

DISSENTING VIEWS

We agree with our Republican colleagues on the need for a long-term Federal Aviation Administration (FAA) reauthorization act. In the 110th and 111th Congresses, the House, under Democratic leadership, passed FAA reauthorization bills that would have created jobs, improved aviation safety, and provided the FAA with the tools necessary to modernize airport and air traffic control infrastructure. We had hoped that H.R. 658, the “FAA Reauthorization and Reform Act of 2011”, would reflect a sustained commitment to these national priorities, and we had looked forward to working with our Republican colleagues this Congress in a bipartisan manner to swiftly enact forward-looking legislation.

Instead, we are deeply concerned that H.R. 658 includes funding cuts that will devastate the FAA’s Next Generation Air Transportation System (NextGen) air traffic control modernization effort and will harm safety-sensitive programs, while ignoring the Nation’s growing airport capital development needs. In addition, H.R. 658 includes a controversial and unrelated provision on union representation elections, sunsets the essential air service (EAS) program, and omits safety-enhancing provisions from prior reauthorization bills. Moreover, we believe the controversial aspects of this legislation will seriously jeopardize the enactment of an FAA reauthorization bill during this Congress and that H.R. 658 will require significant changes before it can be signed into law.

I. Funding Levels

According to the FAA, in 2007, civil aviation generated more than \$1.3 trillion in economic activity, accounted for over 11 million jobs and \$396 billion in earnings, and contributed 5.6 percent to the gross domestic product.

At its heart, the FAA reauthorization bill is a multi-year authorization of funding levels for FAA programs. Successive FAA reauthorization acts have increased funding for FAA programs because investing in aviation infrastructure strengthens the economy, creates jobs, and provides for the safe and efficient flow of commerce. Every \$1 billion of Federal investment in infrastructure creates or sustains approximately 35,000 jobs.

H.R. 658, however, actually proposes to cut funding authorizations for FAA capital programs over a period of years. H.R. 658 is a four-year bill, covering fiscal years (FYs) 2011 to 2014. Overall, cumulative funding levels are set at the FY 2008 appropriations levels for the remainder of FY 2011 and annually beginning in FY 2012, with an overall funding level of \$59.7 billion.

H.R. 658: FY 2011 – FY 2014 Proposed Funding Levels (dollars in billions)

| Program | FY 2008 Enacted | FY 2009¹ Enacted | FY 2010 Enacted | FY 2011 | FY 2012 | FY 2013 | FY 2014 |
|---|----------------------------|--|----------------------------|----------------|----------------|----------------|----------------|
| Operations & Maintenance | \$8.70 | \$9.00 | \$9.40 | \$9.40 | \$9.17 | \$9.17 | \$9.17 |
| Facilities & Equipment | 2.50 | 2.90 | 2.90 | 2.70 | 2.60 | 2.60 | 2.60 |
| Airport Improvement | 3.50 | 4.60 | 3.50 | 3.18 | 3.00 | 3.00 | 3.00 |
| Total | \$14.70 | \$16.50 | \$15.80 | \$15.28 | \$14.77 | \$14.77 | \$14.77 |

These proposed funding cuts have serious consequences for our Nation’s infrastructure, jobs, and economy. For example, the FAA estimates that its NextGen air traffic control system upgrade will reduce total flight delays by 21 percent and deliver \$22 billion in cumulative benefits by 2018 for airlines and other aircraft operators, the Federal Government, and ultimately the flying public. NextGen will permit aircraft operators to save 1.4 billion gallons of fuel and cut carbon emissions by 14 million tons. The Nation’s 567,000 airline industry workers have a vested interest in the cost savings that NextGen promises.

Yet, at the Subcommittee on Aviation’s February 9, 2011 hearing, entitled “Federal Aviation Reauthorization: Stakeholders”, witnesses representing the aerospace industry, general aviation manufacturers, general aviation pilots, airports, air traffic controllers and FAA managers all testified that Congress could not roll back FAA funding to FY 2008 levels without harming safety-sensitive programs or hampering the industry.

At that same hearing, Ms. Marion Blakey, an FAA administrator under President George W. Bush and now the president and chief executive officer of the Aerospace Industries Association, stated that “the prospect is really devastating to jobs and to our future, if we really have to roll back [to 2008 levels] and stop NextGen in its tracks.” FAA officials also indicated that cutting the agency’s budget to FY 2008 levels would likely trigger drastic cutbacks and cancellations of core NextGen programs, and would require the agency to furlough hundreds of safety-related employees.

