



Legislative Bulletin.....June 11, 2003

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H. R. 1320—To amend the National Telecommunications and Information Administration Organization Act to facilitate the reallocation of spectrum from governmental to commercial users (Upton)

Order of Business: The bill is scheduled to be considered on Wednesday, June 11, 2003, under a motion to suspend the rules and pass the bill.

Summary: H.R. 1320 would amend the procedures used to pay for federal telecommunications systems that use electromagnetic spectrum and are reallocated from government to non-government (commercial) use. It would modify the process companies use to reimburse the government for relocation costs and would allow agencies to spend those funds from a new “Spectrum Relocation Fund” (which is an OMB-administered separate fund at the Treasury) without further appropriation. Under current law, such spending is subject to appropriation. In addition, the bill would amend existing law regarding loans made by the Telecommunications Development Fund.

H.R. 1320 defines relocation costs (that the federal government will reimburse) as including five categories of expenses, such as replacement of equipment or software, construction costs, and cost of engineering studies. According to the committee, this reimbursement is designed to ensure that a federal spectrum operation moved to a different band (or instead switched to a different technology such as wireline communications) will be reimbursed for all costs necessary to prevent that operation from experiencing any degradation in service or capability.

The bill also requires the Federal Communications Commission to notify the National Telecommunications and Information Administration (NTIA) eighteen months before conducting an auction of reallocated spectrum. The purpose of this notification is so that NTIA, after review by OMB, can provide the FCC with an estimate of relocation costs for a particular band and a timeline for relocation. This estimate must also be transmitted to Congress under H.R. 1320. **An FCC auction of reallocated spectrum is only valid if the auction yields proceeds of at least 110 percent of the estimated relocation costs.**

There is a rule of construction in the bill that notes that nothing in this bill is intended to modify section 1062(b) of the FY2000 Defense Authorization Act (Public Law 106-65), which deals with DOD being required to surrender some spectrum, after certain entities certified that such surrender would not risk military capability.

Additional Information: The Administration has released a memo on what it calls the Spectrum Policy for the 21st Century. For more information go to:
<http://www.whitehouse.gov/news/releases/2003/06/20030605-4.html>

Committee Action: The bill was introduced on March 18 and referred to the House Energy and Commerce Committee and was reported out by voice vote with an amendment on April 30.

Cost to Taxpayers: CBO estimates that implementing H.R. 1320 would increase net direct spending by \$1.4 billion over the 2006-2008 period and by \$2.5 billion over the next 10 years. According to CBO, allowing agencies to directly spend some auction proceeds would eliminate the need to appropriate funds for relocation costs. Consequently, this increase in direct spending could be largely offset by a reduction in discretionary spending if the total amounts appropriated in future years are reduced correspondingly.

Does the Bill Create New Federal Programs or Rules?: The bill creates a new Spectrum Relocation Fund, which is an OMB-administered separate fund at the Treasury, that may be used without further appropriation to reimburse federal entities. It modifies current procedures relating to Spectrum and establishes new reporting requirements.

Constitutional Authority: The Energy and Commerce Committee, in Report 108-137, finds authority under Article I, Section 8, Clause 3 (power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.)

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H.R. 2350—Welfare Reform Extension Act of 2003 (Herger)

Order of Business: The bill is scheduled to be considered on Wednesday, June 11, 2003, under a motion to suspend the rules and pass the bill.

Summary: The bill extends until September 30, 2003 (the end of fiscal year 2003) federal welfare programs now set to expire on June 30, 2003. In the 107th Congress (H.R. 4737) and in the 108th Congress (H.R. 4) the House passed complete welfare reauthorization bills. The Senate did not consider the 107th bill and has yet to consider the 108th bill. Until a welfare reauthorization bill is signed into law, the welfare programs, which are mandatory spending, expire. This bill, if signed into law, will temporarily continue the programs last authorized in 1996.

