



**Legislative Bulletin.....March 31, 2011**

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**H.R. 658** —FAA Reauthorization and Reform Act of 2011

**Key Conservative Highlights**

*Take-Away Points*

- Returns Authorizations Levels to FY 2008.** The legislation is at fiscal year 2008 levels which is a \$4 billion cut.
- **Repeals National Mediation Board Rule (NMB).** The legislation contains a provision that rolls back the NMB rulemaking provision pertaining to union election rules.
- Repeals EAS Program.** The legislation phases out the Essential air Service Program over three years which is a subsidy for airlines to fly to rural airports / small communities. This program would have also been eliminated in the RSC Spending Reduction Act.
- Expands Privatization Program.** The bill will expand the Contract Tower Program, which is a privatization Program for smaller towers.
- Includes Studies to Consolidate Duplicative Programs.** The legislation requires the FAA to produce recommendations on which facilities to consolidate within 270 days of the bill's enactment, and the consolidation moves forward unless Congress stops it.

*For more details, see below.*

**H.R. 658 - FAA Reauthorization and Reform Act of 2011  
(Mica, R-FL)**

**Order of Business:** The bill is scheduled to be considered on Thursday, March 31, 2011, under a structured rule and waives all points of order against consideration of the bill. The rule provides one hour of general debate with 40 minutes equally divided and controlled by the chair and ranking member of the Committee on Transportation and Infrastructure, 10 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Science, Space, and Technology, and 10 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Ways and Means. The rule also provides that in lieu of the amendment in the nature of a substitute recommended by the Committee on Transportation

and Infrastructure now printed in the bill, it shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule an amendment in the nature of a substitute consisting of the text of the Rules Committee Print dated March 22, 2011. The amendment in the nature of a substitute shall be considered as read and waives all points of order against the amendment in the nature of a substitute. Lastly, the rule makes in order only those amendments printed in the Rules Committee report accompanying the resolution. Provides that each such amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. It waives all points of order against the amendments printed in the report, 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 bill authorizes \$47.6 billion for the FY 2011-FY 2014 period.
  
- **Contract Authority:** H.R. 658 allows for \$12.2 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 \$3.2 billion in FY 2011, and \$3 billion in each of FY 2012 through FY 2014. Amounts made available under the account could not be used for carrying out the Airport Cooperative Research Program or the Airports Technology Research Program.

*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:** \$10.5 billion from the aviation trust fund for the Facilities and Equipment account, including \$2.7 billion in FY 2011, \$2.6 billion in FY 2012, \$2.6 billion in FY 2013, and \$2.6 billion in FY 2014.
  
- **FAA Operations:** \$36.9 billion for the main FAA Operations account, including \$9.4 billion in FY 2011, and \$9.2 billion in each of FY 2012 through FY 2014.

**Other Notable Spending Provisions:**

- **Research Engineering and Development:** \$606 million over four years for the Research, Engineering and Development account, including \$165 million in FY 2011, and \$147 million in each of FY 2012 through FY 2014.
- **Administrative:** \$328 million over four years for the administrative expenses relating to the airport improvement program, passenger facility charge approval and oversight, national airport system planning, airport standards development and enforcement, airport certification, airport-related environmental activities (including legal services), and other airport-related activities, including \$86 million in FY 2011, and \$81 million in each of FY 2012 through FY 2014.
- **Essential Air Service:** \$188 million over three years for the Essential Air Service (EAS) program that provides air service to remote or underserved regions, including \$98 million in FY 2011, \$60 million in FY 2012, and \$30 million in FY 2013. After that, the program is eliminated. The RSC spending reduction act would also have eliminated this program.

**Tax /Revenue Provisions:**

- **Passenger Facility Fee:** The passenger facility fee remains at a maximum of \$4.50 per trip segment. The bill creates a pilot program for passenger facility charges that allows up to five airports to use the charges to fund intermodal ground access projects under more flexible standards than currently in place for such projects
- **Tax Extension on Aviation-Grade Kerosene and Aviation Gasoline:** The measure also extends the following taxes:
  - 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 2014, 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.
- **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.
  - **Expand Eligibility for Airport Development Funds:** The measure amends the current-law definition of "airport development" to include:
    - the acquisition of firefighting and rescue equipment that service aircraft designed for more than nine passenger seats,
    - but fewer than 31 seats, as required under current law);
    - the construction of mobile fuel truck containment systems at certain non-primary airports if such systems are required by the EPA;
    - certain terminal development; and to include the acquisition and installation of facilities or equipment that provide air conditioning, heating, or electrical power from terminal-based facilities to parked aircraft.
    - it also allows the development of an environmental management system to be considered "airport planning."
  - **Contract Tower Program:** The legislation extends the Contract Tower Program to other low activity air traffic control towers for which a qualified entity or state has requested to participate in the program. Expanding the contract tower program will achieve significant cost savings by offering the same quality of air traffic control services at a significantly reduced cost.
  - **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 2014 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 2014, grant authority for compatible land use planning and projects by state and local governments. It extends through Oct. 1, 2014, the authorization of \$2.5 million per year 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.
- **NEXTGEN Air Transportation System and Air Traffic Control Modernization**
- **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.