Further, the FAA’s 2011-2015 National Plan of Integrated Airport Systems (NPIAS) estimates that over the next five years, there will be \$52.2 billion of Airport Improvement Program (AIP)-eligible infrastructure development for all segments of civil aviation, an annual average of \$10.4 billion. Additionally, the 2009-2013 Airports Council International-North America (ACI-NA) Capital Needs Survey estimates total airport capital needs – including the cost of non-AIP-eligible projects – to be about \$94.3 billion, an annual average of \$18.8 billion. Moreover, construction costs have increased more than 50 percent since 2000, eroding the purchasing power of both AIP grants and Passenger Facility Charges (PFCs). Yet, despite airport capital development needs, H.R. 658 actually cuts AIP funding well below FY 2008

¹ Figures pertaining to FY 2009 include funding from the American Reinvestment and Recovery Act of 2009 (P.L. 111-5), with \$200 million in facilities and equipment and additional \$1.1 billion in grants-in-aid for airports.

levels to \$3 billion without increasing the current \$4.50 per-passenger-per-flight cap on PFCs. H.R. 658 clearly falls short of meeting the Nation’s airport infrastructure needs.

H.R. 658: Annual State-by-State AIP Entitlement Cuts

| | | | | | |
|-------------------------------|------------------------------|------------------------------|------------------------------|-------------------------------|-------------------------------|
| AK | AL | AR | AS | AZ | CA |
| Current Funding \$118,362,067 | Current Funding \$37,115,439 | Current Funding \$36,202,224 | Current Funding \$1,871,843 | Current Funding \$47,466,677 | Current Funding \$168,999,692 |
| House Proposal \$107,379,742 | House Proposal \$35,577,880 | House Proposal \$35,019,484 | House Proposal \$1,871,843 | House Proposal \$44,762,351 | House Proposal \$159,217,071 |
| Difference \$10,982,325 | Difference \$1,537,559 | Difference \$1,182,740 | Difference \$-- | Difference \$2,704,326 | Difference \$9,782,621 |
| CO | CT | DC | DE | FL | GA |
| Current Funding \$40,731,820 | Current Funding \$7,599,214 | Current Funding \$490,946 | Current Funding \$1,381,930 | Current Funding \$114,810,633 | Current Funding \$38,935,317 |
| House Proposal \$38,393,191 | House Proposal \$6,851,154 | House Proposal \$394,176 | House Proposal \$1,206,236 | House Proposal \$109,738,448 | House Proposal \$36,228,008 |
| Difference \$2,338,629 | Difference \$748,060 | Difference \$96,770 | Difference \$175,694 | Difference \$5,072,185 | Difference \$2,707,309 |
| GU | HI | IA | ID | IL | IN |
| Current Funding \$4,280,479 | Current Funding \$27,167,407 | Current Funding \$50,102,442 | Current Funding \$24,638,439 | Current Funding \$49,331,284 | Current Funding \$30,414,592 |
| House Proposal \$4,280,479 | House Proposal \$26,443,825 | House Proposal \$48,778,778 | House Proposal \$23,248,755 | House Proposal \$45,853,834 | House Proposal \$28,246,049 |
| Difference \$-- | Difference \$723,582 | Difference \$1,323,664 | Difference \$1,389,684 | Difference \$3,477,450 | Difference \$2,168,543 |
| KS | KY | LA | MA | MD | ME |
| Current Funding \$43,268,375 | Current Funding \$56,616,159 | Current Funding \$34,310,676 | Current Funding \$26,382,614 | Current Funding \$18,958,653 | Current Funding \$24,361,609 |
| House Proposal \$41,706,959 | House Proposal \$58,812,691 | House Proposal \$32,825,645 | House Proposal \$25,085,010 | House Proposal \$17,810,976 | House Proposal \$23,665,061 |
| Difference \$1,561,416 | Difference \$2,803,468 | Difference \$1,485,031 | Difference \$1,297,604 | Difference \$1,147,677 | Difference \$696,548 |
| MI | MN | MO | MP | MS | MT |
| Current Funding \$52,447,718 | Current Funding \$53,155,970 | Current Funding \$28,728,935 | Current Funding \$4,781,386 | Current Funding \$37,199,258 | Current Funding \$36,103,210 |
