

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF  
CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 658), to amend title 49, United States Code, to authorize appropriations for the Federal Aviation Administration for fiscal years 2011 through 2014, to streamline programs, create efficiencies, reduce waste, and improve aviation safety and capacity, to provide stable funding for the national aviation system, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The committee of conference met on January 31, 2012 (the Senate chairing), and resolved their differences. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.



## TITLE

### *House Bill*

"FAA Reauthorization and Reform Act of 2011".

### *Senate Bill*

"FAA Air Transportation, Modernization, and Safety Improvement Act".

### *Conference Substitute*

"FAA Modernization and Reform Act of 2012"

## AMENDMENTS TO TITLE 49, UNITED STATES CODE.

## TERM

### *House Bill*

2011 through 2014.

### *Senate Bill*

2010 through 2011.

### *Conference Substitute*

2012 through 2015.

## TITLE I – AUTHORIZATIONS

### AUTHORIZATION LEVELS (\$ IN BILLIONS)

#### **H101(a),102,103/S101,102,103,104**

##### *House bill*

Section 101(a) authorizes the Federal Aviation Administration's (FAA) Airport Improvement Program (AIP) account at: \$3.176 billion for Fiscal Year (FY) 2011; \$3 billion for FY 2012; and \$3 billion for FY 2013; and \$3 billion for FY 2014. It prohibits the use of AIP funds for carrying out the Airport Cooperative Research Program or the Airports Technology Research Program and extends the obligational authority to September 30, 2014. It makes funds obligated in subsection (a) available until they are spent.

Section 102 authorizes the FAA's Facilities and Equipment (F&E) account at: \$2.7 billion for FY 2011 and \$2.6 billion for FYs 2012 through FY 2014. It removes references to the following accounts: enhanced safety and security for aircraft operations in the Gulf of Mexico; operational benefits of wake vortex advisory system; ground based precision navigational aids; ground based precision navigation; standby power efficiency program; and a pilot program to provide incentives for development of new technologies.

Section 103 authorizes the FAA's Operations account at: \$9.403 billion for FY 2011 and \$9.168 billion for FYs 2012 through FY 2014. It authorizes expenditures necessary for: the Air Traffic Control Collegiate Training Initiative; completion of Alaska aviation safety project regarding 3-D mapping of main aviation corridors; and carrying out the Aviation Safety Reporting System. The FAA's expenditure authority is also extended through 2014. The

Secretary of Transportation is permitted to transfer funds from non-safety related programs if appropriated funds are insufficient to meet salary, operations, and maintenance expenses.

*Senate bill*

Section 101 authorizes the FAA's Operations account at \$9.336 billion in FY 2010 and \$9.62 billion in FY 2011.

Section 102 authorizes the FAA's Facilities and Equipment account at \$3.5 billion in FY 2010, of which \$500 million would be derived from the newly-created Air Traffic System Modernization Account (ATSMA); and \$3.6 billion in FY 2011, of which \$500 million would be derived from the new account established by this section.

Section 103 authorizes the FAA's Research, Engineering and Development(R, E&D) account at \$200 million in FY 2010 and \$206 million in FY 2011. It replaces current statutory language in —§48102(a) (which has a breakdown of how the money should be allotted) with the authorization levels only and strikes several paragraphs for the R,E,&D account. It requires the FAA to establish a grant program to promote aviation research at undergraduate and technical colleges, including schools serving Historically Black Colleges and Universities (HBCU) students, Hispanic, Native Alaskan and Hawaiian populations.

Section 104 authorizes the FAA's AIP account at \$4.0 billion for FY 2010 and \$4.1 billion in FY 2011.

*Conference Substitute*

The conference committee agreed to the following funding levels:

Section 101 authorizes the FAA's Airport Improvement Program (AIP) account at \$3.35 billion for FY 2012 through FY 2015.

Section 102 authorizes the FAA's Facilities and Equipment (F&E) account at: \$2.731 billion for FY 2012, \$2.715 for FY 2013, \$2.730 billion for FY 2014 and FY 2015.

Section 103 authorizes the FAA's Operations account at: \$9.653 billion for FY 2012, \$9.539 billion for FY2013, \$9.596 billion for FY 2014, and \$9.653 billion for FY2015.

Section 901 authorizes the FAA's Research Engineering and Development (R,E&D) account at \$168 million annually for FY 2012 through 2015.

## FUNDING OF AVIATION PROGRAMS

### **H104/S105**

*House bill*

Section 104 modifies the formula that determines the amount made available from the Airport and Airways Trust Fund (Trust Fund) each year to fund the FAA. The section requires the Trust Fund support for aviation programs in FY 2011 be equal to 90 percent of the estimated Trust Fund revenue (taxes plus interest). In FY 2012, FY 2013 and FY 2014, the Trust Fund appropriation should equal the sum of 90 percent of the estimated Trust Fund revenue, plus the difference between actual revenue and the Trust Fund appropriation in the second preceding fiscal year. It extends the authorization of appropriations for the general fund to 2014 and makes technical corrections by striking "level" and inserting "estimated level" and by striking "level of receipts plus interest" and replacing it with "estimated level of receipts plus interest." Lastly, it amends enforcement of guarantees by inserting 2014 in place of 2007.

*Senate bill*

Section 105 extends the budgetary treatment for the FAA's accounts through FY 2011.

*Conference Substitute*

House bill modified by moving the dates in the bill forward by one year.

DELINEATION OF NEXT GENERATION AIR TRANSPORTATION SYSTEMS

**H105/S106**

*House bill*

Section 105 requires the list of capital projects that are part of the Next Generation Air Transportation System (NextGen) system be included in the Airway Capital Investment Plan.

*Senate bill*

Section 106 is a similar provision.

*Conference Substitute*

House bill.

FUNDING FOR ADMINISTRATION EXPENSES FOR AIRPORT IMPROVEMENT  
PROGRAM

**H106/S107(a)(b)**

*House bill*

Section 106 authorizes funds for the Airport Improvement Program (AIP) administrative expenses (i.e., AIP approval and oversight, national airport system planning, airport standards development and enforcement, airport certification, and airport-related environmental activities).

*Senate bill*

Section 107(a) (b) authorizes the administrative expenses for the FAA's airports program through FY 2011.

*Conference Substitute*

No provision.

PASSENGER FACILITY CHARGES

**H111/S201(b)**

*House bill*

Section 111 defines Passenger Facility Charge (PFC), makes permanent a pilot program that allows the collection of PFCs at non-hub airports, and makes a technical correction changing references of PFCs from "fees" to "charges."

*Senate bill*

Section 201(b) makes a technical correction changing references of PFC from "fees" to "charges".

*Conference Substitute*

House bill.

## AIRPORT ACCESS FLEXIBILITY PROGRAM

### **H112/S201(a)**

#### *House bill*

Section 112 establishes a pilot program, at no more than five airports, for off-airport intermodal ground access projects related to movement of airport passengers/property, subject to certain conditions.

#### *Senate bill*

Section 201(a) streamlines the administrative requirements associated with PFCs, while retaining audit controls and FAA project and expenditure oversight. It provides requirements on any airport authority wishing to increase its PFC, or wishing to impose a PFC to finance an intermodal ground facility.

#### *Conference Substitute*

No provision.

## GAO STUDY OF ALTERNATIVE MEANS OF COLLECTING PFCs

### **H114(a),113/S202**

#### *House bill*

Section 114(a) defines "qualifications-based selection" (QBS) as a competitive procurement process under which firms compete for capital improvement projects on the basis of qualifications, past experience, and specific expertise.

Section 113 instructs the U.S. Government Accountability Office (GAO) to conduct a study of alternative means of PFC collection to allow such charges be collected without being included in the ticket price.

#### *Senate bill*

Section 202 requires a pilot program for direct collection of PFCs via the internet or other means, except through air carriers, under which there would be no cap on the PFC. The GAO is directed to conduct a study of potential alternative means of PFC collection.

#### *Conference Substitute*

House bill modified by dropping definition of QBS.

## QUALIFICATIONS-BASED SELECTION

### **H114(b)/S--**

#### *House bill*

Section 114(b) expresses the sense of Congress that airports should consider the use of qualifications-based selection in carrying out capital improvement projects using PFCs collected with the goal of serving the needs of all stakeholders.

#### *Senate bill*

No similar provision.

*Conference Substitute*  
House bill.

#### REFORM AND STREAMLINING OF PFC AUTHORITY AND COLLECTION

**H--/S201(a)**

*House bill*

No similar provision.

*Senate bill*

Section 201(a) eliminates the existing statutory requirement that PFC funding may only be used for airport capital projects that preserve or enhance airport capacity, safety, or security, or reduce noise. It expedites the PFC application process by directing collection to begin upon filing of annual reports containing required information and after consultation with carriers and public notice requirements instead of waiting for FAA approval of each PFC application. This section establishes a process for filing objections to a PFC project, and allows the Secretary of Transportation to investigate excessive PFC collections or for revenue not being used per law. It provides exceptions to new processes used for intermodal ground access projects and for an increase in PFC, both of which require prior FAA approval before collection.

*Conference Substitute*  
House bill.

#### TECHNICAL AMENDMENTS AND PFC PILOT PROGRAM AT NON-HUB AIRPORTS

**H111(b)/S201(a)**

*House bill*

Section 111(b) makes the pilot program for collecting PFCs at non-hub airports permanent.

*Senate bill*

Section 201(a) is a similar provision with minor technical differences.

*Conference Substitute*  
House bill.

#### PFC ELIGIBILITY FOR BICYCLE STORAGE FACILITIES

**H--/S207(b)**

*House bill.*

No provision.

*Senate bill*

Section 207(b) prohibits PFCs from being used to construct bicycle storage facilities.

*Conference Substitute*  
House bill.

## UPDATE ON OVERFLIGHTS

### **H121/S706**

#### *House bill*

Section 121 requires the FAA to guarantee existing overflight fees are reasonably related to agency costs for providing air traffic services, and requires the FAA to adjust the fees and begin collection of the appropriate amount. The FAA is authorized to periodically modify the fee based on the cost of providing such service.

#### *Senate bill*

Section 706 is similar to the House provision, but it directs the FAA to establish an Aviation Rulemaking Committee (ARC) to review overflight fees which the FAA must consult with before making any adjustments to the fees or collection is made.

#### *Conference Substitute*

House bill modified by removing language creating a special rule for FYs 2011 through 2015 which specified that "in each of fiscal years 2011 through 2015, section 45303(c) shall not apply to any increase in fees collected pursuant to a final rule described in paragraph (4)" and by removing language to issue a final rule with respect to the NPRM published in the Federal Register on September 28, 2010.

## REGISTRATION FEES

### **H122/S--**

#### *House bill*

Section 122 requires the FAA to establish fees for registration, certification and related services. It specifies amounts for such fees in the provision for eleven services, and requires the FAA to periodically adjust the fees when cost data reveal that the cost of providing the service changes. Lastly, it specifies that fees should be treated as offsetting collections subject to appropriations.

#### *Senate bill*

No similar provision.

#### *Conference Substitute*

House bill, but with no amounts specified for the fees.

## AIRPORT MASTER PLANS

### **H131/S--**

#### *House bill*

Section 131 requires that airport master plans and systems include in their goals a requirement to consider passenger convenience, airport ground access, and access to airport facilities.

#### *Senate bill*

No similar provision.

*Conference Substitute*  
House bill.

## AEROTROPOLIS TRANSPORTATION SYSTEMS

### **H132/S3--**

*House bill*

Section 132 directs the Secretary of Transportation to encourage development of aerotropolis transportation systems, which are planned and coordinated multimodal freight and passenger transportation networks that provide efficient, cost-effective, sustainable, and intermodal connectivity to a defined region of economic significance centered around a major airport, as determined by the Secretary.

*Senate bill*

No similar provision.

*Conference Substitute*  
Senate bill.

## AIRPORT IMPROVEMENT PROGRAM (AIP) DEFINITIONS

### **H133/S208(j),215,714(a)**

*House bill*

Section 133(a)(1) broadens eligibility for AIP spending to include firefighting and revenue equipment at an airport that serves scheduled passenger operations of air carrier aircraft designed for more than nine passengers instead of the current limit of 20.

Section 133(a)(2) allows AIP funds to be used for glycol recovery vehicles.

Section 133(a)(3) permits AIP funds to be used for mobile refueler parking within a fuel farm at a non-primary airport, if required by an Environmental Protection Agency (EPA) rule, terminal development costs, air conditioning/heating/electricity from terminal facilities, and equipment for parked aircraft to reduce energy consumption.

Section 133(b) amends the definition of airport planning to include an environmental management system and recycling.

Section 133(c) defines "general aviation airport."

Section 133(d) defines "revenue producing aeronautical support facilities," which allows non-primary airports to use their entitlements to build or rehabilitate new facilities that can help generate revenue.

Section 133(e) redefines "terminal development" to include development of an airport passenger terminal building, including gates and access roads and walkways.

*Senate bill*

Section 208(j) is the same provision as House section 133(a)(3).

Section 215 is the same provision as House section 133(a)(2).

No similar provision.

No similar provision.

Section 714(a) is the same provision as House section 133(b).

No similar provision.

No similar provision.

*Conference Substitute*  
House bill.

## RECYCLING PLANS FOR AIRPORTS

### **H134/S714(b)**

*House bill*

Section 134 requires airport master plans to: address the feasibility of solid waste recycling at an airport, minimizing the generation of waste, operation and maintenance requirements, the review of waste management contracts, and the potential for cost savings or the generation of revenue.

*Senate bill*

Section 714(b) is a similar provision, but includes additional requirements for master plans.

*Conference Substitute*  
House bill.

## CONTENTS OF COMPETITION PLANS

### **H135/S--**

*House bill*

Section 135 removes requirements for "patterns of air services" and "airfare levels (as compiled by DOT) compared to other large airports" from the requirements of a competition plans for PFC charges.

*Senate bill*

No similar provision.

*Conference Substitute*  
House bill.

## GRANT ASSURANCES

### **H136/S203**

*House bill*

Section 136(a),(b) permits the Secretary of Transportation to allow grants to be used for relocating or replacing existing airport facilities.

Section 136(b)(1) revises requirements on acquiring lands to permit an airport to keep any funds obtained from the sale of lands acquired for noise compatibility purposes and reinvest those funds in the airport or transfer those funds to another airport consistent with the statute. It removes a requirement to return the proportion equal to the government share in acquiring the land to the Secretary.

Section 136(b)(2) sets the priorities which apply to the Secretary's decision to approve reinvestment or transfer of proceeds from the sale of land acquired for noise compatibility. Priorities are: 1) reinvestments in an approved noise compatibility project; 2) reinvestment in an approved project that is eligible for funding; 3) reinvestment in an approved airport development

project that is eligible for funding under §47114, 47115, or 47117; 4) transfer to a sponsor of another public airport to be reinvested in an approved noise compatibility project; and 5) deposit into the Airport and Airway Trust Fund.

Section 136(c) makes a technical correction to 47107(e)(2)(iii) by deleting "the Fund" and inserting "the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986."

Section 136(d) makes the Competition Disclosure Requirement pilot program permanent. No similar provision.

#### *Senate bill*

Section 203 is a similar provision.

Section 203 is similar, but allows airports that receive improvement grants for the purchase of land to lease the land and develop the land in a manner compatible with noise buffering purposes.