To see the May 16, 2002, RSC Legislative Bulletin for H.R. 4737 go to:
<http://www.house.gov/burton/RSC/Lb51502.pdf>

To see the February 13, 2003 RSC Legislative Bulletin for H.R. 4 go to
<http://www.house.gov/burton/RSC/Lb21303.pdf>

Committee Action: The bill was introduced on June 5, 2003 and referred to House Committee on Ways and Means and to the Committee on Energy and Commerce. The committees did not consider the bill.

Cost to Taxpayers: The bill appropriates \$16.567 billion for fiscal year 2003 with the following language: “Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal year 2003 \$16,566,542,000” for State Family Assistance Grants. This is the entire appropriation for welfare for FY03. In actuality, most of the 2003 money has gone out and the bill will merely allow the agency to administer the final three months of fiscal year 2003. **According to CBO, the bill would increase federal appropriations by \$178 million over 10 years.** This increase is due to two programs: TANF supplemental grant and transitional medical assistance, which were not included in the FY2003 baseline.

Does the Bill Create New Federal Programs or Rules?: The bill extends for an additional three months, current federal welfare programs. No additional amendments to current programs are made in the bill other than striking “2002” and inserting “2003” in current authorizing language.

Constitutional Authority: A Committee report citing constitutional authority is unavailable.

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H.R. 2115— Flight 100 – Century of Aviation Reauthorization Act (Young (AK))

Order of Business: The bill is scheduled to be considered on Wednesday, June 11 under a structured rule.

Summary:

Funding Guarantee: Extends funding guarantee (enforced by points of order) that provides that all the receipts to the Aviation Trust Fund plus any interest shall be made available each year only for Grants in Aid for Airports, Facilities and Equipment, Research and Development, and the Trust Funds Share of Operations. Additional funds from the General Fund are authorized for FAA Operations.

Specific Authorizations of Appropriations:

FAA Salaries Operations, and Maintenance:

\$7.591 Billion for FY 2004 increasing to \$8.064 Billion for FY 2007 (In FY 2003 Congress provided roughly \$7 Billion for this purpose.)

Airline Data and Analysis:

\$3.971 Million for FY 2004 increasing to \$4.219 Million for FY 2007

Air Navigation Facilities and Equipment:

\$3.138 Billion for FY 2004 fluctuating up and down with an FY 2007 authorization of \$3.110 Billion. (In FY 2003 Congress provided roughly \$2.9 Billion for this purpose.)

Airport Planning and Development and Noise Compatibility Planning and Programs:

\$3.4 Billion for FY 2004 rising to \$4.0 Billion for FY 2007

Reauthorizations:

- Contract Air Traffic Control Tower Pilot Program (\$6.5 Million for FY 2004 rising to \$8.0 Million in FY 2007)
- Small Community Air Service Development Program (\$35 Million a year)
- Regional Air Service Incentive Program
- Design-Build Contracting
- Authority to provide insurance to air carriers is extended until December 31, 2007 (from December 31, 2004) and expanded to include aircraft manufacturers for liability for third party claims arising out of acts of terrorism and vendors, agents, subcontractors, and U.S. manufacturer of an air carrier
- Increases the authorization for the Essential Air Service Program from \$15 million to \$65 million and authorizes the hiring of four additional employees to carry-out the program

New Programs or Activities:

- Authorizes funds to create a new office for the Next Generation Air Transportation System Joint Program Office to work in coordination with DOD, NASA, and DHS to develop the next generation of air traffic management system
- Directs the President to establish a task force to work with the Next Generation Air Transportation System Joint Program Office
- Authorizes establishment of helicopter and tiltrotor approach and departure procedures using advanced technology
- Authorizes \$200 Million for a pilot program for innovative financing for terminal automation replacement systems
- Establishes within the FAA a new Small Business Ombudsman
- Requires the collection and publication of data on incidents and complaints involving passenger and baggage security screening
- Adds low-emission airport vehicles and ground support equipment as an eligible airport related project for which funds can be expended under the passenger facility fee
- Creates a 3-year pilot program under which nonhub airports can impose a passenger facility fee under procedures different than those procedures already established
- Establishes a new 2-year pilot program where, at 3 airports selected by the Administrator, airlines may engage in collaborative decision-making (for no more than 24 hours) for the purposes of discussing their respective flight schedules to achieve a capacity reduction (for bad weather for example) without violating anti-trust laws. If successful, the