| House Proposal \$49,462,130 | House Proposal \$51,040,011 | House Proposal \$26,704,711 | House Proposal \$4,781,386 | House Proposal \$36,091,798 | House Proposal \$33,997,432 |
| Difference \$2,985,588 | Difference \$2,115,959 | Difference \$2,024,224 | Difference \$-- | Difference \$1,107,460 | Difference \$2,105,778 |
| NC | ND | NE | NH | NJ | NM |
| Current Funding \$46,332,217 | Current Funding \$27,920,715 | Current Funding \$44,000,735 | Current Funding \$10,470,383 | Current Funding \$27,295,442 | Current Funding \$30,807,088 |
| House Proposal \$43,915,286 | House Proposal \$26,886,268 | House Proposal \$42,639,410 | House Proposal \$10,091,955 | House Proposal \$25,373,919 | House Proposal \$28,805,174 |
| Difference \$2,416,931 | Difference \$1,054,447 | Difference \$1,361,325 | Difference \$378,428 | Difference \$1,921,623 | Difference \$2,001,914 |
| NV | NY | OH | OK | OR | PA |
| Current Funding \$27,657,945 | Current Funding \$82,023,631 | Current Funding \$55,807,474 | Current Funding \$58,696,692 | Current Funding \$34,097,367 | Current Funding \$43,437,179 |
| House Proposal \$25,676,781 | House Proposal \$77,640,932 | House Proposal \$53,109,054 | House Proposal \$57,103,149 | House Proposal \$32,046,553 | House Proposal \$40,400,199 |
| Difference \$1,981,164 | Difference \$4,382,699 | Difference \$2,698,420 | Difference \$1,593,543 | Difference \$2,050,814 | Difference \$3,036,980 |
| PR | RI | SC | SD | TN | TX |
| Current Funding \$12,007,118 | Current Funding \$7,213,070 | Current Funding \$41,661,931 | Current Funding \$30,978,797 | Current Funding \$51,960,664 | Current Funding \$121,513,687 |
| House Proposal \$11,122,138 | House Proposal \$7,025,107 | House Proposal \$40,352,714 | House Proposal \$29,793,674 | House Proposal \$47,678,872 | House Proposal \$112,978,989 |
| Difference \$884,980 | Difference \$187,963 | Difference \$1,309,217 | Difference \$1,185,123 | Difference \$4,281,792 | Difference \$8,534,698 |
| UT | VA | VI | VT | WA | WI |
| Current Funding \$18,019,538 | Current Funding \$62,104,269 | Current Funding \$5,177,452 | Current Funding \$9,232,208 | Current Funding \$52,265,160 | Current Funding \$36,625,581 |
| House Proposal \$16,341,915 | House Proposal \$60,112,278 | House Proposal \$5,177,452 | House Proposal \$9,006,516 | House Proposal \$49,851,576 | House Proposal \$34,809,187 |
| Difference \$1,677,623 | Difference \$1,991,991 | Difference \$-- | Difference \$225,692 | Difference \$2,413,584 | Difference \$1,816,394 |
| WV | WY | | | | |
| Current Funding \$12,008,607 | Current Funding \$22,168,948 | | | | |
| House Proposal \$11,395,829 | House Proposal \$20,797,338 | | | | |
| Difference \$612,778 | Difference \$1,371,610 | | | | |

II. Repeal of National Mediation Board Rule

H.R. 658 includes a “poison pill” provision that bears no relationship whatsoever to job creation or safety enhancement. The provision reinstates an inequitable approach to union representation elections at airlines and railroads whereby a majority of all employees in a bargaining unit were required to vote in favor of representation by a union in order for the union to be certified as their representative. The bill undoes a rule finalized last year by the National Mediation Board (NMB), which oversees labor relations at airlines and railroads, providing for fair, democratic representation elections where outcomes turn on the will of the majority of those who cast ballots, not a super-majority of everyone eligible to vote.

Under the obsolete elections rule that the Republicans' bill reinstates, non-votes were counted as "no" votes. That approach is contrary to the fundamental democratic principle that elections should turn on the will of the majority, with non-voters acquiescing in the will of the majority of those who vote.

