck officers.

**#6 Horn.** Mr. Horn of California may offer an amendment that would establish within 60 days of enactment an Aviation Crew Self-Defense Division within TSA, which would be responsible for airline crew training in self-defense skills. The amendment would strike the underlying bill's details on what crew training is to entail and direct the Under Secretary to develop his own requirements within 60 days of enactment. The amendment would also insert additional limitations of liability for air carriers, training instructors, and cabin crew in regards to self-defense operations. The Under Secretary would be required to study and report to Congress on whether possession of a non-lethal weapon by a crew member would help combat air piracy and criminal violence on commercial flights.

**#7 Hostettler.** Mr. Hostettler of Indiana may offer an amendment that would strike the section directing the Under Secretary to give preference to pilots who are former military or law enforcement personnel.

**#8 Hostettler.** Mr. Hostettler of Indiana may also offer an amendment that would strike the 2% cap on the maximum number of pilots that may become federal flight deck officers and require that within 180 days after this bill's enactment, 20% of all pilots who volunteer to participate in the Program within 30 days of such enactment would be trained and deputized. After two years, at least 80% of all pilots who volunteer to participate in the Program would have to be trained and deputized. The amendment would also change the duration of the program from two years after the day the 250<sup>th</sup> pilot is deputized to two years after the last pilot of the 20% is deputized.

**#9 Hostettler.** Mr. Hostettler of Indiana may also offer an amendment that would prevent air carriers from prohibiting or in any way refusing or discouraging a pilot employed by the air carrier from becoming a federal flight deck officer.

**#10 Mica.** Mr. Mica of Florida may offer an amendment that would add as a procedural requirement for the establishment of the Program an analysis of the likelihood of a flight's catastrophic failure from an *accidental* discharge of a firearm on board an aircraft (and if necessary take steps to minimize the risks). Procedures following accidental discharges are delineated. The amendment would also direct the Under Secretary to consider whether additional background checks (beyond those already required) would be necessary for Program participants and whether security would be enhanced by requiring the in-airport storage of a firearm when the pilot leaves the airport. The amendment would also require that air carriers provide flight attendants with a discreet, hands-free, wireless method of communicating with the pilots. The Under Secretary would be required to study and report to Congress on whether possession of a non-lethal weapon by a crew member would help combat air piracy and criminal violence on commercial flights.

**#11 Nethercutt.** Mr. Nethercutt of Washington may offer an amendment that would make the Program permanent and clarify that the Under Secretary is not to "select" who to train but train and deputize qualified applicants. The amendment would also strike the cap on the maximum number of Program participants and strike the exception allowing Program training to start four months after enactment.

**#12 Nethercutt.** Mr. Nethercutt of Washington may also offer an amendment that would make the Program permanent and strike the cap on the maximum number of Program participants.

**#13 Stearns.** Mr. Stearns of Florida may offer an amendment that would establish a Federal Cockpit Officer Program, with similar requirements, authorities, and liabilities as the Flight Deck Officer Program, except that the Cockpit Officer Program would focus on **non-lethal** weapons used by pilots. The Cockpit Program would be *in addition to* the Deck Officer Program.

**#14 Tauscher.** Mrs. Tauscher of California may offer an amendment that would require the secure storage of firearms carried by Program pilots at airports in between flights.

**#15 Tauscher.** Mrs. Tauscher of California may also offer an amendment that would authorize the Under Secretary to suspend the Program if he determines that there is a significant risk of the catastrophic failure of an aircraft from the discharge of a firearm.

**#16 Tauscher.** Mrs. Tauscher of California may also offer an amendment that would strike the limitation of liability for air carriers and strike the provision treating a Program participant as an employee of the federal government in the case of a civil action against the United States regarding the behavior of said Program participant.

**#17 Tauscher.** Mrs. Tauscher of California may also offer an amendment that would authorize the Under Secretary to terminate the Program if an accidental discharge of a firearm in the Program results in the injury or death of a passenger or crew member of a flight.

**#18 Thune.** Mr. Thune of South Dakota may offer an amendment that would direct the Under Secretary to deputize into the Program any qualified pilot who applied and would strike the cap on the maximum number of pilots that may become federal flight deck officers.

**#19 Towns.** Mr. Towns of New York may offer an amendment that would direct the Under Secretary to assess the potential risks of an accidental or intentional discharge of a firearm by a Program participant on an aircraft. Should such an incident occur, the Under Secretary would be required to report it to Congress.

**Cost to Taxpayers:** CBO estimates that the underlying text of H.R. 4635 would authorize \$5 million in FY2003 and a total of \$56 million over the FY2003-2007 period.

**Does the Bill Create New Federal Programs or Rules?:** Yes, the bill would create a new federal program to train and arm airline pilots. Participating pilots would become deputy federal law enforcement officers. Airlines would pay no portion of the associated costs.

**Constitutional Authority:** The Transportation Committee, in House Report 107-555, cites constitutional authority in Article I, Section 8, but does not cite a specific clause.

**Outside Organizations:** The National Rifle Association is supporting H.R. 4635 but is seeking some amendments to strengthen or broaden its effects.

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