Section 203 adds that a lease by an airport owner or operator of land acquired for a noise compatibility purpose using an improvement grant will not be considered a disposal, and allows revenues from the lease to be used for ongoing airport operational and capital purposes.

No similar provision.

No similar provision.

Section 203 adds the phrase "serving as noise buffer land" to clarify that such land is one of the land acquisitions subject to disposal at the earliest practicable time after it is no longer needed for the intended noise compatibility purpose.

#### *Conference Substitute*

House bill with the language from the Senate bill section 203 related to "serving as noise buffer land" added.

### AGREEMENTS GRANTING THROUGH-THE-FENCE ACCESS TO GENERAL AVIATION AIRPORTS

#### **H137/S--**

##### *House bill*

Section 137 requires that the sponsor of a general aviation airport will not be in violation of a grant assurance as a condition for the receipt of federal funds solely because the sponsor entered into an agreement to allow a person, who owns residential real property adjacent to the airport, access to the airfield of the airport.

##### *Senate bill*

No similar provision.

##### *Conference Substitute*

House bill modified to include language in the agreement between an airport sponsor and a property owner prohibiting any aircraft refueling from occurring on that property, and includes a definition of "general aviation airport".

### GOVERNMENT SHARE OF PROJECT COSTS

#### **H138/S204,207**

*House bill*

Section 138 adds a special rule for transition from small hub to medium hub which limits the government share of funding to 90 percent for the first two years following the change in status. The government share is set at 95 percent for a project at an airport that is receiving subsidized air service and is located in an area that meets one or more of the criteria for economically depressed communities established by the Secretary of Commerce.

*Senate bill*

Section 204(a) establishes a special rule to allow for small hub airports that have increased operations and therefore are being reclassified as medium hub airports to retain their eligibility for two years at up to a 95 percent government share of projects costs.

Section 204(b) extends the project cost for transitioning Airport Improvement Project (AIP) projects through FY 2011.

Section 207 sets the government share at 95 percent for certain projects at small airports if it is funded by a grant issued to, and administered, by a State under the State block grant program or for any project at an airport other than a primary airport having at least 0.25 percent of the total number of passenger boardings at all commercial service airports.

*Conference Substitute*

House bill.

## ALLOWABLE PROJECT COSTS

### **H139/S214,205**

*House bill*

Section 139(a) amends allowable AIP project costs to include costs for airport development incurred prior to the execution of the grant agreement if: 1) the cost is incurred in the same fiscal year as the execution of the grant agreement; 2) the cost was incurred before execution due to a short construction season in the vicinity of the airport; 3) the cost is in accordance with the approved airport layout plan; 4) the sponsor notifies the Secretary of Transportation before commencing work; 5) the sponsor has an alternative funding source available to fund the project; and/or 6) the sponsor's decision to proceed with the work does not affect the priority assigned to the project by the Secretary for the allocation of discretionary funds.

Section 139(b) amends allowable AIP project costs to include costs incurred to improve the efficiency of an airport building (i.e., a measure designed to meet one or more of the criteria for being considered a high-performance green building as set forth under the Energy Independence and Security Act of 2007), and: 1) the measure is for a project for airport development; 2) the measure is for an airport building that is otherwise eligible for construction assistance; and/or 3) if the measure results in an increase in initial project costs, the increase is justified by expected savings over the life cycle of the project.

Section 139(c) provides the Secretary discretion in determining that the costs of relocating or replacing and airport-owned facility are allowable, to those instances in which: 1) the Government's share will be paid with funds apportioned to the airport sponsor; 2) the Secretary determines that the relocation or replacement is required due to a change in the Secretary's design standards; and 3) the Secretary determines the change is beyond the control of the sponsor.

Section 139(d) clarifies that the Secretary may determine that the cost of constructing revenue-producing aeronautical support facilities at non-primary airports is allowable.

No similar provision.

*Senate bill*

Section 214 is a similar provision to House section 142(a), but requires the Secretary to consider the short construction season in some areas when selecting projects for AIP discretionary funding.

No similar provision.

Section 205 is a similar provision to House section 139(c).

No similar provision.

Section 205 includes a requirement for the Administrator to analyze the conclusions of ongoing studies with commercially available bird radar systems within 180 days of enactment and, if it is determined that the systems have no negative impact on existing navigational aids and that the expenditure is appropriate, shall allow purchase of bird-detecting radar systems as an allowable airport development project cost. If the Administrator concludes that such radar systems will not improve or will negatively impact airport safety, the Administrator shall issue a report explaining that determination.

*Conference Substitute*

House bill with the inclusion of Senate language on bird radar systems and short construction season.

## VETERANS' PREFERENCE

### **H140/S208(b)**

*House bill*

Section 140 amends the definition of "Vietnam-era veteran" and adds veterans from the Afghanistan/Iraq conflict and Persian Gulf War to the definition of those veterans eligible for employment preference on Airport Improvement Program (AIP) projects. It adds a provision requiring that a contract involving labor for carrying out an airport development project under a grant agreement include a preference for the use of small business concerns owned and controlled by disabled veterans.

*Senate bill*

Section 208(b) is a similar provision.

*Conference Substitute*

House bill.

## MINORITY AND DISADVANTAGED BUSINESS PARTICIPATION

### **H141,822/S715,703**

*House bill*

Section 141 requires the Secretary to establish, within a year of enactment, a mandatory training program for certain airport agents or officials on certifying whether a small business concern qualifies as a small business concern owned and controlled by socially and economically disadvantaged individuals under the Disadvantaged Business Enterprise (DBE) Program.

Section 822 requires the Inspector General of the Department of Transportation (DOT IG) to report on the number of new small business concerns owned and controlled by socially and economically disadvantaged individuals, including those owned by veterans, that participated in the programs and activities funded using the amounts made available under this Act.

No similar provision.

No similar provision.

*Senate bill*

Section 715(c) is a similar provision to House section 141.

Section 703 authorizes the appointment of three staff to implement the training program.

Section 715(a),(b),(d),(e),(f) adjusts the personal net worth cap for individuals participating in the DBE program.

Section 715(g) directs the Secretary to create a program to eliminate barriers to small business participation in contract and issue a final rule within one year of enactment.

*Conference Substitute*

The conference committee agreed to a modified and merged version of House and Senate bills, including findings of the Senate bill, with clarifications, recounting evidence of discrimination and concluding that a compelling need exists for continuation of the airport disadvantaged business enterprise (DBE) program and the airport concessions DBE program.

## SPECIAL APPORTIONMENT RULES

### **H142/S208(i),(h)**

*House bill*

Section 142(a) gives the Secretary of Transportation authority to apportion to an airport sponsor in a fiscal year an amount equal to the minimum apportionment available to the airport sponsor in the previous fiscal year, if the airport received scheduled or unscheduled air service from a large certificated carrier in the calendar year used to calculate the apportionment, and the airport had more than 10,000 passenger boardings in the calendar year used to calculate the apportionment.

Section 142(b) continues a special apportionment for airports that remain affected by the decrease in passengers following the terrorist attacks of September 11, 2001, through 2012.

No similar provision.

*Senate bill*

Section 208(i) is a similar provision to House section 142(a) and (b).

Section 208(h) amends the special apportionment categories by change the special apportionment from "thirty five percent" to a fixed amount of "\$300 million" annually for grants for various airport noise, compatible land use, and Clean Air Act compliance projects. It adds certain water quality mitigation projects to those on which such funds may be expended.

*Conference Substitute*

House Bill, section 142 with modified dates changed from "2011 and 2012" to "2012 and 2013", and Senate section 208(h) modified with the substitution of "35 percent, but not more than \$300 million".

## UNITED STATES TERRITORIES MINIMUM GUARANTEE

### **H143/S--**

#### *House bill*

Section 143 directs the Secretary of Transportation to apportion AIP amounts for airports in Puerto Rico, does not prohibit the Secretary from making project grants for airports in Puerto Rico from discretionary funds.

#### *Senate bill*

No similar provision.

#### *Conference Substitute*

House bill modified to include language that addresses Puerto Rico and other U.S. territories.

## APPORTIONMENT

### **H144/S--**

#### *House bill*

Section 144 resets the apportionment trigger from \$3.2 billion to \$3 billion.

#### *Senate bill*

No similar provision.

#### *Conference Substitute*

Senate bill.

## REDUCING APPORTIONMENTS

### **H145/S--**

#### *House bill*

Section 145 addresses inequitable application of apportionment fees charged to passengers in the state of Hawaii.

#### *Senate bill*

No similar provision.

#### *Conference Substitute*

House bill.

## MARSHALL ISLANDS, MICRONESIA, AND PALAU

### **H146/S704(a)**

#### *House bill*

Section 146 makes the Marshall Islands, Micronesia and Palau eligible for AIP discretionary grants and funding from the Small Airport Fund.

#### *Senate bill*

Section 704(a) is a similar provision.

*Conference Substitute*  
House bill.

## DESIGNATING CURRENT AND FORMER MILITARY AIRPORTS

**H147/S220,212**

*House bill*

Current law allows the Secretary of Transportation to designate current or former military airports eligible for grants under the Military Airport Program (MAP). Section 147(a) adds to the items that must be considered to approve a grant the requirement that it preserves or enhances minimum airfield infrastructure facilities at former military airports to support emergency diversionary operations for transoceanic flights in locations in U.S. jurisdiction or control, and where there is a lack of airports within the distance required by regulations.

Section 147(b) allows up to three general aviation airports to participate in the FAA's Military Airport Program.

Section 147(c) makes current or former military airports eligible to be considered for AIP funding if that airport is found to be critical to the safety of trans-oceanic air traffic.

*Senate bill*

No similar provision.

Section 220 is a similar provision to House section 147(b) and, however it allows a total of three general aviation airports to participate in the Military Airport Program.

Section 212 is a similar provision to House section 147(c).

*Conference Substitute*

House bill modified.

## CONTRACT TOWER PROGRAM

**H148/S432**

*House bill*

Section 148(a) directs the Secretary of Transportation to extend the low activity (Visual Flight Rules) level I air traffic control tower (ATC) contract program to other low-activity towers meeting the requirements set forth by the Secretary of Transportation where the airport operator has requested to participate in the program.

Section 148(a) also adds a special rule which alleviates the responsibility of the airport sponsor or State or local government to paying the portion of the costs that exceed the benefits for a period of 18 months after the Secretary determines that a level I tower operating under this program has a benefit to cost ratio of less than 1.0.

Section 148(b) caps the maximum allowable cost share for an airport with fewer than 50,000 annual passenger enplanements at 20 percent of the cost of operating an ATC tower under the contract tower program, and sunsets this requirement on September 30, 2014.

Section 148(b) also permits the Secretary to use excess funds from the contract tower program intended for level I towers to fund activities for non-approach contract towers.

Section 148(c) increases the maximum amount of funds that can be expended in carrying out the Contract Tower Program for non-approach contract towers at not more than \$8.5 million for each of FYs 2011 through 2014.

Section 148(d) increases the limitation on the amount of the federal share of the cost of construction of a non-approach control tower from \$1.5 million to \$2 million.

Section 148(e) requires the establishment of uniform safety standards and requirements for safety assessments of ATC towers that receive funding.

*Senate bill*

Section 432(b) is the same provision as House section 148(b) but caps the maximum allowable local share at 20 percent.

Section 432(a) is the same provision as House section 148(a).

Section 432(c) is a similar provision to House section 148(c), but it specifies that not more than \$9.5 million in FY 2010 and not more than \$10 million in FY 2011 can be used.

Section 432(d) is the same provision as House section 148(d).

Section 432(e) is the same provision as House section 148(e).

*Conference Substitute*

House bill modified by adjusting the authorization levels, and by deleting: 1) language capping the local cost share at 20 percent; and 2) provisions requiring the Secretary of Transportation to expand the Contract Tower Program. Under the agreement (in the modified section), the Secretary retains the authority to expand the program.

## RESOLUTION OF DISPUTES CONCERNING AIRPORT FEES

### **H149/S431**

*House bill*

Section 149 updates current law that addresses the resolution of disputes concerning airport fees by the Secretary of Transportation to include foreign air carriers in payment by airports under protest.

*Senate bill*

Section 431 is the same provision.

*Conference Substitute*

House bill.

## SALE OF PRIVATE AIRPORT TO PUBLIC SPONSOR

### **H150/S206**

*House bill*

Section 150(a) exempts funds from the sale of an airport to a public sponsor from use restrictions. This exemption applies where the Secretary of Transportation approves the sale, federal grants are provided for any portion of the public sponsor's acquisition of the airport, and certain amounts of remaining airport improvement grants are repaid to the Secretary.

Section 150(a) also specifies that recovery of grant funds are treated as recovery of prior year obligations.

Section 150(b) specifies that this section is applicable to grants issued on or after October 1, 1996.

*Senate bill*

Section 206 is a similar provision to House section 150(a), but it specifies that proceeds are repaid to the Airport and Airway Trust Fund for airport acquisitions.

No similar provision.

Section 206 is an identical provision to House section 150(b).

*Conference Substitute*

House bill.

## REPEAL OF CERTAIN LIMITATIONS ON METROPOLITAN WASHINGTON AIRPORTS AUTHORITY (MWAA)

### **H151/S718**

*House bill*

Section 151 repeals the limitations on Metropolitan Washington Aviation Authority to apply for Airport Improvement Program grants and collect Passenger Facility Charges.

*Senate bill*

Section 718 is a similar provision.

*Conference Substitute*

House bill.

## MIDWAY ISLAND AIRPORT

### **H152/S704(b)**

*House bill*

Section 152 provides a four-year extension for the Secretary of Transportation to enter into a reimbursable agreement with the Secretary of the Interior to provide AIP discretionary funds for airport development projects at Midway Island Airport through FY 2014.

*Senate bill*

Section 704(b) is a similar provision, but the extension would expire at the end of the term of the Senate bill in FY 2011.

*Conference Substitute*

House bill.

## MISCELLANEOUS AMENDMENTS

### **H153/S208(a)(c)(e)(f)(g)**

*House bill*

Section 153(a) makes a technical change to requirements for the National Plan of Integrated Airport Systems (NPIAS), which comprises all commercial service airports, all reliever airports, and selected general aviation airports.

Section 153(b) permits the Secretary of Transportation to approve a project for terminal development (including multimodal terminal development) in a nonrevenue-producing public-use area of a commercial service airport if the sponsor certifies that the airport: 1) has all the safety equipment required and security equipment required by regulation; 2) provides access for passengers to the area of the airport boarding or exiting aircraft that are not air carrier aircraft; 3)

costs are directly related to moving passengers and baggage in air commerce within the airport; and 4) meets the terms necessary to protect the interest of the government.

Section 153(b) directs the Secretary to approve as allowable costs of terminal development (including multimodal terminal development) in a revenue-producing area and construction, reconstruction, repair and improvement in a non-revenue producing parking lot under certain circumstances.

Section 153(b) prohibits the Secretary from distributing more than \$20 million from discretionary funds for terminal development projects at a non-hub airport or a small hub airport that is eligible to receive discretionary funds.

Section 153(c) makes technical changes to the annual reporting requirements by moving the due date to June 1 of each year. Also, it removes the first four report requirements and replaces them with: 1) a summary of airport development and planning completed; 2) a summary of individual grants issued; 3) an accounting of discretionary and apportioned funds allocated; and 4) the allocation of appropriations.