In American political elections, including congressional and presidential elections, States do not require the winner of an election to receive a majority of votes from all those eligible to vote. In fact, in 2010, 41 States had a voter turnout rate below 50 percent. Moreover, non-votes are counted as what they are – non-votes. People do not vote in elections for innumerable reasons: they are sick, they are away from home, they are disengaged, they are intimidated not to vote by those on one side or another, or they simply do not care about the outcome. It is neither fair nor democratic to impute a particular opinion to non-voters who did not personally express that opinion.

The NMB's new rule has not opened the floodgates to unionization. Among the 17 representation elections conducted to date under the new rule, unions have been certified in only nine of them. At one air carrier, in fact, four representation elections were held among four different employee groups in 2010, and in each election the union failed to win the support of a majority of voters. Under the old rule, from 1990 to 2010, unions were certified in 63 percent of elections. Under the new rule, unions have been certified in only 53 percent of elections, and the median participation rate has been quite high: 84 percent (with 94 percent of eligible workers voting in one election). The NMB's new rule has not made the certification of unions more or less likely than before.

We are troubled that the Republicans chose FAA reauthorization legislation, which is critical for the enhancement of aviation safety, to wage an assault on collective bargaining among airline and railroad workers. During the Committee markup of H.R. 658, this provision was subject to strong opposition by both Democratic and Republican Members. In fact, the provision barely survived the markup when an amendment to strip it from the bill failed by just a single vote. This controversial provision's presence in this bill seriously jeopardizes the enactment of long-term FAA reauthorization legislation.

III. Sunset of EAS Program

More than three decades ago, Congress enacted the Airline Deregulation Act of 1978 (P.L. 95-504), which phased out the Federal Government's control over domestic fares and routes. At the time, Congress also recognized that the free market alone could not be relied on to maintain air service to all small communities. The Act established the EAS program, which guaranteed that communities served by air carriers before deregulation would continue to receive a certain level of scheduled air service. In subsequent legislation, the program has been modified to ensure that it only provides air service where the service can be provided at a reasonable cost. EAS is necessary to link small communities to the larger system of commerce and, in the process, to create and sustain local jobs.

H.R. 658 cuts EAS program funding progressively through FY 2013, and then, for airports in the lower 48 States, it sunsets the program altogether (although EAS for Alaska and Hawaii would be continued). Sunsetting the EAS program could severely hurt the 110 communities in the contiguous United States that depend on EAS. By proposing to renege on the Federal commitment to support small and rural community air service, H.R. 658 effectively contemplates a policy of two Americas – one wealthy enough to support scheduled air service, and the other increasingly isolated and unable to afford full access to our national aviation system.

H.R. 658: Communities Where EAS Subsidy Would Be Eliminated After FY 2013

| | AL | AR | AZ | CA | CO | GA | IA | IL |
|----------------|---------------|---------------------|----------------------|-------------------------|---------------------|-------------------|--------------------|------------------|
| | Muscle Shoals | Harrison | Page | Crescent City | Cortez | Athens | Burlington | Decatur |
| | | El/Dorado/Camden | Show Low | Visalia | Alamosa | | Fort Dodge | Marion/Herrin |
| | | Hot Springs | Kingman | El Centro | Pueblo | | Mason City | Quincy |
| | | Jonesboro | Prescott | Merced | | | | |
| | | | | | | | | |
| KS | KY | MD | ME | MI | MN | MO | MS | MT |
| Dodge City | Paducah | Hagerstown | Presque Isle/Houlton | Sault St. Marie | Thief River Falls | Joplin | Meridian | Glasgow |
| Garden City | Owensboro | | Bar Harbor | Hancock/Houghton | International Falls | Kirksville | Greenville | Wolf Point |
| Hays | | | Rockland | Iron Mountain/Kingsford | Chisholm/Hibbing | Fort Leonard Wood | Hattiesburg/Laurel | Havre |
| Liberal/Guymon | | | Augusta/Waterville | Alpena | | Cape Girardeau | Tupelo | Sidney |
| Salina | | | | Manistee | | | | Glendive |
| Great Bend | | | | Escanaba | | | | Lewistown |
| | | | | Ironwood/Ashland | | | | Miles City |
| | | | | Muskegon | | | | West Yellowstone |
| ND | NE | NH | NM | NV | NY | OR | PA | PR |
| Dickinson | Chadron | Lebanon/White River | Carlsbad | Ely | Massena | Pendleton | Altoona | Mayaguez |
| Devils Lake | North Platte | | Clovis | | Plattsburgh | | DuBois | Ponce |
| Jameston | McCook | | Silver City/Hurley | | Ogdensburg | | Lancaster | |
| | Alliance | | Alamogordo/Holloman | | Saranac Lake | | Franklin/Oil City | |
| | Scottsbluff | | | | Watertown | | Johnstown | |
| | Kearney | | | | Jamestown | | Bradford | |
| | Grand Island | | | | | | | |
| SD | TN | TX | UT | VA | VT | WI | WV | WY |
| Huron | Jackson | Victoria | Moab | Staunton | Rutland | Eau Claire | Beckley | Worland |
| Watertown | | | Cedar City | | | | Parkersburg | Laramie |
| | | | Vernal | | | | Clarksburg | |
| | | | | | | | Morgantown | |
| | | | | | | | | |
| | | | | | | | | |