Administrator may extend the program for an additional 2 years and expand it up to 7 additional airports

- Requires air carriers after any accident that involves damage to property on the ground to notify the owner in writing about liability for any property damage and means for obtaining compensation
- Requires air carriers to make sure that any NTSB public hearing regarding an accident is simulcast at the origination and destination cities (if in the United States) if the city is more than 80 miles away from the hearing.
- Requires air carriers to display a notice to each passenger regarding the country in which the aircraft was finally assembled
- Provides that the Secretary may require a unit of local government to pay a percentage (2.5% in FY 2005 rising to 10% in 2008) of the compensation provided to an air carrier to provide small community air service if the community is less than 170 miles from a medium or large hub airport or 75 miles from a small hub. Permits waivers.
- Establishes a new pilot program within the essential air service program to provide compensation directly to a unit of local government so that they may secure air service (includes to help purchase aircraft or provide surface transportation between airports) rather than providing directly to an air carrier
- Expands the type of certificates (certifications) that the FAA may issue to include “design organization certificate” (effective 7-years after enactment)
- Requires flight attendants to hold a certificate of demonstrated proficiency from the FAA (this includes completing FAA required training) and permits current flight attendants to continue serving until certified. Air carrier training is subject to approval by the FAA.
- Requires studies and analysis regarding air quality in aircraft cabins
- Requires report on any actions that should be taken with respect to recommendations made by the National Commission to Ensure Consumer Information and Choice in the Airline Industry regarding travel agents
- Requires the President to establish a task force to look for better ways covert technology developed for military aircraft for use by civilian aircraft
- Authorizes \$100 million for the Secretary of Transportation to make grants to certain general aviation entities for the security costs incurred and revenue foregone as a result of post September 11, 2001 restrictions
- Sets up procedures regarding the impasse in labor negotiations between the FAA and the National Association of Air Traffic Specialists
- Requires GAO to conduct a study regarding training of FAA aviation safety inspectors and an additional National Academy of Sciences study of staffing standards and workload of inspectors
- Requires the Secretary of Transportation (subject to the availability of funds) to reimburse air carriers and airports for security screening still provided by the air carrier or airport and to reimburse them for the use of space for screening if the space had previously been used for revenue-generating activities
- Allows federal funds to be used for the construction or modification of public parking facilities for security purposes

- Requires the Secretary of Transportation and EPA Administrator to assure that airport sponsors receive appropriate emission credits for carrying out air quality projects related to low-emission airport vehicles
- Establishes a 10 site pilot project to fund the retrofitting of airport ground support equipment to achieve lower emissions
- Authorizes Secretary of Transportation to make grants to States and local government for land use compatibility planning around large and medium hub airports

Earmarks:

- \$750 K for FY 2004 increasing to \$1 Million for FY 2007 for projects at the Midway Island Airport

Other Provisions:

- Prohibits the privatization of air traffic control
- Directs the FAA Administrator to develop a workforce strategy to determine the most effective method for addressing the need for more air traffic controllers
- Requires report on goals and objectives of Aviation Safety Reporting System
- Converts the Air Traffic Services Subcommittee of the Management Advisory Council into an independent Board known as the Air Traffic Services Board and makes numerous changes to the operations of the new Board.
- Includes a provision authored by Mr. Chocoma requiring the FAA to take certain actions to correct and prevent improper and wasteful purchases and missing assets via the FAA purchase card
- Ensures that the passenger facility fee is not charged against military charters
- Requires air carriers to hold passenger facility fees in escrow or otherwise provide proof of a security covering the estimated amount of fees to be collected
- Clarifies existing law regarding overflights of national parks for air tours, including preventing the FAA from restricting certain flights over certain areas of the Grand Canyon
- Expands the number of slots at Ronald Reagan National Airport
- Permits a holder of a certificate (certification by the FAA that an aircraft part is properly designed and manufactured) to allow another person to use the certificate to manufacture a new part of aircraft
- Requires the FAA to continue a requirement that a manufacturer make available at cost instructions for mechanics of how to maintain the airworthiness of an aircraft
- Permits the FAA Administrator to revoke or amend certificates (including for airmen) in response to a security threat. A U.S. citizen affected by such an action is entitled to a hearing; such hearing may include the use of classified evidence and may be appealed.
- Requires updating or curriculum standards for aviation maintenance technicians
- Sense of Congress that air carriers should offer reduced fares for active duty members of the Armed Forces and that purchased tickets offer flexible terms that allow changes without fees or restrictions
- Requires feasibility study regarding the U.S. hosting a world-class international air show
- Increases Federal retirement benefits for air traffic control supervisors
- Requires a report on the justification for any expanded air defense identification zone (restricted fly zone) around Washington D.C.

- Modifies the existing pilot project for airport privatization
- Prohibits FAA from requiring rent free space for FAA from an airport

Airport Project Streamlining: The bill contains several provisions aimed at accelerating airport runway construction and extension projects:

- Directs the Federal Aviation Administration (FAA) to encourage the construction of new runways at congested airports.
- Directs the Secretary of Transportation to develop and implement a coordinated review process (amongst relevant federal agencies) for airport capacity enhancement projects at congested airports, so that all necessary (environmental) analyses, reports, approvals, and other requirements could go on simultaneously and be completed by the same (and sooner) deadline. The details of the coordinated review could be explicated in a memorandum of understanding. Failures to meet deadlines would have to be explained to Congress and the Council on Environmental Quality.
- Allows states to participate in such coordinated reviews.
- Authorizes appropriations of \$4.2 million for FY 2004 and each fiscal year thereafter to facilitate the timely processing, review, and completion of environmental activities associated with airport capacity enhancement projects at congested airports
- Directs the Secretary of Transportation to craft (in coordination with “interested persons and government entities”) a list of reasonable alternatives for each airport enhancement project at a congested airport from which other federal agencies could not deviate.
- Directs the Secretary of Transportation to develop and publish (within 120 days of this bill’s enactment) a list of categorical exclusions from the requirement that an environmental assessment or an environmental impact statement be prepared for projects at airports.
- Repeals the requirement that the Governor of the state in which a project is located certifies in writing to the Secretary of Transportation that there is reasonable assurance that the project will be in compliance with applicable air and water quality standards.
- Authorizes the Secretary of Transportation to approve runway restrictions (for noise reduction) if such restrictions are necessary to accelerate runway construction (and meet other outlined conditions).
- Authorizes the use of local revenues generated at a participating airport for expenses related to the mitigation of the environmental impact of the airport enhancement project.
- Authorizes FAA to accept funding from an airport sponsor (including funds received by the sponsor from the federal government) to hire additional staff or obtain the services of consultants in order to expeditiously complete the environmental activities associated with a development project.
- Expands ability to use funds for construction of certain noise abatement projects in areas surrounding an airport.
- Maintains existing provisions for public comment on and applicable state jurisdiction over airport enhancement projects.

