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Legislative Bulletin……………………………..………September 20, 2007

Contents:

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: Unknown

Total Cost of Discretionary Authorizations: $51 billion over four years

Effect on Revenue: $863 million increase over five years.

Total Change in Mandatory Spending: According to the CBO score, a reduction of $336 million over five years, compared to current law, and an increase of $216 million over ten years. However, H.R. 2881 also includes $3.7 billion over ten years in increased contract authority for the Airport Improvement Program.

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: Several. CBO notes three in particular: a prohibition on operating aircraft not in compliance with low-noise criteria, a revised schedule of fees for certain services of the FAA, and requirements on air carriers related to airline service.

Number of *Bills* Without Committee Reports: 0

Number of *Reported* Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 2881 — FAA Reauthorization Act of 2007 *(Oberstar, D-MN)*

Order of Business: H.R. 2881 is expected to be considered on Thursday, September 20, subject to a structured rule (H.Res. 664) that makes in order eight amendments.

Summary:

Cost:

- **Discretionary Spending Levels.** H.R. 2881 authorizes \$12.3 billion of discretionary spending in FY 2008 and \$51 billion over four years—this compares to \$11 billion in FY 2007.

- **Mandatory Spending.** CBO estimates that H.R. 2881 would reduce entitlement spending *outlays* (the relevant figure in judging PAYGO compliance) by \$336 million over five years and increase entitlement spending outlays by \$216 million over ten years.

- **Contract Authority.** H.R. 2881 includes a large increase in contract authority for the Airport Improvement Program—\$1.1 billion over four years and \$3.7 billion over ten years, which CBO scores as an increase in mandatory spending *budget authority*. Since this spending is subject to obligation limitations during the appropriations process (essentially budget caps), CBO does not project *any* effect on outlays from this \$3.7 billion increase in contract authority for the Airport Improvement 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**. This program provides funding for infrastructure and systems for communications, navigation, and radar surveillance related to air travel. In 2007, \$2.5 billion was provided for this program. H.R. 2881 authorizes \$13 billion over four years for discretionary spending as follows:
  - 2008—\$3.1 billion (a 25 percent increase from FY 2007)
  - 2009—\$3.2 billion
  - 2010—\$3.3 billion
  - 2011—\$3.4 billion

- **FAA Operations**—used for salaries as well as other expenses to run the FAA. In 2007, \$8.3 billion was provided for this purpose. H.R. 2881 authorizes \$36.6 billion over four years for discretionary spending as follows:
  - 2008—\$8.7 billion (a 5 percent increase from FY 2007)
  - 2009—\$9 billion

- 2010—$9.3 billion
- 2011—$9.6 billion

__Other Notable Spending Provisions__

- **Federal Cost Share for Airport Improvement Program (AIP).** H.R. 2881 increases the federal cost share from 90 to 95 percent for AIP projects in certain economically distressed communities.

- **Reports and Studies.** H.R. 2881 would require numerous reports and studies to be completed by various federal agencies—according to the staff of the Transportation and Infrastructure Committee (Republican) the total figure is 40. This increases the cost of the bill. As CBO notes, H.R. 2881 would spend $25 million over five years (subject to appropriation) for various "studies, reports, and activities to be carried out by the FAA, DOT, and other agencies."

- **Essential Air Service.** The bill increases the authorization for the Essential Air Service (EAS) program from $77 million to $83 million. Over five years, this increases authorized discretionary spending by $30 million. The Administration's SAP notes this as an item of concern and states: "This program is a relic of the regulatory era, subsidizes uneconomic air service and has not kept pace with consumer choices." Past RSC budgets proposed to eliminate funding for this program.

- **Small Community Air Service Development Program.** H.R. 2881 extends this program's authorization through FY 2011 at the current level of $35 million a year. The Administration's SAP argues that the "program was originally implemented as a temporary pilot effort and was not intended to be a permanent subsidy."

- **PFC Eligibility for Bike Storage.** H.R. 2881 opens up PFC funding for bike storage facilities and requires the FAA to submit a report to Congress "on the progress being made by airports to install bicycle parking for airport customers and airport employees." This is intended to increase access to airports for bicycles.

