

**AMENDMENT TO H.R. 2881**  
**OFFERED BY MR. COSTELLO OF ILLINOIS**

At the beginning of title VI of the bill, insert the following (and redesignate subsequent sections, and conform the table of contents, accordingly):

1 **SEC. 601. FEDERAL AVIATION ADMINISTRATION PER-**  
2 **SONNEL MANAGEMENT SYSTEM.**

3 (a) DISPUTE RESOLUTION.—Section 40122(a) is  
4 amended—

5 (1) by redesignating paragraphs (3) and (4) as  
6 paragraphs (5) and (6), respectively; and

7 (2) by striking paragraph (2) and inserting the  
8 following:

9 “(2) DISPUTE RESOLUTION.—

10 “(A) MEDIATION.—If the Administrator  
11 does not reach an agreement under paragraph  
12 (1) or the provisions referred to in subsection  
13 (g)(2)(C) with the exclusive bargaining rep-  
14 resentative of the employees, the Administrator  
15 and the bargaining representative—

16 “(i) shall use the services of the Fed-  
17 eral Mediation and Conciliation Service to  
18 attempt to reach such agreement in ac-

1 cordance with part 1425 of title 29, Code  
2 of Federal Regulations (as in effect on the  
3 date of enactment of the Federal Aviation  
4 Administration Reauthorization Act of  
5 2007); or

6 “(ii) may by mutual agreement adopt  
7 alternative procedures for the resolution of  
8 disputes or impasses arising in the negotia-  
9 tion of the collective-bargaining agreement.

10 “(B) BINDING ARBITRATION.—

11 “(i) ASSISTANCE FROM FEDERAL  
12 SERVICE IMPASSES PANEL.—If the services  
13 of the Federal Mediation and Conciliation  
14 Service under subparagraph (A)(i) do not  
15 lead to an agreement, the Administrator  
16 and the exclusive bargaining representative  
17 of the employees (in this subparagraph re-  
18 ferred to as the ‘parties’) shall submit  
19 their issues in controversy to the Federal  
20 Service Impasses Panel. The Panel shall  
21 assist the parties in resolving the impasse  
22 by asserting jurisdiction and ordering bind-  
23 ing arbitration by a private arbitration  
24 board consisting of 3 members.

1                   “(ii) APPOINTMENT OF ARBITRATION  
2                   BOARD.—The Executive Director of the  
3                   Panel shall provide for the appointment of  
4                   the 3 members of a private arbitration  
5                   board under clause (i) by requesting the  
6                   Director of the Federal Mediation and  
7                   Conciliation Service to prepare a list of not  
8                   less than 15 names of arbitrators with  
9                   Federal sector experience and by providing  
10                  the list to the parties. Within 10 days of  
11                  receiving the list, the parties shall each se-  
12                  lect one person from the list. The 2 arbi-  
13                  trators selected by the parties shall then  
14                  select a third person from the list within 7  
15                  days. If either of the parties fails to select  
16                  a person or if the 2 arbitrators are unable  
17                  to agree on the third person within 7 days,  
18                  the parties shall make the selection by al-  
19                  ternately striking names on the list until  
20                  one arbitrator remains.

21                  “(iii) FRAMING ISSUES IN CON-  
22                  TROVERSY.—If the parties do not agree on  
23                  the framing of the issues to be submitted  
24                  for arbitration, the arbitration board shall  
25                  frame the issues.

1                   “(iv) HEARINGS.—The arbitration  
2                   board shall give the parties a full and fair  
3                   hearing, including an opportunity to  
4                   present evidence in support of their claims  
5                   and an opportunity to present their case in  
6                   person, by counsel, or by other representa-  
7                   tive as they may elect.

8                   “(v) DECISIONS.—The arbitration  
9                   board shall render its decision within 90  
10                  days after the date of its appointment. De-  
11                  cisions of the arbitration board shall be  
12                  conclusive and binding upon the parties.

13                  “(vi) COSTS.—The parties shall share  
14                  costs of the arbitration equally.

15                  “(3) RATIFICATION OF AGREEMENTS.—Upon  
16                  reaching a voluntary agreement or at the conclusion  
17                  of the binding arbitration under paragraph (2)(B),  
18                  the final agreement, except for those matters de-  
19                  cided by an arbitration board, shall be subject to  
20                  ratification by the exclusive bargaining representa-  
21                  tive of the employees, if so requested by the bar-  
22                  gaining representative, and approval by the head of  
23                  the agency in accordance with the provisions re-  
24                  ferred to in subsection (g)(2)(C).