Section 153(d) makes a technical correction to the emission credits provision.

Section 153(e) makes a technical correction to section §46301(d)(2).

Section 153(f) makes a conforming amendment to §40117(a)(3)(B) and 47108(e)(3).

Section 153(g) makes a technical correction to the surplus property authority section.

Section 153(h) updates the definition of "Congested Airport" to include the FAA's Airport Capacity Benchmark Report of 2004 "or table 1 of the Federal Aviation Administration's most recent airport capability benchmark report, as well as the definition of "Joint Use Airport".

#### *Senate bill*

Section 208(a) is the same as House section 153(a).

No similar provision.

No similar provision.

No similar provision.

Section 208(c) is the same as House section 153(c).

Section 208(e) is the same as House section 153(d).

No similar provision.

Section 208(f) is a similar to House section 153(g).

Section 208(g) is a similar to House section 153(h), but changes definition for "Joint Use Airport".

#### *Conference Substitute*

House bill.

### EXTENSION OF GRANT AUTHORITY FOR COMPATIBLE LAND USE PLANNING AND PROJECTS BY STATE AND LOCAL GOVERNMENTS

#### **H154/S--**

##### *House bill*

Section 154 extends the grant authority for compatible land use planning and projects by State and local governments until September 30, 2014.

##### *Senate bill*

No similar provision.

*Conference Substitute*

House bill.

PRIORITY REVIEW OF CONSTRUCTION PROJECTS IN COLD WEATHER STATES

**H155/S724**

*House bill*

Section 155 instructs the Administrator to schedule reviews of construction projects that are prevented by weather from being carried out before May 1 of each year, or as early as possible.

*Senate bill*

Section 724 directs the Administrator to review, as early as possible, proposed airport projects in those states where, during a typical calendar year, construction could not begin until May 1.

*Conference Substitute*

House bill.

STUDY ON NATIONAL PLAN OF INTEGRATED AIRPORT SYSTEMS (NPIAS)

**H156/S--**

*House bill*

Section 156 requires the Secretary of Transportation to study and evaluate the formulation of the National Plan of Integrated Airport Systems (NPIAS) and report to Congress on the findings and recommended changes for formulating the NPIAS and methods to determining the amounts apportioned to airports. The study is to address the following: 1) criteria used for including airports in the plan; 2) changes in airport capital needs as shown in the 2005-2009 and 2007-2011 plans, compared with the amounts apportioned or otherwise made available to individual airports between 2005 and 2010; 3) a comparison of the amounts received by airports under the AIP in airport apportionments, State apportionments, and discretionary grants during fiscal years with capital needs as reported in the plan; 4) the effect of transfers of airport apportionments under title 49 United States Code (U.S.C.); 5) an analysis on the feasibility and advisability of apportioning amounts under §47114(c)(1) to the sponsor of each primary airport for each fiscal year an amount that bears the same ratio to the amount subject to the apportionment for FY 2009 as the number of passenger boardings at the airport during the prior calendar year bears to the aggregate of all passenger boardings at all primary airports during that calendar year; 6) a documentation and review of the methods used by airports to reach the 10,000 passenger enplanement threshold; and 7) any other matters pertaining to the plan that the Secretary determines appropriate.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill.

## TRANSFERS OF TERMINAL AREA AIR NAVIGATION EQUIPMENT TO AIRPORT SPONSORS

### **H157/S--**

#### *House bill*

Section 157 establishes a pilot program to allow the Administrator to transfer terminal area air navigation equipment to airport sponsors at a specified number of airports. The airport sponsors must assure the Administrator that the sponsors will operate and maintain the equipment, permit inspections by the Administrator, and will replace equipment as needed. This transfer will include all rights, title and interests of the U.S. to the sponsor at no cost to the sponsor.

#### *Senate bill*

No similar provision.

#### *Conference Substitute*

Senate bill.

## AIRPORT PRIVATIZATION PROGRAM

### **H158/S--**

#### *House bill*

Section 158(a) amends current law relating to specific provisions for issuance of exemptions in connection with a transfer of airport operation to a private owner. This section authorizes the Secretary of Transportation to expand the number of airports from five to ten airports. The Secretary is authorized to exempt the selling airport sponsor from the revenue diversion prohibition after the Secretary has consulted the air carrier serving the primary airport, and in the case of non-primary airport, with at least 65 percent of owners of aircraft based at that airport (thereby eliminating the existing requirement that the selling airport sponsor obtain the approval of at least 65 percent of the air carriers serving the airport before the revenue diversion prohibition can be waived.)

Section 158(b) removes the requirement that the Secretary must ensure that the airport fee imposed on air carriers will not increase more than inflation; the percent increase on fees to general aviation will not exceed the percentage of fees imposed on air carriers; and collective bargaining agreements will not be abrogated by sale or lease. It prohibits an airport from imposing a fee on a domestic or foreign air carrier for a return on investment or recovery of principal with respect to consideration paid to public agency for the lease unless the air carriers approve.

#### *Senate bill*

No similar provision.

#### *Conference Substitute*

House bill modified by dropping all language except language on expansion of the airport privatization program from five to ten airports.

## AIRPORT SECURITY PROGRAM

### **H--/S208(d)**

*House bill*

No similar provision.

*Senate bill*

Section 208(d) sunsets the Airport Security Program.

*Conference Substitute*

House bill.

MINIMUM GUARANTEE

**H--/S217**

*House bill*

No similar provision.

*Senate bill*

Section 217 amends the Alaska minimum guarantee to permit the Secretary of Transportation to apportion to the local authority of a U.S. Territory the difference between the amount apportioned to the territory and 1.5 percent of the total amount apportioned to all airports under subsections (c) and (d) of §47144.

*Conference Substitute*

Senate bill provision incorporated in the section entitled "United States territories minimum guarantee".

RESEARCH IMPROVEMENT FOR AIRCRAFT

**H--/S216**

*House bill*

No similar provision.

*Senate bill*

Section 216 expands the type of research that the Administrator may conduct or supervise to include research to support programs designed to reduce gases and particulates emitted by aircraft.

*Conference Substitute*

House bill.

MERRILL FIELD AIRPORT, ANCHORAGE ALASKA

**H--/S218**

*House bill*

No similar provision.

*Senate bill*

Section 218 modifies current federal restrictions at Merrill Field Airport in Anchorage, Alaska to facilitate airport and federal highway development.

*Conference Substitute*

Senate bill dropped due to the inclusion of language addressing this provision in the section entitled "Release from Restrictions".

INCLUSION OF MEASURES TO IMPROVE THE EFFICIENCY OF AIRPORT BUILDINGS

**H--/S222**

*House bill*

No similar provision.

*Senate bill*

Section 222 specifies that AIP funds can be used for updating buildings to meet high-performance green building standards.

*Conference Substitute*

House bill.

## TITLE II - NEXT GENERATION AIR TRANSPORTATION SYSTEM AND AIR TRAFFIC CONTROL MODERNIZATION

### DEFINITIONS

#### **H201/S327**

##### *House bill*

Section 201 defines the terms: "NextGen," "Automatic Dependent Surveillance Broadcast (ADS-B)," "ADS-B In," "ADS-B Out," "Area Navigation (RNAV)," and "Required Navigation Performance (RNP)."

##### *Senate bill*

Section 327 sets out definitions for "Administration," "Administrator," "NextGen," and the "Secretary".

##### *Conference Substitute*

House bill.

### NEXTGEN DEMONSTRATIONS AND CONCEPTS

#### **H202/S--**

##### *House bill*

Section 202 directs the Secretary of Transportation when allocating funds to give priority to NextGen-specific programs.

##### *Senate bill*

No similar provision.

##### *Conference Substitute*

House bill with minor modification.

### CLARIFICATION OF AUTHORITY TO ENTER INTO REIMBURSABLE AGREEMENTS

#### **H203/S304**

##### *House bill*

Section 203 clarifies FAA's existing authority to perform work for other agencies with or without reimbursement.

##### *Senate bill*

Section 304 is a similar provision.

##### *Conference Substitute*

House bill.

### CHIEF NEXTGEN OFFICER

#### **H204/S302,301**

##### *House bill*

Section 204 establishes a new position within the FAA – the Chief NextGen Officer (CNO) – who would be responsible for the implementation of NextGen programs. The Chief NextGen Officer shall be answerable to the Administrator and appointed for a term of 5 years to serve at the pleasure of the Administrator. The section directs the CNO to coordinate NextGen implementation with the Office of Management and Budget and other federal agencies. It requires the CNO to prepare an annual NextGen implementation plan.

*Senate bill*

Section 302 is a similar provision, but with a technical difference and a requirement that the CNO oversee the Joint Planning and Development Office's (JPDO) facilitation of cooperation among all federal agencies whose operations and interests are affected by NextGen implementation.

Section 301 replaces current Management Advisory Council and Air Traffic Services Committee with one governance body – the Air Traffic Control Modernization Oversight Board.

*Conference Substitute*

House bill.

DEFINITION OF AIR NAVIGATION FACILITY

**H205/S310**

*House bill*

Section 205 updates and broadens the definition of an air navigation facility to clarify that F&E funding may be used for many capital expenses directly related to the acquisition or improvement of buildings, equipment, and new systems related to the national airspace system and NextGen.

*Senate bill*

Section 310 is a similar provision.

*Conference Substitute*

House bill.

CLARIFICATION TO ACQUISITION REFORM AUTHORITY

**H206/S305**

*House bill*

Section 206 repeals a provision with limits on “other than competitive procedures” that conflicts with the FAA’s 1996 procurement reform.

*Senate bill*

Section 305 is a similar provision.

*Conference Substitute*

House bill.

ASSISTANCE TO FOREIGN AVIATION AUTHORITIES

**H207/S306**

*House bill*

Section 207 clarifies the FAA's current authority to provide air traffic services abroad, whether or not the foreign entity is private or governmental, and that the FAA may participate in any competition to provide such services. It clarifies that the Administrator may allow foreign authorities to pay in arrears rather than in advance, and that any payment for such assistance may be credited to the current applicable appropriations account.

*Senate bill*

Section 306 is a similar provision.

*Conference Substitute*

House bill.

NEXT GENERATION AIR TRANSPORTATION SYSTEM JOINT PLANNING AND  
DEVELOPMENT OFFICE

**H208/S309(a)**

*House bill*

Section 208(a) elevates the Director of the Joint Planning and Development Office (JPDO) to the level of Associate Administrator for NextGen, reporting directly to the Administrator. The responsibilities of the Director will include: 1) establishing specific quantitative goals for the safety, capacity, efficiency, performance, and environmental impacts of each phase of NextGen planning and development activities; 2) working to ensure global interoperability of NextGen; 3) working to ensure the use of weather information and space weather information in NextGen as soon as possible; 4) overseeing, with the Administrator and in consultation with the Chief NextGen Officer (CNO), the selection of products or outcomes of Research, Engineering and Development activities that should be moved to a demonstration phase; and 5) maintaining a baseline modeling and simulation environment for testing and evaluating alternative concepts to satisfy NextGen enterprise architecture requirements.

Section 208(a) directs the Associate Administrator for NextGen to also be a voting member on the Joint Resources Council.

Section 208(a) requires the JPDO to coordinate NextGen activities with OMB.

Section 208(a) requires the Department of Defense (DOD), Department of Homeland Security (DHS), Department of Commerce, and the National Aeronautics and Space Administration (NASA) to designate a senior official to work with the FAA on NextGen implementation.

Section 208(b) requires the JPDO to develop an Integrated Work Plan that will outline the activities required by partner agencies to achieve NextGen.

Section 208(c) directs FAA to annually publish a NextGen Implementation Plan.

Section 208(d) requires the head of JPDO to develop contingency plans for dealing with the degradation of the system in the event of a disaster or failure.

*Senate bill*

No similar provision.

No similar provision.

No similar provision.

Section 309(a) is a similar provision as House section 208(a), but creates a NextGen Implementation Office, which will be established by FAA, DOD, NASA, Commerce, DHS and other applicable agencies.

No similar provision.

No similar provision.

No similar provision.

*Conference Substitute*

House bill.

NEXT GENERATION AIR TRANSPORTATION SENIOR POLICY COMMITTEE

**H209/S309(b)**

*House bill*

Section 209 requires each agency involved in implementing NextGen initiatives to participate in an Air Transportation Senior Policy Committee. This committee will meet biannually and will be responsible for producing an annual report summarizing the progress made in carrying out the NextGen integrated work plan. The Secretary of Transportation is directed to publish an annual report on the date of submission of the President's Budget, summarizing the progress made in carrying out the integrated work plan.

*Senate bill*

Section 309(b) is a similar provision but with a requirement that the Senior Policy Committee meet once each quarter.

*Conference Substitute*

House bill.

IMPROVED MANAGEMENT OF PROPERTY INVENTORY

**H210/S311**

*House bill*

Section 210 clarifies FAA's current authority to purchase and sell property needed for airports and air navigation facilities, and includes the authority to retain funds associated with disposal of property.

*Senate bill*

Section 311 is a similar provision, but does not allow these funds to be used to offset costs of property disposal.

*Conference Substitute*

House bill.

AUTOMATIC DEPENDENT SURVEILLANCE BROADCAST SERVICES

**H211/S315**

*House bill*

Section 204 requires an annual audit by the DOT IG of the FAA's ADS-B program to assist Congress in creating FAA accountability for implementing the ADS-B program. It directs

the Administrator to initiate a rulemaking proceeding within one year after the date of enactment to issue guidelines and regulations relating to ADS-B In technology. Requires the Chief NextGen Officer to verify that the necessary ground infrastructure is installed and functioning properly, certification standards have been approved, and appropriate operational platforms interface safely and efficiently before the date on which all aircraft are required to be equipped with ADS-B In technology. The Administrator is directed to develop, in consultation with employee and industry groups, plans for the use of ADS-B technology, including testing, controller training, and policy for early aircraft equipage.

*Senate bill*

Section 315 is a similar provision, but requires a defined budget and the identification of actual benefits to national airspace system (NAS) users including small and medium-sized airports and the general aviation community. It requires two rulemakings by the FAA: 1) to complete a rulemaking procedure within 45 days of enactment and mandate that all aircraft should be equipped with ADS-B Out technology by 2015; and 2) to initiate a rulemaking procedure on ADS-B In technology and require all aircraft to be equipped with ADS-B In by 2018. The FAA is required to create a plan for ADS-B technology use by air traffic control by 2015, including a test of ADS-B prior to 2015 within the plan. It sets conditional extensions of the deadline for equipping aircraft with ADS-B technology.

*Conference Substitute*

House bill modified to include an additional requirement in the DOT IG review to identify "any potential operational or workforce changes resulting from deployment of ADS-B".

## ACCELERATION OF NEXTGEN TECHNOLOGIES

### **H213/S314,510**

*House bill*

Section 213(a) requires the Administrator to publish a report within six months (but after consultation with employee groups) that includes how FAA will develop: 1) Area Navigation and Required Navigation Performance (RNAV/RNP) procedures at 35 Operational Evolution Partnership (OEP) airports identified by FAA; 2) a description of requirements to implement them; 3) an implementation plan; 4) an assessment of the cost/benefit for using third parties to develop procedures; and 5) a process for creating future RNA/RNP procedures. (The FAA is directed to implement 30 percent of these procedures within 18 months, 60 percent within 36 months, and 100 percent by June 2015.