__Tax Increases/ Revenue Provisions__:

- **Tax Increases on Aviation Gasoline.** The tax is increased from 19.3 cents to 24.1 cents. Joint Committee on Taxation (JCT) scores this provision as increasing taxes by $42 million over five years.

- **Tax Increase on Aviation-grade Kerosene.** The tax is increased from 21.8 cents to 35.9 cents. JCT scores this provision as increasing taxes by $821 million over five years.

- **Extension of all current air transportation and aviation fuel taxes.** These taxes would otherwise expire on September 30, 2007. JCT scores this provision as having no revenue effect.

- **Passenger Facility Fee Increase.** The Passenger Facility Charge (PFC) is currently set at a maximum of $4.50 per passenger. H.R. 2881 would allow an increase to a maximum of $7.00, which is a 56 percent increase from the maximum provided by current law. This increases revenues to local governments—the fee is collected by airport agencies and used to fund airport infrastructure.

  CBO estimates that this provision will *decrease* federal revenues by $67 million over the next five years and by $315 million over the next ten years. This projected revenue decrease results from CBO's calculation that the higher fee will result in "increased tax-exempt financing for airport construction and related projects and, consequently, reduce federal revenues."

  Representatives Lampson and Poe offered an amendment to the Rules Committee to strike the PFC increase, but it was not made in order under the rule.

- **Overflight Fees.** Requires the FAA to change overflight fees to reflect the costs to the FAA of servicing these flights and to implement the new fees on October 1, 2008 (the first day of FY 2009). An overflight is a flight that neither takes off nor lands in the U.S. but flies over U.S. airspace. CBO estimates that the cost to the FAA of supporting overflights currently exceeds revenues from fees by $18 million and that eliminating the shortfall would increase revenues by $74 million over the first four years and by $177 million over the FY 2009-FY 2017 period.

Air Traffic Controllers Compensation:

- **Overturns Current Air Traffic Controllers Contract.** Section 601 of the bill would repeal the FAA's changes to air traffic controllers compensation enacted in April 2006, after a breakdown in negotiations between the union and the FAA. Section 601 is championed by the air traffic controllers union who want to prevent the current FAA compensation policy from staying in effect and instead require the FAA and National Air Traffic Controllers Association (NATCA) to renegotiate a new contract. Both the FAA and NATCA agree that Section 601 will lead to higher compensation for the air traffic controllers at a resulting higher cost to the taxpayers.

  According to the FAA, the current contact would save taxpayers $1.9 billion over five years and $7.5 billion over ten years in comparison to the previous 1998 contract. CBO estimates that Section 601 of the bill would require $477 million over four years of additional spending subject to appropriation.

  The FAA points out that the Air Traffic Controllers are already very well compensated, particularly for federal employees and earn $130,000 on average in cash compensation (not including benefits).

Other Provisions

- **Increase in Pilot Retirement Age.** FAA regulations require pilots to retire at age 60. H.R. 2881 increases the mandatory retirement age to 65. However, on international flights, a pilot over the age of 60 is prohibited from piloting the plane unless there is also a pilot under 60 on the flight crew.

- **Inspection of Foreign Repair Stations.** Within one year of enactment, the bill mandates that the FAA inspect every FAA-certificated repair station outside the U.S. The Administration expresses opposition to this provision in its SAP, arguing that current safety oversight efforts are adequate and that this requirement in the bill would harm efforts to work out reciprocal agreements that allow the U.S. to perform repair-station inspections on its behalf.

- **OSHA Regulations.** H.R. 2811 requires the FAA Administrator to establish benchmarks in coordination with the OSHA Administrator, on issues related to the work environment in an airplane cabin.

- **Extension of Aviation Insurance.** Under current law, the FAA offers two insurance programs that insure against losses resulting from terrorist attacks. One program serves commercial air carriers, and the other serves air carriers that participate in the Civil Reserve Air Fleet (CRAF). H.R. 2881 would extend both programs, currently set to expire on March 30, 2008 through the end of FY 2017. CBO estimates that this extension would reduce mandatory spending by $30 million over the next ten years, but increases net mandatory spending beyond 2017.

- **Air Carrier Citizenship.** H.R. 2881 requires that in order for an airline to be classified as under the "actual control of citizens of the United States," U.S. citizens have to be in control of all matters related to the business and the structure of the airline. The Administration's SAP argues that this provision is harmful to the U.S. negotiating position under the United States/ European Union "open skies plus" agreement.