- ***Sunset of Line Check:*** The bill sunsets, one year after the date of enactment, the requirement for an additional annual line check evaluation for airline pilots over the age of 60.
  - ***Flight Attendant Fatigue:*** The bill requires the FAA to conduct a study on flight attendant fatigue and report the findings to Congress.
  - ***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 authorizes the appropriation of \$98 million in FY 2011, \$60 million in FY 2012, and \$30 million in FY 2013 for the Essential Air Service (EAS) program. These amounts are in addition to the \$50 million per year the EAS program is currently authorized to receive from FAA collection of overflight fees. After that, the program is eliminated. The RSC spending reduction act would also have eliminated this program.
  - ***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 measure eliminates the general fund authorization of appropriations for the Small Community Air Service program, funding it instead through overflight fee collections.
- **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 34 slots per day for flights originating or terminating beyond the 1,250-mile perimeter from Ronald Reagan Washington National Airport and requires the FAA to eliminate 10 other slots for the airport to accommodate these additional long-haul flights.

➤ **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. Any airport receiving 25 or more complaints in a year would be required to annually submit to the FAA the number and summary of noise complaints received, which the FAA would make available to the public electronically.
- **Noise Levels:** The bill prohibits operation after Dec. 31, 2014, of civil subsonic jets weighing 75,000 pounds or less unless the jets comply with "stage 3" noise levels, thereby barring the use of aircraft that meet stage 1 or stage 2 noise levels after that time. The measure provides exceptions for emergency situations designed to address area-wide emergencies such as floods, hurricanes or acts of terrorism.
- **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 NextGen environmental efficiency projects into projects that are subject to streamlined environmental review.
  - Implement sustainable practices for incorporation of energy efficient measures in the construction and major renovation of air traffic control facilities in order to reduce energy consumption, improve environmental performance, and reduce the cost of maintenance.

➤ **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 repeals 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 the ability to vote for union representation and assumes that a failure to vote is a "yes" vote. The repeal of the National Mediation Board rule would be effective for Jan. 1, 2011.

➤ **Research Provisions**

- ***Research Programs*** he measure does the following:
  - Requires the FAA and NASA to establish a joint research program on improving both the confidence in, and the timeliness of, certification for new national air system technologies.
  - 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, which expires at the end of March, through the end of 2021. 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 creates a successor program through which coverage would be required to be provided after Dec. 31, 2021, through a risk-retention or risk-sharing program sponsored by the industry.

All premiums collected by the FAA from airlines would be transferred to the industry program.

- 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 also extends through 2013 a provision of current law that prohibits punitive damages against an airline or the federal government for causes relating to a terrorist event.
- The bill allows the FAA to use commercial insurance carriers to underwrite insurance or adjust claims.
- **Facilities Consolidation:** The measure establishes a new procedure for recommending the realignment of FAA tower control facilities. Under the bill, a working group would be formed in the Transportation Department within nine months of enactment to develop criteria and make recommendations for realigning or consolidating facilities. The group would include the by the Transportation secretary, who appoints two members to the board, and the comptroller general, who is a nonvoting member.
- 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. The House is also expected to consider a short-term FAA extension (HR 1079) this week that would continue FAA programs through May 31, 2011.

**Committee Action:** H.R. 658 was introduced by Rep. John Mica (R-FL) on February 11, 2011, and was referred to the Committee on Transportation and Infrastructure. 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.

**Administration Position:** According the Statement of the Administration Positions, “The Administration supports House passage of H.R. 658 as a necessary step in the enactment of a multiyear reauthorization of the Department of Transportation’s aviation programs to enhance safety, increase capacity, reduce passenger delays, and provide for the timely development and implementation of the Next Generation Air Transportation System (NextGen). If the President is

presented with a bill that would not safeguard the ability of railroad and airline workers to decide whether or not they would be represented by a union based upon a majority of the ballots cast in an election or that would degrade safe and efficient air traffic, his senior advisers would recommend that he veto the bill.”

**Cost to Taxpayers:** According to CBO, the legislation authorizes \$47.6 billion over the FY 2011-2014 period, increases revenues by \$4 million over ten years, and reduces contract authority (a form of mandatory budget authority) by \$7.5 billion over ten years.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No. The legislation reduces authorized spending levels compared to current levels, and phases out the Essential Air Service (EAS) program. The bill also expands the Contract Tower Program, which is a privatization Program for smaller towers. However, it also includes some new mandates as noted below.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** According to CBO, “H.R. 658 contains intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would impose new requirements on both public and private entities that own aircraft or airports. CBO estimates that the aggregate cost of intergovernmental mandates in the bill would fall well below the annual threshold established in UMRA (\$71 million in 2011, adjusted annually for inflation). The bill would impose additional private-sector mandates on operators of certain aircraft, entities registering or obtaining certification with the FAA, commercial air carriers, employees in air or rail industries, and unions. Based on information from the FAA, the National Mediation Board, and industry sources, CBO estimates that the aggregate cost of complying with the private-sector mandates would exceed the annual threshold established in UMRA (\$142 million in 2011, adjusted annually for inflation).” One mandate of note is would require owners of aircraft operating in congested airspace or at congested airports to install new communications equipment by 2020.

**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.

**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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