Section 213(b) establishes a charter with Performance Based Navigation ARC as necessary to establish priorities in navigation performance and area navigation procedures based on potential safety and efficiency benefits to the NAS, including small and medium hub airports.

Section 213(c) states that performance and area navigation procedures under this section shall be presumed covered by categorical exclusion in Chapter 3 of FAA Order 1050.1E.

Section 213(d) directs the Administrator to submit a development plan in one year for nationwide data communications systems.

Section 213(e) instructs the Administrator to outline in the NextGen Implementation Plan what utilization of ADS-B, RNP and other technologies included as part of NextGen implementation will display position of aircraft more accurately, and the feasibility of reducing

aircraft separation standards. Should it be deemed feasible to reduce aircraft separation standards, the Administrator shall produce a timetable for implementation of such standards.

Section 213(f) establishes a program in which the Administration will utilize third parties to develop air traffic procedures.

*Senate bill*

Section 314 directs the Administrator to publish a report within six months, after consultation with stakeholders, including the development of: 1) RNP/ RNAV procedures at 137 airports; 2) a description of the activities required for their implementation; 3) an implementation plan that includes baseline and performance metrics; 4) assessment of the benefits/costs of using third parties to develop the procedures; and 5) a process for the creation of future RNP and RNAV procedures. The Administrator must implement 30 percent of the procedures within 18 months of enactment, 60 percent within 36 months of enactment, and 100 percent by 2014. The Administrator is directed to create a plan for the implementation of procedures at the remaining airports across the country. It would require 25 percent of the procedures at these airports to be implemented within 18 months after enactment, 50 percent within 30 months after enactment; 75 percent within 42 months after enactment, and 100 percent before 2016. The charter of the Performance Based Navigation ARC is extended and directs it to establish priorities for development of the RNP/RNAV procedures based on potential safety and congestion benefits. It would require that the process of the development of such procedures be subject to a previously established environmental review process. The FAA is directed to provide Congress with a deployment plan for the implementation of a nationwide data communications system to support NextGen air traffic control and a report evaluating the ability of NextGen technologies to facilitate improved performance standards for aircraft in the NAS.

*Conference Substitute*

House bill modified to change language to separate OEP and non-OEP airports to establish separate timelines and milestones, to require the FAA to provide a categorical exclusion for RNP/RNAV procedures that would lead to a reduction in aircraft fuel consumption, emissions and noise on an average per flight basis, and to direct the Administrator to establish a program under which the Administrator is authorized to utilize the services of qualified third parties in the development, testing, and maintenance of flight procedures.

DOT INSPECTOR GENERAL REVIEW OF OPERATIONAL APPROACH PROCEDURES  
BY THIRD PARTY

**H--/S510(b)**

*House bill*

No similar provision.

*Senate bill*

Section 510(b) directs the DOT IG review and report to Congress on FAA's oversight of third party development of flight procedures, the extent of new flight procedures developed by third parties, and whether FAA has the resources to develop these procedures without the use of third parties.

*Conference Substitute*

House bill.

## PERFORMANCE METRICS

### **H214/S317**

#### *House bill*

Section 214 requires the FAA, within 180 days after enactment, to establish and track NextGen related performance metrics within the national airspace system and to submit an annual report to Congress based on the results of the study.

#### *Senate bill*

Section 317 is a similar provision, but it has some different metrics including ones to demonstrate reduced fuel burn and emissions.

#### *Conference Substitute*

House bill. The conference committee believes that performance metrics are the best way to evaluate the FAA's progress in implementing NextGen. With these metrics, Congress and the public will be able to determine the Administration's real progress in the delivery of NextGen benefits, which is the goal of the NextGen program.

## CERTIFICATION STANDARDS AND RESOURCES

### **H215/S318**

#### *House bill*

Section 215 requires the FAA to develop a plan to accelerate the certification of NextGen technologies.

#### *Senate bill*

Section 318 is a similar provision, but it prohibits the FAA from making any distinction between publicly and privately owned equipment when determining certification requirements.

#### *Conference Substitute*

House bill modified to include language prohibiting the FAA from making any distinction between publicly and privately owned equipment when determining certification requirements.

## SURFACE SYSTEMS ACCELERATION

### **H216/S321**

#### *House bill*

Section 216 directs the Chief Operation Officer of the Air Traffic Organization (ATO) to: 1) evaluate Airport Surface Detection Equipment-Model X (ASDE-X); 2) evaluate airport surveillance technologies; 3) accelerate implementation of ASDE-X; and 4) carry out additional duties as required by the Administrator. The Administrator is required to consider options for expediting the certification of Ground-Based Augmentation System (GBAS) technology, and develop plans to utilize such a system at the 35 OEP airports by September 30, 2012.

#### *Senate bill*

Section 321 is a similar provision, however it directs the FAA to consider expediting the certification of Ground Based Augmentation Systems (GBAS) technology and develop a plan to utilize it at the 35 OEP airports by September 30, 2012.

*Conference Substitute*

House bill.

INCLUSION OF STAKEHOLDERS IN AIR TRAFFIC CONTROL MODERNIZATION  
PROJECTS

**H217/S322**

*House bill*

Section 217 requires the Administrator to create a process for including union employees in the planning, development, and deployment of air traffic control projects. Within 180 days of enactment, the FAA must report to Congress on implementation of this provision.

*Senate bill*

Section 322 is a similar provision, but it provides travel and per diem expenses for the employees.

*Conference Substitute*

House bill modified, directing the Administrator to include qualified employees selected by each collective bargaining representative of employees affected by air traffic control modernization projects. Includes provision for employees to receive per diem reimbursement, if appropriate, however, the Administrator is prohibited from paying overtime expenses except in extraordinary circumstances. The provision also directs participants to adhere to deadlines and milestones to help keep NextGen on schedule.

AIRSPACE REDESIGN

**H218/S--**

*House bill*

Section 218 contains Findings of Congress that the FAA redesign efforts will play a critical role in enhancing capacity, reducing delays, and transitioning to more flexible routing. Additionally, the Findings state that funding cuts have led to delays and deferrals to critical capacity enhancing airspace redesign efforts, and several new runways planned for in FY 2011 and FY 2012 will not provide estimated capacity benefits without additional funds. It also requires the Administrator to work with the New York/New Jersey Port Authority to monitor the noise impacts of the redesign and submit a report to Congress on those impacts in one year.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill.

STUDY ON FEASIBILITY OF DEVELOPMENT OF A PUBLIC INTERNET WEB BASED  
RESOURCE ON LOCATIONS OF POTENTIAL AVIATION OBSTRUCTIONS

**H219/S--***House bill*

Section 219 instructs the Administrator to carry out a study on the feasibility of developing publicly searchable web-based resources with information regarding height, latitudinal and longitudinal locations of guywire and free-standing tower obstructions.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill.

**NEXTGEN RESEARCH AND DEVELOPMENT CENTER OF EXCELLENCE****H220/S--***House bill*

Section 220 permits the Administrator to enter into an agreement on a competitive basis to assist the establishment of a Center of Excellence for the research and development of NextGen technologies.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill.

**PUBLIC-PRIVATE PARTNERSHIPS****H221/S--***House bill*

Section 221 directs the Administrator to develop a plan to expedite the equipage of general aviation and commercial aircraft with NextGen technologies.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill modified to include language on NextGen public private partnership program. The language describes financial instruments which the Secretary may use to facilitate public-private financing. In addition, language establishing an avionics incentive program for facilitating the acquisition and installation of equipment that is deemed to be in the interest of achieving NextGen capabilities in commercial and general aviation aircraft. Language regarding limitation on principal is included with language regarding collateral, fees and premiums as well as use of funds.

Subject to the availability of funds, the Secretary, or his/her designee, may guarantee loans with deferred repayment schedules, provided that in establishing the decisional criteria for the period of deferral, the Secretary or his designee shall consider the terms of the deferral

established by other transportation loan guarantee programs and when equipment qualifying under subsection (A) of this section will be put to beneficial use in aircraft. The Secretary shall ensure that any such applications are reviewed under procedures similar to those established for the Railroad Rehabilitations and Improvement Financing program. The authority of the Secretary to issue credit assistance terminates 5 years after the date of establishment of the Incentive Program.

In reviewing and evaluating applications for loan guarantees, the Secretary or his/her designee shall reference similar provisions in Sections 821, 822, and 823 of the Railroad Rehabilitation and Improvement Financing program, 800 et seq. of Title 45, U.S.C. when considering the following: (a) the estimated cost to the federal government of providing the requested form and amount of assistance; (b) the estimated public and aviation system benefits to be derived from installing the required avionics in the most timely manner; (c) the amount of private sector funding that will be committed and the amount of private sector capital placed at risk; and (d) the likelihood of default by borrowers.

#### FACILITATION OF NEXTGEN AIR TRAFFIC SERVICES

##### **H--/S303**

###### *House bill*

No similar provision.

###### *Senate bill*

Section 303 describes the factors that the FAA would consider in determining whether to accept the provision of air traffic services by non-governmental providers.

###### *Conference Substitute*

House bill.

#### OPERATIONAL INCENTIVES

##### **H--/S316**

###### *House bill*

No similar provision.

###### *Senate bill*

Section 316 requires the FAA to issue a report to identify incentives to encourage the equipping of aircraft with NextGen technologies – including a “best equipped, best served” approach.

###### *Conference Substitute*

Senate bill.

#### EDUCATIONAL REQUIREMENTS

##### **H--/S312**

###### *House bill*

No similar provision.

###### *Senate bill*

Section 312 requires FAA to reimburse Department of Defense (DOD) for the cost of DOD-provided education of dependents of FAA employees stationed in Puerto Rico and Guam.

*Conference Substitute*  
Senate bill.

#### STATE ADS-B EQUIPAGE BANK PILOT PROGRAM

**H--/S324**

*House bill*

No similar provision.

*Senate bill*

Section 324 authorizes the Secretary of Transportation to enter into cooperative agreements with up to five states to establish ADS-B equipage banks for making loans and providing other assistance to public entities.

*Conference Substitute*  
House bill.

#### REPORT ON FUNDING FOR NEXTGEN TECHNOLOGY

**H--/S319**

*House bill*

No similar provision.

*Senate bill*

Section 319 requires the FAA to report on: 1) a financing proposal to fund the development and implementation of NextGen technology; and 2) recommendations for operational benefits that could be provided to aircraft for early equipage with NextGen technologies.

*Conference Substitute*  
House bill.

#### AIR TRAFFIC CONTROLLER STAFFING INITIATIVES AND ANALYSIS

**H--/S325**

*House bill*

No similar provision.

*Senate bill*

Section 325 directs the FAA to implement certain DOT IG recommendations with respect to the air traffic control tower at Los Angeles International Airport and the Southern California Terminal Radar Approach Control and Northern California Terminal Radar Approach Control facilities by, among other things, ensuring that classroom space, contract instructors, and simulators are sufficiently available to provide training to trainee air traffic controllers; evenly distributing new trainee controllers across the facilities over the calendar year; and

commissioning an independent analysis, in consultation with the controllers' exclusive collective bargaining representative, of overtime scheduling practices.

*Conference Substitute*

Senate bill modified by removing language that would limit application of this section to only the facilities named above. In addition, directs the Administrator, as soon as practicable, to assess training programs at air traffic control facilities with below-average success rates and prioritize such efforts to address recommendations for the facilities identified in Inspector General of the Department of Transportation Report Number AV-2009-047.

SEMIANNUAL REPORT ON STATUS OF GREENER SKIES PROJECT

**H--/S326**

*House bill*

No similar provision.

*Senate bill*

Section 326 requires the FAA to report to Congress on a strategy for accelerated implementation of the NextGen operational capabilities produced by the Greener Skies project. Follow-up reports are due 180 days after the first report is submitted and then every 180 days after that until September 30, 2011.

*Conference Substitute*

Senate bill with modified language requiring the first report to be submitted six months after enactment, with follow up reports annually (instead of reports every 180 days) until the pilot program terminates.

FINANCIAL INCENTIVES FOR NEXTGEN EQUIPAGE

**H--/S328**

*House bill*

No similar provision.

*Senate bill*

Section 328 authorizes the FAA Administrator to enter into agreements to fund the costs of equipping aircraft with avionics to enable NextGen technologies, including grants or other financial instruments.

*Conference Substitute*

Senate bill dropped, however House language on public-private partnerships was included.

## TITLE III - SAFETY

### JUDICIAL REVIEW OF DENIAL OF AIRMEN CERTIFICATES

#### **H301/S502**

##### *House bill*

Section 301 allows a person to seek judicial review of a National Transportation Safety Board order in an appeal of a decision on an application for an airman certificate.

##### *Senate bill*

Section 328 is a similar provision with minor technical differences.

##### *Conference Substitute*

House bill.

### RELEASE OF DATA RELATING TO ABANDONED TYPE CERTIFICATES AND SUPPLEMENTAL TYPE CERTIFICATES

#### **H302/S503**

##### *House bill*

Section 302 authorizes the Administrator to release certificate information without consent of the owner if: 1) the requested data has been inactive for three or more years; 2) the FAA cannot, after due diligence, find the owner of record, or the owner of record's heir; and 3) making the data available will enhance aviation safety. The Administrator shall maintain engineering data in possession of the FAA relating to a type certificate that has been inactive for three or more years.

##### *Senate bill*

Section 503 is a similar provision but with no language regarding the requirement to maintain data.

##### *Conference Substitute*

House bill.

### DESIGN AND PRODUCTION ORGANIZATION CERTIFICATES

#### **H303/S504**

##### *House bill*

Section 303 directs the Administrator to issue Certified Design and Production Organization Certificates to aviation manufacturers in order to streamline the certification process and allow FAA to focus its safety resources on primary safety concerns. It clarifies that nothing in this section would affect the FAA's authority to revoke the Certified Design and Production Organization Certificates once issued. The Administrator is directed to start issuing such certificates by January 1, 2013.

##### *Senate bill*

Section 504 authorizes the Administrator to issue design organization certificates beginning on January 1, 2013.

*Conference Substitute*

House bill.

CABIN CREW COMMUNICATION

**H--/S508**

*House bill*

No similar provision.

*Senate bill*

Section 508 requires that flight attendants be able to read, speak and write English well enough to: 1) read and comprehend material; 2) provide direction to, and understand and answer questions from, English-speaking individuals; 3) write incident reports and statements, and log entries and statements; and 4) carry out written and oral instruction regarding the proper performance of their duties. This section does not apply to flight attendants serving solely between points outside the United States.

*Conference Substitute*

Senate bill, however the FAA shall work with air carriers to facilitate compliance through the flight attendant certification requirements of 49 U.S.C. 44728.

LINE CHECK EVALUATIONS

**H316/S722**

*House bill*

Section 316 requires the Administrator to sunset, one year after the date of enactment, the requirement for a second yearly line check evaluation for airline pilots over the age of 60, unless the Secretary of Transportation certifies that the additional line check is necessary to ensure safety.

*Senate bill*

Section 722 is a similar provision, but does not require DOT safety certification.

*Conference Substitute*

Senate bill.