- **FedEx Union Provision.** H.R. 2881 changes the labor laws applicable to one company, FedEx Express. FedEx Express was created as an airline and, as a result, under current law is subject to the Railway Labor Act. This provision would put FedEx Express under the National Labor Relations Act. The main difference between the two labor laws is that the Railway Labor Act requires unions to organize nationally, while the National Labor Relations Act allows unions to organize locally. The Railway Labor Act requires unions to organize nationally, instead of locally, because of the impact a local strike would have on the company's entire national transportation system.

<u>Possible Conservative Concerns:</u>

- **Taxes.** Some conservatives may be concerned about the two tax increases that the rule self-executes into the bill, as adopted by the Ways and Means Committee, which raise taxes by a combined $863 million. Specifically, the tax increases on aviation-grade kerosene and the tax increase on aviation gasoline. The bill also includes an increase in the Passenger Facility Fee from $4.50 to $7.00. Some conservative groups, such as the National Taxpayers Union

(NTU), have expressed concerns that this provision is also a tax increase (even though at the federal level it actually loses revenues).

- **Spending.** Some conservatives may be concerned by the higher authorized spending levels for several programs as well as how some of this spending is prioritized. For example, the bill allows PFC funds to be used for bicycle paths and the numerous reports and studies the bill requires would cost taxpayers $25 million.

- **Union Provisions.** Some conservatives may be concerned with the provision overturning the current Air Traffic Controllers contract with an anticipated higher cost to the taxpayer, as well as the provision that makes it possible for FedEx Express unions to unionize at the local level.

Amendments Made in Order under the Rule (H.Res. 664):

All amendments are debatable for 10 minutes.

1. ***Oberstar* (D-MN): Manager's Amendment**: Among other things, requires the FAA to issue occupational safety and health standards for flight attendants aboard aircraft, requires a GAO study on the "Essential Air Service Subsidy Cap", requires the Department of Transportation's Inspector General to issue a report of air carrier flight delays and cancellations, and establishes an advisory committee for aviation consumer protection.

2. **LaTourette (R-OH):** Authorizes the Secretary to assist Lake County's purchase of the Lost Nation Airport by providing a grant to Lake County with a 90 percent federal cost share and a $1.22 million maximum federal cost.

3. **Poe (R-TX):** Amends the bill's inspection of foreign repair stations requirement (as described above) to require testing for alcohol and controlled substances of individuals employed at these stations who perform safety-sensitive work.

4. **Shays (R-CT)/ Garrett (R-NJ):** Requires the GAO to conduct a study within six months after enactment to among other things report on "effective strategies to alleviate congestion in the national airspace at airports during peak times."

5. ***Waters* (D-CA):** Section 807 of the bill establishes a working group on consolidation and realignment of FAA facilities. This amendment allows representatives of employees of regional offices to be part of the working group.

6. ***Udall* (D-NM):** Requires the Secretary of Transportation to issue regulations within 180 days of enactment on annual training for flight attendants and gate attendants on serving alcohol, dealing with disruptive passengers, and recognizing intoxicated persons.

7. ***Klein* (D-FL):** Subject to appropriation, requires the Secretary of Transportation to investigate consumer complaints in a number of areas including among other things cancelled flights, overbooked flights, and misleading advertising.

8. **Neugebauer (R-TX):** Within one year of enactment, requires an FAA study to be conducted on "the feasibility of developing a publicly searchable, Internet web-based resource that provides information regarding the acceptable height and distance that wind turbines may be installed in relation to aviation sites and the level of obstruction such turbines may present to such sites."

Earmark Compliance: According to Committee Report 110-331, "Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2881, does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI of the Rules of the House of Representatives."

Committee Action: H.R. 2881 was introduced on June 27, 2007, and referred the House Committee on Transportation and Infrastructure, which held a mark-up on June 28, 2007 and approved the bill as amended by voice vote.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The bill includes a tax increase of more than $800 million over five years and authorizes higher levels of discretionary spending.

Constitutional Authority: Committee Report 110-331 cites constitutional authority in Article 1, Section 8 of the Constitution.

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