25                  “(4) ENFORCEMENT.—

1           “(A) ENFORCEMENT ACTIONS IN UNITED  
2 STATES COURTS.—Each United States district  
3 court and each United States court of a place  
4 subject to the jurisdiction of the United States  
5 shall have jurisdiction of enforcement actions  
6 brought under this section. Such an action may  
7 be brought in any judicial district in the State  
8 in which the violation of this section is alleged  
9 to have been committed, the judicial district in  
10 which the Federal Aviation Administration has  
11 its principal office, or the District of Columbia.

12           “(B) ATTORNEY FEES.—The court may  
13 assess against the Federal Aviation Administra-  
14 tion reasonable attorney fees and other litiga-  
15 tion costs reasonably incurred in any case  
16 under this section in which the complainant has  
17 substantially prevailed.”.

18           (b) APPLICATION.—On and after the date of enact-  
19 ment of this Act, any changes implemented by the Admin-  
20 istrator of the Federal Aviation Administration on and  
21 after July 10, 2005, under section 40122(a) of title 49,  
22 United States Code (as in effect on the day before such  
23 date of enactment), without the agreement of the exclusive  
24 bargaining representative of the employees of the Adminis-  
25 tration certified under section 7111 of title 5, United

1 States Code, shall be null and void and the parties shall  
2 be governed by their last mutual agreement before the im-  
3 plementation of such changes. The Administrator and the  
4 bargaining representative shall resume negotiations  
5 promptly, and, subject to subsection (c), their last mutual  
6 agreement shall be in effect until a new contract is adopt-  
7 ed by the Administrator and the bargaining representa-  
8 tive. If an agreement is not reached within 45 days after  
9 the date on which negotiations resume, the Administrator  
10 and the bargaining representative shall submit their issues  
11 in controversy to the Federal Service Impasses Panel in  
12 accordance with section 7119 of title 5, United States  
13 Code, for binding arbitration in accordance with para-  
14 graphs (2)(B), (3), and (4) of section 40122(a) of title  
15 49, United States Code (as amended by subsection (a) of  
16 this section).

17 (c) SAVINGS CLAUSE.—All cost of living adjustments  
18 and other pay increases, lump sum payments to employ-  
19 ees, and leave and other benefit accruals implemented as  
20 part of the changes referred to in subsection (b) may not  
21 be reversed unless such reversal is part of the calculation  
22 of back pay under subsection (d). The Administrator shall  
23 waive any overpayment paid to, and not collect any funds  
24 for such overpayment, from former employees of the Ad-

1 ministration who received lump sum payments prior to  
2 their separation from the Administration.

3 (d) BACK PAY.—

4 (1) IN GENERAL.—Employees subject to  
5 changes referred to in subsection (b) that are deter-  
6 mined to be null and void under subsection (b) shall  
7 be eligible for pay that the employees would have re-  
8 ceived under the last mutual agreement between the  
9 Administrator and the exclusive bargaining rep-  
10 resentative of such employees before the date of en-  
11 actment of this Act and any changes were imple-  
12 mented without agreement of the bargaining rep-  
13 resentative. The Administrator shall pay the employ-  
14 ees such pay subject to the availability of amounts  
15 appropriated to carry out this subsection. If the ap-  
16 propriated funds do not cover all claims of the em-  
17 ployees for such pay, the Administrator and the bar-  
18 gaining representative, pursuant to negotiations con-  
19 ducted in accordance with section 40122(a) of title  
20 49, United States Code (as amended by subsection  
21 (a) of this section), shall determine the allocation of  
22 the appropriated funds among the employees on a  
23 pro rata basis.

1           (2) AUTHORIZATION OF APPROPRIATIONS.—

2           There is authorized to be appropriated \$20,000,000  
3           to carry out this subsection.

4           (e) INTERIM AGREEMENT.—If the Administrator and  
5           the exclusive bargaining representative of the employees  
6           subject to the changes referred to in subsection (b) reach  
7           a final and binding agreement with respect to such  
8           changes before the date of enactment of this Act, such  
9           agreement shall supersede any changes implemented by  
10          the Administrator under section 40122(a) of title 49,  
11          United States Code (as in effect on the day before such  
12          date of enactment), without the agreement of the bar-  
13          gaining representative, and subsections (b) and (c) shall  
14          not take effect.