SAFETY OF AIR AMBULANCE OPERATIONS

**H310/S507**

*House bill*

Section 310 directs the FAA to issue a Notice of Proposed Rulemaking (NPRM) within 180 days to address air ambulance safety. It requires a follow up or rulemaking to address additional Helicopter Emergency Medical Services training. Operators are required to collect and report data to the Administrator on their operations, including the number of flights and hours flown and for the FAA to report on that data 24 months after enactment, and annually thereafter.

*Senate bill*

Section 507 is similar language, but includes fixed-wing ambulance operators within the NPRM and includes a deadline of 60 days. It does not require pilot training, radar altimeters, survivability equipment, or operational control centers to be addressed within the NPRM. It requires helicopter and fixed wing air ambulance operators to comply with regulations under 14 Code of Federal Regulations (C.F.R.) part 135 whenever there is medical personnel onboard, with certain exceptions. It also requires that terrain awareness and warning systems be onboard helicopter and fixed wing aircraft within one year. The FAA is directed to study and initiate a third rulemaking within one year of enactment to require devices similar to Cockpit Voice Recorders (CVR) and Flight Data Recorders (FDR).

*Conference Substitute*

House bill with modified language to change deadline for the first two rulemakings to June 1, 2012.

**PROHIBITION ON PERSONAL USE OF CERTAIN DEVICES ON THE FLIGHT DECK  
H313/S558**

*House bill*

Section 313 prohibits the use of laptops and other personal wireless devices by the flight crew on the flight deck while the aircraft is being operated except if the device is being used for a purpose related to the operation of the aircraft, emergencies or safety, or employment related communications. It authorizes civil penalties for violation of this provision and gives the Administrator the ability to amend, modify, suspend or revoke an operator's certificate for violation of this provision. The Secretary of Transportation is required to initiate a rulemaking within 90 days of enactment; and a final rule is due two years after date of enactment. It directs the Administrator to conduct a study and report to Congress on the sources of distraction for flight crewmembers.

*Senate bill*

Section 558 is a similar provision, except only civil penalties are authorized for violation of this provision. It directs FAA to initiate a rulemaking within 30 days of enactment, and issue a final rule within one year of enactment.

*Conference Substitute*

House bill.

**INSPECTION OF REPAIR STATIONS LOCATED OUTSIDE THE UNITED STATES  
H315/S521**

*House bill*

Section 315 requires the Administrator to establish and implement a system for assessing the safety of foreign repair stations based on identified risks and consistent with U.S. requirements. The FAA is to initiate inspections as frequently as it determines is warranted by its safety assessment system. The Departments of Transportation and State are required to request members of the International Civil Aviation Organization to establish international standards for drug/alcohol testing of safety inspectors. The Administrator is directed to issue a proposed rule within one year of enactment requiring that all foreign repair station employees responsible for safety-sensitive maintenance functions are subject to an alcohol and controlled

substances testing program that is determined acceptable by the FAA and is consistent with the applicable laws of the country in which the repair station is based. The FAA is to provide an annual report within one year of enactment, and annually thereafter, on the Administration's oversight of foreign repair stations and implementation of the foreign repair station safety assessment system. It instructs the Administrator to notify Congress within 30 days after initiating formal negotiations with a foreign aviation authority or other appropriate foreign government agency on a new maintenance implementation agreement.

*Senate bill*

Section 521 is a similar provision, but directs the FAA to inspect all repair stations, including those abroad, at least twice a year in a manner consistent with United States obligations under international agreements. The inspection results for foreign civil aviation authorities shall be considered if the foreign country has a maintenance safety agreement with the United States.

*Conference Substitute*

House and Senate bills merged and modified, removing language requiring that the report on part 145 repair stations be completed within 1 year of enactment and modified the annual inspections requirement from occurring "as frequently as determined warranted" to annually in a manner that is consistent with U.S. obligations under international agreements, with additional inspections authorized based on identified risks.

ENHANCED TRAINING FOR FLIGHT ATTENDANTS AND GATE AGENTS

**H--/S562**

*House bill*

No similar provision.

*Senate bill*

Section 562 requires that flight attendants and gate agents receive training related to: serving alcohol to passengers; recognizing intoxicated passengers; and dealing with disruptive passengers.

*Conference Substitute*

Senate bill modified by removing references to gate agents from the provision.

LIMITATION ON DISCLOSURE OF SAFETY INFORMATION

**H337/S554**

*House bill*

Section 337 amends Chapter 447, by exempting the following reports and data from being subject to discovery or subpoena or admitted into evidence in a Federal or State court: an Aviation Safety Action Program (ASAP) report; data produced from a Flight Operational Quality Assurance (FOQA) Program; a Line Operations Safety Audit (LOSA) Program report; hazard identification, risk assessment risk control; safety data collected for purpose of assessing/improving aviation safety; and reports, analyses and directed studies based in whole or part on reports from the afore mentioned programs including those under the Aviation Safety Information Analysis and Sharing (ASIAS) Programs. Any report or data that is voluntarily

provided to the FAA shall be considered to be voluntarily submitted information within the meaning and shall not be disclosed to the public. The FAA may release documents to the public that include summaries, aggregations or statistical analyses based on reports or data described in this section, and the NTSB is not prevented from referring to relevant information. This exemption shall not apply to a report developed or data produced on behalf of a person if that person waives the privileges provided.

*Senate bill*

Section 554 would limit the use of FOQA and ASAP and LOSA data in judicial proceedings. FOQA, ASAP or LOSA data would only be allowed in a judicial proceeding if the judge finds that a party shows that the information is relevant, not otherwise known or available, and demonstrates a particularized need for the information that outweighs the intrusion upon the confidentiality of these programs. If this information is used in a judicial proceeding, the court would be required to protect it against further dissemination with a protective order and place the information under seal. This section would also prohibit disclosure of this data through the Freedom of Information Act. This section would not prevent the NTSB from referring to information provided under the FOQA, ASAP or LOSA programs.

*Conference Substitute*

House bill modified with technical edits.

PROHIBITION AGAINST AIMING A LASER POINTER AT AN AIRCRAFT

**H--/S733**

*House bill*

No similar provision.

*Senate bill*

Section 733 amends title 18, United States Code, to add a new section 39A to make it a crime to knowingly aim the beam of a laser pointer at an aircraft in the special aircraft jurisdiction of the United States or at the flight path of such aircraft. An individual convicted of this crime is subject to criminal fines or imprisonment up to 5 years. This provision does not apply to: 1) individuals conducting research and development or flight test operations for an aircraft manufacturer or the Federal Aviation Administration; 2) Department of Defense (DOD) or Department of Homeland Security (DHS) personnel conducting research, development, operations, testing or training; or 3) an individual using a laser emergency signaling device to send a distress signal. Section 39A authorizes the Attorney General, in consultation with the Secretary of Transportation, to provide by regulation, after public notice and comment, additional exceptions to this provision as necessary and appropriate. The Attorney General must give written notice of any such proposed regulations to the House and Senate Committees on the Judiciary as well as other specified committees.

*Conference Substitute*

Senate bill with minor modifications.

AIRCRAFT CERTIFICATION PROCESS REVIEW AND REFORM

**H304/S--**

*House bill*

Section 304 directs the Administrator to review the current practices for aircraft certification. It requires that in his/her assessment the Administrator must make recommendations to improve efficiency and reduce costs through streamlining and reengineering of certification process and issue a report within 180 days.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill.

CONSISTENCY OF REGULATORY INTERPRETATION

**H305/S--**

*House bill*

Section 305 directs the Administrator to convene an advisory panel to determine the root causes of inconsistent interpretation of regulations by the FAA Flight Standards Service and Aircraft Certification Service, develop recommendations to improve the consistency of interpreting the regulations, and submit these recommendations to Congress within six months.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill with modification of six months to twelve months to submit recommendations to Congress.

RUNWAY SAFETY

**H306/S501,517**

*House bill*

Section 306 requires the Administrator within six months to create a Strategic Runway Safety Plan to address: 1) goals to improve safety; 2) near and long term actions, time frames and resources needed, continuous evaluative process for goals, and review of every commercial service airport; and 3) increased runway safety risks with the expected increased volume of air traffic. It requires a report to Congress by December 31, 2011 outlining a plan to install and deploy systems to alert controller and/or flight crews of potential runway incursions.

*Senate bill*

Section 328 is a similar provision.

*Conference Substitute*

House bill.

FLIGHT STANDARDS EVALUATION PROGRAM

**H308/S--**

*House bill*

Section 308 directs the Administrator to modify the Flight Standards Evaluation Program to include periodic and random audits of air carriers in the agency's oversight, and prohibit an individual from participating in a review or audit of an office with responsibility for an air carrier under the program if the individual had responsibility for inspecting the operations of that carrier in the five year period preceding the date of the review. The Administrator is required to report to Congress within one year of enactment, and annually thereafter on the Flight Standards Evaluation Program.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill.

COCKPIT SMOKE

**H309/S--**

*House bill*

Section 309 directs U.S. Government Accountability Office to conduct a study on the effectiveness of the FAA's oversight of the use of new technologies to prevent/mitigate effects of dense and continuous smoke in cockpit of aircraft, with a report to be submitted to Congress in one year.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill with modified language changing the report deadline from one year to 18 months.

OFF-AIRPORT, LOW-ALTITUDE AIRCRAFT WEATHER OBSERVATION  
TECHNOLOGY

**H311/S--**

*House bill*

Section 311 directs the Administrator to conduct a review of off-airport, low-altitude aircraft weather observation technologies, which will include an assessment of technical alternatives, investment analysis, and recommendations for improving weather reporting. A report is required to be submitted to Congress in one year.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill.

## FEASIBILITY OF REQUIRING HELICOPTER PILOTS TO USE NIGHT VISION GOGGLES.

### **H312/S--**

#### *House bill*

Section 312 directs the FAA to conduct a study and report to Congress within one year of enactment on the feasibility and potential risks of requiring all pilots of helicopters providing air ambulance services to use night vision goggles during nighttime operations.

#### *Senate bill*

No similar provision.

#### *Conference Substitute*

House bill.

## MAINTENANCE PROVIDERS

### **H314/S522**

#### *House bill*

Section 314 requires the Administrator to issue regulations within three years to mandate that maintenance work on aircraft be performed only by individuals employed by a part 121 air carrier, a part 145 repair station, or a company that provides contract workers to part 121 carriers or part 145 repair stations if the individual meets part 121/145 requirements, works under the supervision of a part 121/145 carrier/station, and carries out the work in accordance with part 121/145.

#### *Senate bill*

Section 522 is a similar provision.

#### *Conference Substitute*

Senate bill with modifications, including heading changed to "Maintenance Providers." This section directs the Administrator to require that essential maintenance, regularly scheduled maintenance, and work pursuant to required inspection items must be performed by part 121 carriers, part 145 repair stations, or contractors meeting the requirements of part 121 or 145 certificate holders. Covered work performed by a contractor meeting the requirements of part 121 or 145 certificate holders are subject to the following terms and conditions: 1) the part 121 carrier shall be directly in charge of work; 2) the work shall be carried out according to the part 121 carrier's maintenance manual; and 3) the work shall be performed under the part 121 carrier's supervision and control.

121 air carriers are responsible for ensuring that all maintenance, whether performed by the air carrier itself or performed by another entity under contract with the carrier, is conducted in accordance with the air carrier's maintenance program. When maintenance is performed by another entity, the air carrier continues to be responsible for the oversight of these maintenance providers, who are considered to be an extension of the air carrier's maintenance program. This provision will ensure that oversight responsibility for maintenance remain with the 121 air carrier recognizing supervision and oversight of individuals may be with a Part 145 repair station.

Responsibility for oversight by 121 carriers is not meant to change the permitted work of the Part 145 repair stations. In particular, 145 stations can continue to supervise and oversee the activities of individuals that perform contract maintenance-when it is necessary to obtain technical expertise.

#### STUDY OF AIR QUALITY IN CABINS

**H--/S564**

*House bill*

No similar provision.

*Senate bill*

Section 517 requires the FAA to initiate a study of air quality in aircraft cabins. Additionally, the Administrator would be given the authority to require domestic carriers to allow monitoring of air quality on their aircraft while the study is conducted. The Administrator is required to initiate research and development work on effective air cleaning and sensor technology for the engine and auxiliary power unit for bleed air supplied to the passenger cabin and flight deck of a pressurized aircraft within 180 days of enactment.

*Conference Substitute*

Senate bill modified by removing language requiring the FAA to determine the extent to which the installation of sensors and air filters on commercial aircraft would provide a public health benefit. The conference also agreed that the FAA's authority to monitor air quality may not impose significant costs to air carriers and may not interfere with the carrier's normal use of the aircraft.

#### IMPROVED PILOT LICENSES

**H307/S--**

*House bill*

Section 307 directs the Administrator to issue improved pilot licenses that are tamper-resistant, include a photograph of the individual, and are capable of accommodating a digital photograph, a biometric identifier, or any other unique identifier. It instructs the Administrator to develop methods to determine or reveal if part of license issued has been tampered with.

*Senate bill*

No provision.

*Conference Substitute*

House bill modified by adding new language: 1) directing the Administrator to provide the relevant House and Senate Committees with a timeline for the issuance of pilot licenses; 2) specifying that the new licenses should incorporate biometric identifiers; and 3) requiring that the licenses must comply with established aviation security checkpoint clearance standards. The conference committee recognizes that the federal government is responsible for the screening of all individuals prior to entry into airport sterile areas and expects that efforts to utilize improved pilot certificates will be carried out by the federal government.

#### STUDY OF HELICOPTER AND FIXED WING AIR AMBULANCE SERVICES

**H--/S717***House bill*

No similar provision.

*Senate bill*

Section 717 requires the GAO to conduct a detailed study of the air ambulance industry and to make recommendations related to the interaction of state and federal regulations of air ambulances.

*Conference Substitute*

House bill, because the GAO has completed the required study.

**PILOT FATIGUE****H--/S506***House bill*

No similar provision.

*Senate bill*

Section 506 requires a study of pilot fatigue to be conducted by the National Academy of Sciences and for the FAA to consider the study's findings as part of its rulemaking proceeding on pilot flight time limitations and rest requirements

*Conference Substitute*

Senate provision dropped because it is included in P.L. 111-216, the Airline Safety and Federal Aviation Administration Extension Act of 2010.

**OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR FLIGHT ATTENDANTS  
ON BOARD AIRCRAFT****H--/S509***House bill*

No similar provision.

*Senate bill*

Section 509 requires the Administrator to establish milestones and a policy statement for the completion of work with the Occupational Safety and Health Administration (OSHA) begun under the August 2000 Memorandum of Understanding (MOU) regarding the application of OSHA requirements to crewmembers while working in an aircraft.

*Conference Substitute*

Senate bill modified by dropping policy statement principles. The conference committee believes that in initiating development of a policy statement the FAA shall consider the establishment of a coordinating body similar to the Aviation Safety and Health Joint Team established by the August 2000 memorandum of understanding that includes representatives designated by both Administrations to examine the applicability of current and future Occupational Safety and Health Administration regulations; to recommend policies for

facilitating the training of Federal Aviation Administration inspectors; and to make recommendations that will govern the inspection and enforcement of safety and health standards on board aircraft in operation and all work-related environments. Any standards adopted by the Federal Aviation Administration shall set forth clearly the circumstances under which an employer is required to take action to address occupational safety and health hazards; the measures required of an employer under the standard; and the compliance obligations of an employer under the standard.