Amendments Self-Executed Under the Rule:

Thomas -- Extends the general expenditure authority and purposes of the Airport and Airway Trust Fund through September 30, 2007

Amendments Made in Order Under the Rule:

Mica (Manager's Amendment) Summary Based on Sponsors Summary--

- Allows the Department of Transportation to request information from the Department of Homeland Security in order to help prepare its monthly report on passenger complaints about screening rather than requiring monthly reports.
- Directs FAA to publish its policy on the use of passenger facility charge revenue for ground access projects.
- Prohibits air tour flights from evening to dawn over certain portions of the Grand Canyon.
- Allows DOT to issue the 6 slots for service from Reagan National to a small airport to an airline that is not a new entrant. Allows 76 seat regional jets to qualify for the commuter aircraft slots at Reagan National.
- Requires small communities close to hubs to pay their local share from any source other than airport revenue.
- Allows DOT to increase the subsidy to a commuter serving a small community if that commuter is experiencing significantly increased costs.
- Allows an airline to begin service to a small community that used to have subsidized essential air service without being subject to many of the regulatory requirements of the essential air service program.
- Revises the provision requiring aircraft manufacturers to make maintenance manuals available to aircraft repair stations in order to accommodate concerns expressed by the manufacturers.
- Requires FAA to issue rules on Stage 4 noise standards by July 1, 2004.
- Revisions provisions on crew training to make clear that hands-on anti-hijacking training for flight attendants is voluntary and the airlines are not required to pay for it or to pay flight attendants for the time they spend if they choose to take it.
- Directs GAO to study how airlines were compensated after 9/11, especially whether they should be compensated for the devaluation of their aircraft.
- Directs FAA to study whether certain aircraft operations in Alaska can be performed under Part 91 of FAA rules.

Norton -- Repeals section 49108 of Title 49, which requires the Metropolitan Washington Airports Authority (MWAA) to appear before Congress before September 30, 2004 in order for the Secretary of Transportation to approve an application of MWAA for an airport development project grant or to impose a passenger facility fee.

Peterson / McHugh / Shuster – Strikes the provision that provides that the Secretary may require a unit of local government to pay a percentage (2.5% in FY 2005 rising to 10% in 2008) of the compensation provided to an air carrier to provide small community air service if the community is less than 170 miles from a medium or large hub airport or 75 miles from a small hub. The provision in the bill permits waivers.

Pitts – Provides that for the purposes of determining eligibility for essential air service subsidies (subsidies not allowed for locations less than 70 highway miles from a hub airport) the Secretary of Transportation shall consult with the Governor, or his designee of the State in which the airport in question is located as to the most commonly used highway route between that airport and the nearest large or medium hub airport. In addition, after consultation with the Governor, the Secretary shall establish a regulation providing for a consistent standard for calculating the most commonly used route. Repeals contradictory provisions of law and requires that upon the request of a community terminated after September 30, 1993 because of the 70 mile rule the Secretary shall review the termination and determine eligibility based upon the new proposed guidelines contained in the amendment.

Manzullo -- Requires the Secretary of Transportation to submit to Congress, within 90 days of enactment of the bill, a report on waivers granted under the FAA “Buy-American Preferences” provisions. The report shall, at minimum, include a list of all waivers granted pertaining to that section, the specific authority under such section for granting the waiver and the rationale for granting the waiver.

Committee Action: Ordered to be reported (as amended) by voice vote by the Committee on Transportation and Infrastructure.

Cost to Taxpayers: CBO estimates that implementing H.R. 2115 would cost about \$48.4 billion over the next five years, assuming appropriation actions consistent with the amounts that would be authorized by the bill and the levels of new contract authority (a mandatory form of budget authority) it would provide for aviation programs. In addition, they estimate that enacting the bill would increase direct spending by \$1.4 billion over the 2004-2008 period and by \$2.7 billion over the next 10 years. Finally, CBO and the Joint Committee on Taxation (JCT) estimate that H.R. 2115 would increase revenues by \$3 million over the 2004-2008 period and \$11 million over the next 10 years.

Does the Bill Create New Federal Programs or Rules?: Yes, as noted above.

Constitutional Authority: The Committee on Transportation and Infrastructure states in their Committee Report “that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution,” but they fail to cite a specific clause.

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