IV. Omission of Safety-Enhancing Provisions

Finally, we are concerned about other aspects of the bill, including some notable omissions. The FAA reauthorization bills that passed the House and Senate last Congress each contained a provision establishing occupational safety and health protections for flight attendants in aircraft cabins. This bill omits that provision.

Air transportation workers spend their working hours in some of the Nation’s most dangerous workplaces, where the rate of work-related injury or illness was more than twice the national average in 2009, according to Bureau of Labor Statistics data. Construction workers and workers on factory floors are exposed to fewer workplace injuries and illnesses than air transportation workers. Flight attendants, in particular, are exposed to unique risks every day: repeated changes in air pressure, constant noise, significant temperature variations, sick or belligerent passengers, and all manner of communicable air- and blood-borne pathogens. Flight attendants, however, are not protected by the occupational safety and health standards that cover

tens of millions of other workers, even though they are passengers' first resource during emergencies and must be fit and healthy to perform their safety duties.

In 1975, the FAA recognized that cabin crewmembers' occupational safety and health were matters of aviation safety; in 2000, the administrators of the FAA and the Occupational Safety and Health Administration (OSHA) signed a memorandum of understanding (MOU) under which they agreed to work together to develop occupational safety and health protections for flight attendants. A team comprised of FAA and OSHA officials produced a joint report in 2000 documenting their collaborative work to that point and listing issues needing further analysis (including the effects of state occupational safety and health plans, and the need to ensure that application of occupational standards would not affect aviation safety). Shortly afterward, however, the collaborative process reached a standstill, and flight attendants still are not protected by occupational safety and health standards. We agree with the FAA that cabin crewmembers' occupational safety and health are matters of aviation safety, and we believe H.R. 658 should include a provision directing the relevant parties to move forward to develop effective occupational safety and health standards whose application will be cost-effective and will improve aviation safety.

Similarly, H.R. 658 will not meaningfully reduce the occurrence of flight attendant fatigue, another significant safety issue. The bill merely requires a study on flight attendant fatigue. The FAA has already completed this study and released it to the public.

At a Subcommittee on Aviation June 6, 2007 hearing, entitled "The National Transportation Safety Board's Most Wanted Aviation Safety Improvements", Ms. Patricia Friend, then-president of the Association of Flight Attendants, testified that fatigue among flight attendants "is a very real and serious concern for the flight attendant workforce . . . and poses a potentially dangerous risk for the safety of the aviation system."

Since then, the FAA's Civil Aerospace Medical Institute conducted the very study required under H.R. 658. The study's findings support but one conclusion: further action is now required. The five-part study, which included a national survey of flight attendants working at a cross-section of air carriers, found that fatigue is pervasive among flight attendants and affects their performance of required safety responsibilities. Accordingly, the bill should require a rulemaking, based on the results of the study, to reduce the occurrence of flight attendant fatigue.

Conclusion

The bill's inadequate funding levels, its "poison pill" provision on collective-bargaining that has no relationship to job creation or safety, its sunset of the EAS program, and its omissions of important safety protections all raise concerns that the bill will not sufficiently create jobs and improve safety. Although we share our Republican colleagues' desire to enact long-term reauthorization legislation, we are concerned that H.R. 658 will not advance our mutual goal of moving the aviation system into the 21st Century. Moreover, we believe that these controversial aspects of this bill seriously jeopardize enactment of multi-year FAA reauthorization legislation. We therefore oppose these aspects of the bill as reported by the Committee on Transportation and Infrastructure.

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