## IMPROVED SAFETY INFORMATION

### **H--/S511**

#### *House bill*

No similar provision.

#### *Senate bill*

Section 511 directs the Administrator to issue a final rule regarding re-registration and renewal of aircraft registration, which must include preparing for the expiration of aircraft registration certificates and periodic renewal process, and other measures to promote the accuracy of the Administration's aircraft registry.

#### *Conference Substitute*

House bill.

## USE OF EXPLOSIVE PEST CONTROL DEVICES

### **H--/S523**

#### *House bill*

No similar provision.

#### *Senate bill*

Section 523 requires the FAA to study the use of explosive pest control devices to prevent wildlife strikes to aircrafts and submit a report in six months.

#### *Conference Substitute*

House bill.

## SUBTITLE B—UNMANNED AIRCRAFT SYSTEMS

### DEFINITIONS

### **H321/S--**

#### *House bill*

Section 321 defines the terms: "certificate of waiver", "sense and avoid capability", "public unmanned aircraft system", "small unmanned aircraft", "test range", "unmanned aircraft", and "unmanned aircraft system (UAS)."

#### *Senate bill*

No similar provision.

*Conference Substitute*

House and Senate bills merged to include all of House definitions and Senate definition of "Arctic".

INTEGRATION OF CIVIL UNMANNED AIRCRAFT SYSTEMS INTO NATIONAL  
AIRSPACE SYSTEM

**H322/S320, 607(a)(b)(d)(e)(f)**

*House bill*

Section 322 requires the Secretary of Transportation to develop a plan, in consultation with aviation and Unmanned Aircraft Systems (UAS) industry representatives, within nine months of enactment, for the safe integration of civil UASs into the Nation Airspace (NAS). This plan must contain a review of technologies and research to assist in this goal, recommendations for a rulemaking on the definition of acceptable standards, ensure civil UAS have sense and avoid capability, develop standards and requirements for operator and pilots of UASs, and recommendations. The plan must include a realistic time frame for UAS integration into the NAS, but no later than September 30, 2015. The plan must be submitted to Congress within one year of enactment. The FAA is required to initiate a Notice of Proposed Rulemaking (NPRM) for site integration of UAS within 18 months of the date of enactment of the integration plan.

*Senate bill*

Section 320 requires the FAA to develop a plan within one year to accelerate the integration of UASs into the NAS. This plan must include: 1) a pilot project that includes the integration of UAS into six test sites, representing geographic and climate differences within the United States, by 2012; 2) development of certification, flight standards, and air traffic requirements for UAS; 3) the dedication of funding for research on UAS certification, flight standards, and air traffic control (ATC); 4) coordination of research between NASA and DOD; and 5) verification of the safety of UAS before their integration into the NAS. This section would allow the FAA Administrator to include testing at six test sites as part of the integration plan by 2012. The FAA is directed to work with DOD certify and develop flight standards for military unmanned aerial systems and to integrate these systems into the NAS as part of the UAS integration plan. The FAA Administrator is required to submit a report describing and assessing the progress made in establishing special use airspace for DOD to develop detection techniques for small UASs.

Section 607 allows the FAA to conduct developmental research on UASs. It would direct the FAA and the National Academy of Sciences to create an assessment of UAS capabilities and would require the National Academy of Sciences to submit a report to Congress on the subject. It requires the FAA to issue a rule to update the most recent policy statement on UASs. The FAA is directed to identify permanent areas in the Arctic where UASs may operate 24 hours a day. The FAA is to take part in cost-share pilot projects designed to accelerate the safe integration of UASs into the NAS.

*Conference Substitute*

House and Senate bills merged. The conference committee directs the Secretary to develop a plan to accelerate the safe integration of unmanned aircraft systems (UAS) into the

national airspace system. The Secretary is directed to develop the plan in consultation with the aviation industry, federal agencies using UASs, and the UAS industry as soon as practicable, but no later than September 30, 2015. Concurrent with the integration planning, the Secretary is directed to publish, and update annually, a five-year roadmap describing the activities of the FAA's Unmanned Aircraft Program Office, and its efforts to safely integrate UASs into the national airspace system. The conference committee also directs the Secretary to promulgate rules to allow for integration of small UASs into the national airspace system. The conference committee also directs the Administrator of the Federal Aviation Administration to establish six test ranges until September 30, 2020. Test range locations are not designated in the legislation. Instead, the Administrator is directed to coordinate with, and leverage resources from, the National Aeronautics and Space Administration and the Department of Defense to select the test ranges based on the criteria set forth in this section. This language is consistent with legislative direction in the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81). The intent of the committee is for the Administrator to establish a total of six test ranges under both laws, and not six ranges to be established under each law for a total of twelve. The conference committee directs the Secretary to develop a plan for the use of UASs in the arctic, as defined in this subtitle. Finally, the term "non-exclusionary airspace" was removed as the FAA does not recognize that term. The conference committee intends that when the FAA establishes the program to integrate UAS's into the national airspace system at six test ranges, the Administrator shall safely designate airspace for integrated manned and unmanned flight operations in the national airspace system.

#### SPECIAL RULES FOR CERTAIN UNMANNED AIRCRAFT SYSTEMS

##### **H323/S--**

###### *House bill*

Section 323 directs that within 180 days the Secretary of Transportation, prior to completing of the Commercial UAS integration plan, will determine if certain UAS may operate in the NAS. Assessment of the UASs will determine which types of UAS do not create hazard to users of NAS or national security, and whether a certificate of waiver or authorization of airworthiness is required. If the Secretary determines UAS may operate safely in the NAS, the Secretary shall establish requirements of the safe operation of such systems.

###### *Senate bill*

No similar provision.

###### *Conference Substitute*

House bill.

#### PUBLIC UNMANNED AIRCRAFT SYSTEMS

##### **H324/S--**

###### *House bill*

Section 324 directs that within 270 days the Secretary of Transportation will issue guidance on the operation of public UASs to expedite the certificate of authorization process, provide a collaborative process for expansion of access to the NAS, and provide guidance on public entities responsible when operating UASs. By December 31, 2015, the Secretary is required to implement operational and certification standards. The Secretary is directed to enter

in agreements, within 90 days, with appropriate government agencies to simplify and expedite the process for issuing certificates of waiver or authorization regarding applications seeking authorization to operate public UAS in the NAS.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill.

## SAFETY STUDIES

**H325/S--**

*House bill*

Section 325 directs the Administrator to conduct all safety studies necessary to support integration of UAS into the NAS.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill.

## SPECIAL RULE FOR MODEL AIRCRAFT

**H--/S607(g)**

*House bill*

No similar provision.

*Senate bill*

Section 607(g) exempts most model airplanes used for recreational or academic use from any UAS regulations established by the FAA.

*Conference Substitute*

Senate bill with modifications. Language including model aircraft for the purposes of sports, competitions and academic purposes is removed and replaced with "hobby". The modified section includes language requiring that the model aircraft must be operated in a manner that does not interfere with and gives way, to all manned aircraft. In addition, language that requires that model aircraft flown within five miles of an airport will give prior notification to the airport and the air traffic control (ATC), and that model aircraft that are flown consistently within five miles of the ATC will do so under standing agreements with the airports and ATC. Lastly, language is added that will ensure that nothing in this provision will interfere with the Administrator's authority to pursue enforcement action against persons operating model aircraft who endanger the safety of the national airspace system. In this section the term "nationwide community-based organization" is intended to mean a membership based association that represents the aeromodeling community within the United States; provides its members a comprehensive set of safety guidelines that underscores safe aeromodeling operations within the National Airspace System and the protection and safety of the general public on the ground;

develops and maintains mutually supportive programming with educational institutions, government entities and other aviation associations; and acts as a liaison with government agencies as an advocate for its members.

## UNMANNED AIRCRAFT SYSTEMS TEST RANGE

### **H326/S607(c)**

#### *House bill*

Section 326 directs the Administrator no later than one year after enactment to establish a program to integrate UASs into the national airspace system at no fewer than four test ranges. The program will include safely designating nonexclusionary airspace for integrated unmanned flight operations, develop certification standards and air traffic requirements, coordinate and leverage the resources of National Air and Space Administration and Department of Defense, address both civil and public UAS, ensure the program is coordinated with NextGen, and provide for verification of safety of UASs. In determining test range locations the Administrator shall consider geographic and climate diversity and consult with NASA and the Air Force.

#### *Senate bill*

Section 607(c) is a similar provision, but it allows the Administrator to include testing at three test sites as part of the integration plan by 2012. It directs the FAA to work with DOD to certify and develop flight standards for military UASs and to integrate these systems into the NAS as part of the UAS integration plan.

Section 320 establishes a test range program for 10 sites.

#### *Conference Substitute*

House and Senate bills merged into language that is included in Section 332 "Integration of civil unmanned aircraft into the national airspace system".

## SUBTITLE C – SAFETY AND PROTECTIONS

### AVIATION WHISTLEBLOWER INVESTIGATION OFFICE

### **H334/S518**

#### *House bill*

Section 334 establishes an independent Whistleblower investigation office within the FAA. The Director of this office is to be appointed by the Secretary of Transportation for a five year term. The office is in charge of investigating reports of agency or carrier safety violations, and is to make recommendations to the Administrator. It specifies that the Director cannot be prohibited from initiating an assessment of a complaint and that any evidence of criminal violations must be reported to the Administrator and Inspector General of the Department of Transportation (DOT IG).

#### *Senate bill*

Section 518 is a similar provision, but it does not require the Secretary to exercise authority under title 5 for the prevention of prohibited personnel actions or require direct reporting by the Director to the Secretary.

#### *Conference Substitute*

House bill with modified language to authorize the Director of the office created under this section to receive and investigate disclosures from employees of the Administration as well as employees of persons holding certificates issued under title 14 of the Code of Federal Regulations (C.F.R), if those certificate holders do not have similar in-house reporting programs, relating to possible violation of an order, a regulation, or any other provision of federal law relating to aviation safety.

#### POST-EMPLOYMENT RESTRICTIONS FOR FLIGHT STANDARDS INSPECTORS

##### **H331/S513**

###### *House bill*

Section 331 establishes a two year post-service period for FAA inspectors or persons responsible for oversight of FAA inspectors before they can act as an agent or representative of a certificate holder that they previously had responsibility for while employed at the FAA.

###### *Senate bill*

Section 513 is a similar provision, but it has a three year post-service restriction.

###### *Conference Substitute*

House bill.

#### REVIEW OF AIR TRANSPORTATION OVERSIGHT SYSTEM DATABASE

##### **H332/S520**

###### *House bill*

Section 332 requires the FAA to create a process to review the Air Transportation Oversight System (ATOS) database by regional teams to ensure that trends in regulatory compliance are identified, and appropriate corrective actions are taken according to Administration regulations.

###### *Senate bill*

Section 520 is a similar provision.

###### *Conference Substitute*

House bill.

#### IMPROVED VOLUNTARY DISCLOSURE REPORTING SYSTEM

##### **H333/S512**

###### *House bill*

Section 333 requires FAA to modify the Voluntary Disclosure Reporting Program (VDRP) to require inspectors to verify that air carriers have implemented comprehensive solutions to correct underlying causes of voluntarily disclosed violations, and confirm, before approving a final report of a violation, that the violation has not been previously discovered by an inspector or self-disclosed by an air carrier. The DOT IG is directed to review the FAA's implementation of the VDRP program.

###### *Senate bill*

Section 512 is a similar provision.

*Conference Substitute*  
House bill.

#### DUTY PERIODS AND FLIGHT TIME LIMITATIONS APPLICABLE TO FLIGHT CREWMEMBERS

**H335/S--**

*House bill*

Section 335 directs the FAA to initiate a rulemaking within six months of enactment to require commercial pilots who accept additional flight assignments under part 91 of Title 14 Code of Federal Regulations to count the flying time under the additional flight assignments towards the commercial flight time limitations. It requires the Administrator to conduct two separate rulemakings for part 121 and part 135 flight time limitations (the latter rulemaking must be initiated within one year of enactment).

*Senate bill*

No similar provision.

*Conference Substitute*  
House bill.

#### CERTAIN EXISTING FLIGHT TIME LIMITATIONS AND REST REQUIREMENTS

**H336/S--**

*House bill*

Section 523 extends the sections 263 and 264 of part 135 of title 14 C.F.R. for part 135 certificate holders providing air ambulance services and pilots and flight crewmembers of all cargo aircraft regarding certain flight times and rest periods shall remain in effect as they were in effect in January 1, 2011. It prohibits the Administrator from issuing, finalizing or implementing a rule as proposed in the FAA docket on "Interpretations of Rest Requirements" published in the register on December 23, 2010, or any similar rule regarding such sections for part 135 certificate holders providing air ambulance services and pilots and flight crewmembers of all cargo aircraft.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill modified by removing language requiring a separate rulemaking and language referencing requirements in effect on January 1, 2011.

#### EMERGENCY LOCATOR TRANSMITTERS ON GENERAL AVIATION AIRCRAFT

**H--/S553**

*House bill*

No similar provision.

*Senate bill*

Section 553(a),(b) directs the Administrator to submit an annual report to Congress regarding the recommendations issued by the NTSB consisting of the following: 1) whether the FAA plans to implement the recommendation of the NTSB; 2) if so, what actions the FAA plans to take to implement the recommendation; and 3) if the FAA chooses to not implement a NTSB recommendation, its reasoning for not doing so. This section would require the FAA to submit within 180 days to Congress the above information on all current NTSB recommendations not implemented so far.

Section 553(c) requires the FAA to implement NTSB recommendations relating to the proper installation of emergency locator transmitters (ELTs) on general aviation aircraft.

*Conference Substitute*

Senate bill modified to only keep the ELT language.

LIABILITY PROTECTION FOR PERSONS IMPLEMENTING SAFETY MANAGEMENT  
SYSTEMS

**H338/S--**

*House bill*

Section 338 specifies that a person required by the FAA to implement a Safety Management System (SMS) may not be held liable for damages in connection with a claim filed in a State or Federal court relating to the person's preparation or implementation of the SMS. The section does not relieve a person from liability for damages resulting from the person's own willful or reckless acts or omissions when demonstrated through evidence. Notwithstanding any other provision of law, a person employed by previously mentioned individuals and responsible for performing functions of an accountable executive, shall be deemed to be acting in the person's official capacity and may not be held liable for damages. A person performing the functions of an accountable executive is not relieved from personal liability for damages resulting from reckless acts or omissions.

*Senate bill*

No similar provision.

*Conference Substitute*

Senate bill.

MODIFICATION OF CUSTOMER SERVICE INITIATIVE

**H--/S519**

*House bill*

No similar provision.

*Senate bill*

Section 519 directs the FAA to remove from their customer service initiative, mission statements, and vision statements, any reference to air carriers as "customers". This section instructs the agency to guarantee that these statements should emphasize safety as the agency's highest priority when considering the dissatisfaction of any regulated entity.

*Conference Substitute*

House bill.

#### INDEPENDENT REVIEW OF SAFETY ISSUES

**H--/S514**

*House bill*

No similar provision.

*Senate bill*

Section 514 directs the U.S. Government Accountability Office (GAO) to initiate a review and investigation of air safety issues identified by FAA employees and reported to the Administrator. The GAO must report any findings to the Administrator and relevant Congressional Committees on an annual basis.

*Conference Substitute*

House bill.

#### NATIONAL REVIEW TEAM

**H--/S515**

*House bill*

No similar provision.

*Senate bill*

Section 517 requires the FAA to create a national review team to conduct unannounced, periodic, random reviews of the Administration's oversight of air carriers that will report to the Administrator and the relevant Congressional Committees. Members of the team may not review an air carrier that they previously had responsibility for overseeing. The section would also direct the DOT IG to provide progress reports on the review team's effectiveness to Congress.

*Conference Substitute*

House bill.

#### SAFETY INSPECTIONS OF REGIONAL CARRIERS

**H--/S559**

*House bill*

No similar provision.

*Senate bill*

Section 559 instructs the Administrator to make random, on-site safety inspections of regional air carriers at least once a year.

*Conference Substitute*

Senate bill dropped because it is included in P.L. 111-216, the Airline Safety Federal Aviation Administration Extension Act of 2010.

#### OVERSIGHT OF PILOT FLIGHT TRAINING SCHOOLS

**H--/S561***House bill*

No similar provision.

*Senate bill*

Section 561 directs the Administrator to submit a plan to Congress detailing the FAA's plans to enforce oversight of Pilot Training Schools.

*Conference Substitute*

Senate bill dropped because it is included in P.L. 111-216, the Airline Safety Federal Aviation Administration Extension Act of 2010.

**FEDERAL AVIATION ADMINISTRATION PILOT RECORDS DATABASE****H--/S551***House bill*

No similar provision.

*Senate bill*

Section 551 requires that part 121 air carriers review a pilot's entire history before making hiring decisions. It would mandate that the FAA develop and maintain a comprehensive database of pilot records, including both FAA records and air carrier records. It contains provisions permitting pilots to review and correct their records.

*Conference Substitute*

Senate bill dropped because it is included in P.L. 111-216, the Airline Safety Federal Aviation Administration Extension Act of 2010.

**AIR CARRIER SAFETY MANAGEMENT SYSTEMS****H--/S552***House bill*

No similar provision.

*Senate bill*

Section 552 directs the FAA to initiate a rulemaking requiring all part 121 air carriers to implement three safety programs as part of their Safety Management Systems (SMS) including: an Aviation Safety Action Program (ASAP), a Flight Operational Quality Assurance (FOQA) program, and a Line Operations Safety Audit LOSA program. It would require that the FAA implement employee protections for the ASAP and FOQA programs and mandate that the FAA Administrator consider the viability of integrating cockpit voice recorder data into safety oversight practices and guarantee that the agency enforce safety regulations in a consistent manner.

*Conference Substitute*

Senate bill dropped because it is included in P.L. 111-216, the Airline Safety Federal Aviation Administration Extension Act of 2010.

IMPROVED FLIGHT OPERATIONAL QUALITY ASSURANCE, AVIATION SAFETY  
ACTION, AND LINE OPERATIONAL SAFETY AUDIT PROGRAMS

**H--/S554**

*House bill*

No similar provision.

*Senate bill*

Section 554 would limit the use of FOQA and ASAP and LOSA data in judicial proceedings. FOQA, ASAP or LOSA data would only be allowed in a judicial proceeding if the judge finds that a party shows that the information is relevant, not otherwise known or available, and demonstrates a particularized need for the information that outweighs the intrusion upon the confidentiality of these programs. If this information is used in a judicial proceeding, the court would be required to protect it against further dissemination with a protective order and place the information under seal. This section would prevent disclosure of this data through the FOIA but would not prevent the NTSB from referring to information provided under the FOQA, ASAP or LOSA programs.

*Conference Substitute*

Senate bill dropped because it is included in P.L. 111-216, the Airline Safety Federal Aviation Administration Extension Act of 2010.

RE-EVALUATION OF FLIGHT CREW TRAINING, TESTING, AND CERTIFICATION  
REQUIREMENTS

**H--/S555**

*House bill*

No similar provision.

*Senate bill*

Section 555 requires the Administrator to develop and implement a plan to reevaluate flight crew training procedures and would specify what types of training would be included in the review. It would require the Administrator to initiate a new rulemaking to reevaluate minimum requirements to become a commercial pilot, certificated captain, and when transitioning to a new type of aircraft.

*Conference Substitute*

Senate bill dropped because it is included in P.L. 111-216, the Airline Safety Federal Aviation Administration Extension Act of 2010.

FLIGHTCREW MEMBER MENTORING, PROFESSIONAL DEVELOPMENT, AND  
LEADERSHIP

**H--/S556**

*House bill*

No similar provision.

*Senate bill*

Section 556 requires the FAA to establish an ARC to develop flight crew mentoring programs and establish or modify training existing programs to include leadership and command training.

*Conference Substitute*

Senate bill dropped because it is included in P.L. 111-216, the Airline Safety Federal Aviation Administration Extension Act of 2010.

FLIGHTCREW MEMBER SCREENING AND QUALIFICATIONS

**H--/S557**

*House bill*

No similar provision.

*Senate bill*

Section 557 requires the FAA to issue a rule that ensures flight crew members have proper qualifications and experience, including a minimum of 800 hours of flight training, before serving as a flight crew member for a part 121 air carrier.

*Conference Substitute*

Senate bill dropped because it is included in P.L. 111-216, the Airline Safety Federal Aviation Administration Extension Act of 2010.

ESTABLISHMENT OF SAFETY STANDARDS WITH RESPECT TO THE TRAINING,  
HIRING, AND OPERATION OF AIRCRAFT BY PILOTS

**H--/S560**

*House bill*

No similar provision.

*Senate bill*

Section 560 requires the FAA to issue a final rule establishing training safety standards for pilots within 180 days after enactment of this Act.

*Conference Substitute*

Senate bill dropped because it is included in P.L. 111-216, the Airline Safety Federal Aviation Administration Extension Act of 2010.

DEFINITIONS

**H--/S563**

*House bill*

No similar provision.

*Senate bill*

Section 563 defines the terms: "Aviation Safety Action Program," "Administrator," "Air Carrier," "FAA," "Flight Operational Quality Assurance Program," "Line Operation Safety Audit Program", and "Part 121 Air Carrier".

*Conference Substitute*  
House bill.

## TITLE IV - AIR SERVICE IMPROVEMENTS

### SUBTITLE B- ESSENTIAL AIR SERVICE

#### ESSENTIAL AIR SERVICE MARKETING

##### **H401/S417**

###### *House bill*

Section 401 specifies that when deciding where to award an Essential Air Service (EAS) contract, the Secretary of Transportation must consider, whether the air carrier has included a plan in its proposal to market its services to the community.

###### *Senate bill*

Section 417 similar provision, but it requires that all applications for EAS are to include a marketing plan to promote community involvement in their EAS service.

###### *Conference Substitute*

###### *House bill.*

#### NOTICE TO EAS COMMUNITIES PRIOR TO TERMINATION OF EAS ELIGIBILITY

##### **H402/S--**

###### *House bill*

Section 402 requires the Secretary of Transportation to notify a community receiving EAS at least 45 days in advance of any final decision to end EAS payments to that community due to a determination by the Secretary that providing such service requires a subsidy in excess of the per passenger subsidy cap. The Secretary shall establish procedures by which each community that is notified of an impending loss of subsidy may work directly with an air carrier to ensure that the air carrier is able to submit a proposal to the Secretary that does not require a subsidy in excess of the per passenger subsidy cap.

###### *Senate bill*

No similar provision.

###### *Conference Substitute*

###### *House bill.*

#### RESTORATION OF ELIGIBILITY

##### **H406/S418**

###### *House bill*

Section 406 authorizes state and local governments to submit a proposal to restore essential air service to a location after that location's per passenger subsidy has been determined to be over the allowable dollar amount. To qualify for restoration of service, the Secretary must determine that the rate of subsidy per passenger under the proposal does not exceed the allowable amount and the proposal is consistent with the legal and regulatory requirements of the essential air service program.

###### *Senate bill*

Section 418 is a similar provision.

*Conference Substitute*

House and Senate bills modified to include proposals to restore essential air service to locations that have been determined to have fewer than 10 enplanements per day. To qualify for restoration of service, the Secretary must determine that the rate of subsidy per passenger under the proposal does not exceed the allowable amount, the proposal is likely to result in an average of at least 10 enplanements per day, and the proposal is consistent with the legal and regulatory requirements of the essential air service program.

ESSENTIAL AIR SERVICE CONTRACT GUIDELINES

**H403/S413**

*House bill*

Section 403 authorizes DOT to provide incentive payments to communities for achieving performance goals, and to execute long-term EAS contracts. Requires DOT to issue revised guidelines incorporating these changes within 18 months after the date of enactment. Requires DOT to report to Congress on the extent to which the revised guidelines have been implemented, and the impact such implementation has had, every two years after the guidelines are established.

*Senate bill*

Section 413 is a similar provision, but it does not contain language on issuing guidance or the report.

*Conference Substitute*

House bill modified to extend the deadline for issuance of revised guidelines to one year after date of enactment.

ESSENTIAL AIR SERVICE REFORM

**H404/S415**

*House bill*

Section 404 authorizes \$97.5 million for Essential Air Service (EAS) in FY 2011, \$60 million in FY 2012, and \$30 million in FY 2013. These amounts are in addition to the \$50 million per year the EAS program is authorized to receive under current law from overflight fees collected by the FAA. Beginning in FY 2014, section 404 limits the amount EAS would receive from overflight fees to the amount needed to provide EAS to eligible communities in Alaska and Hawaii. In addition, it directs the Secretary of Transportation to take such actions as may be necessary to administer the EAS program within the amount of funding made available for the program.

*Senate bill*

Section 415 authorizes \$150 million per year for EAS, plus \$50 million from overflight fees. It requires any overflight fees in excess of \$50 million to be obligated for various EAS programs, including the code sharing pilot program under section 406 of Vision 100 and the alternate air service pilot program under §41745.

*Conference Substitute*

Authorizes \$143 million for EAS in FY 2012, \$118 million in FY 2013, \$107 million in FY 2014, and \$93 million in FY 2015. In addition, authorizes all overflight fees collected by the FAA to be made available, until expended, to carry out the essential air service program.

#### SMALL COMMUNITY AIR SERVICE

##### **H405/S416**

###### *House bill*

Section 405 adds an additional factor that the Secretary of Transportation must consider in selecting communities for participation in the Small Community Air Service Development (SCASD) program. In addition to the existing criteria for participation in the program, the Secretary is required to give priority to multiple communities that cooperate to submit a regional or multi-state application to improve air service. It eliminates the general fund authorization of appropriations for the SCASD program, funding it instead through overflight fee collections.

###### *Senate bill*

Section 413 extends the authorization for the SCASD program at its authorized funding level of \$35 million per year through FY 2011.

###### *Conference Substitute*

Requires the Secretary to give priority to multiple communities that cooperate to submit a regional or multistate application to consolidate air service into one regional airport. Authorizes the appropriation of \$6 million for the Small Community Air Service Development program for each of fiscal years 2012 through 2015.

#### ADJUSTMENTS TO COMPENSATION FOR SIGNIFICANTLY INCREASED COSTS

##### **H406/S418(g)**

###### *House bill*

Section 406 permits the Secretary of Transportation to increase the rates of compensation payable to air carriers under the EAS program to compensate carriers for increased aviation fuel costs, without regard to any agreement, without requiring the negotiation of existing contracts, and without any notice requirement. It removes the 90 day period in which the Secretary may continue to pay the amount previous contracted for as EAS carrier who has given notice, but has been required to continuing operating.

###### *Senate bill*

Section 418(g) is a similar provision.

###### *Conference Substitute*

House bill.

#### REPEAL OF ESSENTIAL AIR SERVICE LOCAL PARTICIPATION PROGRAM

##### **H407/S419**

###### *House bill*

Section 407 eliminates an EAS pilot program in which communities assumed a portion of the cost of providing EAS to the community.

*Senate bill*

Section 419 is a similar provision with minor technical differences.

*Conference Substitute*

House and Senate bills.

SUNSET OF ESSENTIAL AIR SERVICE PROGRAM

**H408/S420,421**

*House bill*

Section 408 sunsets the EAS program everywhere except Alaska and Hawaii as of October 1, 2013.

*Senate bill*

Section 420 imposes limits EAS to locations that average ten or more enplanements per day, with an exception for Alaska. It authorizes the Administrator to waive this limitation with respect to a location if the Administrator determines that the reason the location averages fewer than ten enplanements per day is not because of inherent issues with the location.

Section 421 limits EAS to locations that are 90 or more miles away from the nearest medium or large hub airport. It authorizes the Secretary of Transportation to waive this limitation as a result of geographic characteristics resulting in undue difficulty accessing the nearest medium or large hub airport.

*Conference Substitute*

Senate bill, except the requirement that locations be at least 90-miles away from the nearest large or medium hub airport is deleted; the requirement that locations have at least 10 enplanements per day only applies to locations that are within 175 miles of a large or medium hub airport; and an exception is added for locations in the State of Hawaii and Alaska. In addition, instead of sunseting the program as proposed in the House bill, the conference substitute freezes the program at the communities currently participating. Specifically, except in Alaska and Hawaii, the conference agreement limits eligibility for EAS to those communities that, at any time from September 30, 2010, to September 30, 2011, either received subsidized EAS or were notified by the last carrier providing unsubsidized service to the community of the carrier's intent to terminate such service.

SUBTITLE A- PASSENGER AIR SERVICE IMPROVEMENTS

SMOKING PROHIBITION

**H421/S--**

*House bill*

Section 421 prohibits smoking on aircraft in all intrastate, interstate, and foreign air transportation for scheduled passenger or nonscheduled passenger air transportation when a flight attendant is required.

*Senate bill*

No similar provision.

*Conference Substitute*  
House bill.

## MONTHLY AIR CARRIER REPORTS

### **H422/S402**

*House bill*

Section 422 requires air carriers that file monthly service reports to also file a monthly report on each flight diverted and each flight that departs the gate but is cancelled before the flight takes off. It requires the Secretary of Transportation to compile the information in a single monthly report and publish it on a DOT website.

*Senate bill*

Section 402 requires air carriers to publish on their website, and update monthly, a list of chronically delayed flights operated by the air carrier. It requires air carriers and authorized entities to disclose the on-time performance for a chronically delayed flight when a customer books a flight on the carrier's website, prior to actual purchase of a ticket.

*Conference Substitute*  
House bill.

## MUSICAL INSTRUMENTS

### **H424/S713**

*House bill*

Section 424 requires air carriers to permit passengers to carry a small musical instrument, such as a violin, guitar, onto the aircraft cabin if it can be stowed safely in a suitable baggage compartment in the aircraft cabin or baggage or cargo storage compartment if the instrument can be stowed properly and there is space for such instruments. Air carriers are to permit passengers to bring a large instrument into the passenger compartment if the instrument can be stowed properly in a seat and the passenger has purchased a seat for the instrument. Air carriers must transport as checked baggage musical instruments that may not be carried on provided they meet certain weight and size limitations (i.e., if the sum of length, width, and height does not exceed 150 inches, weigh over 165 pounds, or exceed size and weight restrictions for that aircraft) and can be properly stowed. It directs, no later than two years after the date of enactment, the Secretary of Transportation to issue final regulations to carry out this section.

*Senate bill*

Section 713 is a similar provision, but it does not specify that passengers carrying musical instruments would be charged fees for that luggage. There is no deadline for the rulemaking to be completed by, but it includes a mandate to require carrier participation.

*Conference Substitute*

House bill modified to specify that passengers carrying musical instruments are subject to the same baggage fees assessed to all other types of carry-on baggage if a seat is not purchased for that instrument.

## EXTENSION OF COMPETITIVE ACCESS REPORTS

**H--/S705***House bill*

No similar provision.

*Senate bill*

Section 705 makes the requirement for air carriers to file competitive access reports permanent by eliminating the current sunset provision. Current law requires large and medium hub airports to file semi-annual competition disclosure reports with DOT before receiving an AIP grant if the airport was unable to accommodate an airline request for facility access. The report must explain reason for the lack of accommodation and time frame for accommodation.

*Conference Substitute*

Senate bill modified to the length of the bill.

**AIRFARES FOR MEMBERS OF THE ARMED SERVICES****H426/S433***House bill*

Section 426 expresses the Sense of Congress that each domestic air carrier should seek to provide active duty members of the Armed Services who are traveling on leave or liberty at their own expense with: reduced air fares that are comparable to the lowest airfare for ticketed flights, and that eliminate to the maximum extent possible advanced purchase requirements; no baggage and excess weight fees, or reduced fees; flexible terms that allow members to purchase, modify, or cancel tickets without time restrictions, and to waive fees (including baggage fees), ancillary costs, or penalties; and proactive measures to ensure that all airline employees are trained in the policies pertaining to members of the Armed Forces who are on leave.

*Senate bill*

Section 433 is a similar provision with minor technical differences.

*Conference Substitute*

House bill.

**REVIEW OF AIR CARRIER FLIGHT DELAYS, CANCELLATIONS, AND ASSOCIATED CAUSES****H427/S--***House bill*

Section 427 requires the Inspector General of the Department of Transportation (DOT IG) to conduct a review regarding air carrier flight delays, cancellations, and associated causes, to update its 2000 report, within one year of enactment.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill.

## COMPENSATION FOR DELAYED BAGGAGE

### **H429/S--**

#### *House bill*

Section 429 directs the U.S. Government Accountability Office to study delays in the delivery of checked baggage to passengers, assess options and examine: the impact of establishing minimum standards to compensate a passenger in the case of unreasonable delays; take into consideration the additional fees for checked baggage that are imposed by many air carriers; and how the additional fees should improve a carrier's baggage performance. The report must be submitted within 180 days of the date of enactment.

#### *Senate bill*

No similar provision.

#### *Conference Substitute*

House bill.

## DOT AIRLINE CONSUMER COMPLAINT INVESTIGATIONS

### **H431/S403**

#### *House bill*

Section 431 directs the Secretary of Transportation to investigate consumer complaints regarding: 1) flight cancellations; 2) overbooking flights; 3) lost or damaged baggage; 4) problems obtaining refunds; 5) incorrect information regarding fares; 6) frequent flyer programs; and 7) deceptive or misleading advertising.

#### *Senate bill*

Section 403 is a similar provision, but with language requiring a budget needs report.

#### *Conference Substitute*

House bill.

## STUDY OF OPERATORS REGULATED UNDER PART 135

### **H432/S--**

#### *House bill*

Section 432 requires the Administrator, along with interested parties, to conduct a study of part 135 operators within 18 months of enactment, and an update within three years, and every two years thereafter.

#### *Senate bill*

No similar provision.

#### *Conference Substitute*

House bill with modification removing the requirement for follow up reports every two years.

## USE OF CELL PHONES ON PASSENGER AIRCRAFT

### **H433/S--**

*House bill*

Section 433 directs the Administrator to conduct a study within four months of enactment on the impact of the use of cell phones for voice communications in scheduled flights where currently permitted by foreign governments in foreign air transportation. The results of the study must be published and open to public comment, and a final report must be submitted to Congress within nine months of enactment.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill.

ESTABLISHMENT OF ADVISORY COMMITTEE FOR AVIATION CONSUMER  
PROTECTION

**H--/S404**

*House bill*

No similar provision.

*Senate bill*

Section 404 requires the establishment of an advisory committee for the Secretary of Transportation regarding aviation consumer protection. Membership would consist of one representative each from an air carrier, airport operator, and a state or local government with expertise with consumer protection matters, and one nonprofit group with expertise in consumer protection matters. It directs the advisory committee to report annually on its recommendations on February 1 of each of the first two calendar years of enactment.

*Conference Substitute*

Senate bill modified to make the provision last the length of the bill and removes travel per diem for members of the advisory committee.

DISCLOSURE OF SEAT DIMENSIONS TO FACILITATE THE USE OF CHILD SAFETY  
SEATS ON AIRCRAFT

**H--/S408**

*House bill*

No similar provision.

*Senate bill*

Section 408 directs the Administrator to prescribe regulations, within six months of enactment, to facilitate the use of child safety seats on aircraft. The regulations must require part 121 air carriers to post on their websites the maximum dimensions of a child safety seat that can be used on each aircraft operated by the air carrier to enable passengers to determine which child safety seats can be used on those aircraft.

*Conference Substitute*

Senate bill with modified language changing the deadline for the regulations from six months to twelve months. The conference committee also believes that passengers should be made fully aware of the location of final assembly of the aircraft on which they fly. Therefore, the committee believes the Secretary should require air carriers to position the "location of final assembly" notification immediately below the aircraft model number on the front page of the information placard.

## SCHEDULE REDUCTION

### **H430/S--**

#### *House bill*

Section 430 directs the FAA to convene a conference of air carriers to voluntarily reduce aircraft operations if the FAA determines that operations of those carriers are exceeding the hourly maximum departure and arrival rates, and the excess operations are likely to have a significant adverse effect on the NAS. It authorizes FAA to take action as necessary if there is no voluntary agreement to reduce schedules.

#### *Senate bill*

No similar provision.

#### *Conference Substitute*

House bill modified by adding new section specifying that the Administrator shall give priority to United States-flagged air carriers in permitting additional operations subsequent to any voluntary or non-voluntary reduction in operations.

## FLIGHT OPERATIONS AT RONALD REAGAN WASHINGTON NATIONAL AIRPORT

### **H423/S737**

#### *House bill*

Section 423 directs the Secretary of Transportation to grant an additional ten beyond-perimeter exemptions (from 24 under current law to 34) at Washington Reagan National Airport (DCA). It increases the number of operations by which exemptions may increase operations during any one-hour period between 7:00 AM and 9:59 PM, from three to five. The Administrator is required to reduce the hourly air carrier slot quota at DCA by ten slots in order to grant the additional exemptions provided. These reductions are required to be taken in the 6:00 AM, 10:00 PM or 11:00 PM hours. Scheduling priority is to be given to new entrant air carriers and limited incumbent air carriers over operations conducted by air carrier grant exemptions. The highest scheduling priority is given to beyond-perimeter operations conducted by new entrant air carrier and limited incumbent air carriers.

#### *Senate bill*

Section 737 creates additional beyond perimeter commercial flights at DCA with 24 beyond-perimeter round trip flights (10 to limited incumbents or new entrants and 14 to incumbents) would be permitted, and an additional eight could be added later if the Secretary of Transportation determines that the first 24 did not negatively impact the airport. It specifies that if an incumbent carrier that uses a slot for service to a large hub airport within the perimeter receives one or more the 24 additional beyond-perimeter round trip flights authorized by this provision, it must discontinue the use of that slot for within-perimeter service and, in place of

that service, operate beyond-perimeter service. It prohibits the Secretary from granting any more than two slot exemptions to an air carrier with respect to the same airport, except in the case of an airport serving an area with a population of more than 1 million. Any carrier receiving an exemption for beyond-perimeter service is prohibited from using multi-aisle or wide body aircraft, and from selling, trading, leasing, or otherwise transferring the rights to its beyond-perimeter exemptions, except through a merger or acquisition, and must use the slot within 60 days of receiving the exemption. If an incumbent carrier that uses a slot for service to a large hub airport within the perimeter receives one or more of the eight additional exemptions authorized by this provision, it must discontinue the use of that slot for within-perimeter service and, in place of that service, operate beyond-perimeter service. It authorizes Metropolitan Washington Aviation Authority (MWAA) to use revenues derived at either DCA or Washington Dulles International Airport (IAD) for operating and capital expenses (including debt service, depreciation and amortization) at the other airport.

#### *Conference Substitute*

House and Senate bills merged to direct the Secretary of Transportation to grant 16 exemptions for additional beyond perimeter commercial flights at Ronald Reagan Washington National Airport (DCA). Of the 16 exemptions created, the Secretary shall make eight available to limited incumbent air carriers and new entrant air carriers. When allocating such exemptions, the Secretary shall consider the extent to which the exemptions will provide air transportation with domestic network benefits in areas beyond the perimeter; increase competition in multiple markets; not reduce travel options for communities served by small hub airports and medium hub airports within the perimeter; not result in meaningfully increased travel delays; enhance options for nonstop travel to and from the beyond-perimeter airports that will be served as a result of those exemptions; have a positive impact on the overall level of competition in the markets that will be served as a result of those exemptions; or produce public benefits, including the likelihood that the service to airports located beyond the perimeter will result in lower fares, higher capacity, and a variety of service options.

The Secretary shall also make available eight slot exemptions for other incumbent air carriers qualifying for status as a non-limited incumbent carrier at DCA. Each such non-limited incumbent air carrier may operate up to a maximum of two of the newly authorized slot exemptions. Each such non-limited incumbent air carrier, prior to exercising an exemption made available shall discontinue the use of a slot for service between DCA and a large hub airport within the perimeter, and operate, in place of such service, service between DCA and an airport located beyond the perimeter. Each such non-limited incumbent air carrier shall be entitled to return of the slot by the Secretary if use of the exemption made available is discontinued; shall have sole discretion concerning the use of an exemption including the initial or any subsequent beyond perimeter destinations to be served; and shall file a notice of intent with the Secretary and subsequent notices of intent, when appropriate, to inform the Secretary of any change in circumstances concerning the use of any exemption. Such notices of intent shall specify the beyond perimeter destination to be served and the slots the carrier shall discontinue using to serve a large hub airport located within the perimeter. Each such non-limited incumbent air carrier operating an exemption may not operate a multi-aisle or widebody aircraft in conducting such operations and shall be prohibited from transferring the rights to its beyond-perimeter exemptions.

The Secretary shall afford a scheduling priority to operations conducted by new entrant air carriers and limited incumbent air carriers over operations conducted by other air carriers granted additional slot exemptions; a scheduling priority to slot exemptions currently held by new entrant air carriers and limited incumbent air carriers for service to airports located beyond the perimeter to the extent necessary to protect viability of such service; and consider applications from foreign air carriers that are certificated by the government of Canada if such consideration is required by the bilateral aviation agreement between the U.S. and Canada.

The exemptions granted by the Secretary may not be for operations between the hours of 10:00 p.m. and 7:00 a.m.; and may not increase the number of operations at DCA in any 1-hour period during the hours between 7:00 a.m. and 9:59 p.m. by more than five operations. A non-limited incumbent air carrier utilizing an exemption for an arrival after 10:01 p.m. must discontinue use of an existing slot during the same time period the arrival exemption is operated.

In determining a limited incumbent, the Secretary shall consider any air carrier operating 40 or fewer slots at DCA. The term 'slot' shall not include slot exemptions; slots operated by an air carrier under a fee-for-service arrangement for another air carrier, if the air carrier operating such slots does not sell flights in its own name, and is under common ownership with an air carrier that seeks to qualify as a limited incumbent and that sells flights in its own name; or slots held under a sale and license-back financing arrangement with another air carrier, where the slots are under the marketing control of the other air carrier. The Secretary shall prohibit the transfer of exemptions except through an air carrier merger or acquisition. The definition of airport purposes at the Metropolitan Washington Aviation Authority (MWAA) shall include a business or activity not inconsistent with the needs of aviation that has been approved by the Secretary.

## PASSENGER AIR SERVICE IMPROVEMENTS

### **H425/S401**

#### *House bill*

Section 425 requires that within 90 days of enactment, air carriers and each operator of a medium- or large-hub airport, file emergency contingency plans with the Secretary of Transportation for review and approval. Air carriers are required to update their plans every three years and airports must update every five years. The Secretary is also directed to establish a toll-free consumer complaints hotline telephone number for use of passengers. The Secretary is instructed to take action to notify the public of the DOT's consumer complaints hotline telephone number and related website. Air carriers providing scheduled air service are required to include on their website consumer complaints hotline information for DOT and the air carrier as well as a hotline telephone number on carrier signs displayed at airport ticket counters, and on any electronic confirmation of the purchase of a passenger ticket. It directs the Secretary to establish a website that contains a listing of the countries that may require a U.S. or foreign air carrier to treat an aircraft passenger cabin with insecticides prior to a flight to that country, or to apply an aerosol insecticide in an aircraft cabin used for such a flight when the cabin is occupied with passengers. Air carriers are required to update their emergency contingency plans every three years, and airport operators every five years.

#### *Senate bill*

Section 401 requires air carriers and airport operators to develop contingency plans to address situations in which the departure of a flight is substantially delayed while passengers are confined to an aircraft. Each plan would have to be submitted to the DOT for review and approval by the Secretary of Transportation, and would be required to address minimum standards established by the Department. At a minimum, the plans for air carriers must outline how the airline will guarantee that the passengers are provided: a) adequate food, potable water, and restroom facilities; b) cabin ventilation and comfortable cabin temperatures, and; c) access to necessary medical treatment. It specifies that airlines must allow passengers to deplane if three hours have elapsed since the doors have closed and the aircraft has not departed, or the aircraft has been landed for three hours but passengers have been unable to deplane. Exceptions to the deplane requirements would exist only when a pilot reasonably believes that the aircraft will depart within 30 minutes, or if the pilot believes that deplaning the passengers would jeopardize passenger security or safety. Airport operators would also be required to submit a plan to the DOT for approval that provides for the deplanement of passengers following extended tarmac delays. The Secretary would also be required to perform periodic reviews of the air carrier and airport operator plans, and would be authorized to impose civil penalties on air carriers or airport operators that fail to meet the requirements of such plans. It directs the DOT to create a consumer complaint hotline telephone number.

#### *Conference Substitute*

House and Senate bills merged and modified. The modified section includes House language requiring emergency contingency plans by air carriers and modified to include large, medium, small, and non-hub airports. Included in the section is modified language that would give passengers the option to deplane and return to airport terminal when there is an excessive tarmac delay, except if there is a safety, security or disruption of airport operations causes that would result from deplanement. The Secretary of Transportation is to determine the length of a tarmac delay that would be deemed "excessive". Lastly, the section includes House language on consumer complaints and use of pesticides in a passenger aircraft.

### DENIED BOARDING COMPENSATION

#### **H428/S--**

##### *House bill*

Section 428 requires the Secretary of Transportation to evaluate, within six months of enactment and every two years thereafter, the amount provided for denied boarding compensation and issue a regulation to adjust such compensation as necessary.

##### *Senate bill*

No similar provision.

#### *Conference Substitute*

Senate bill. The Department of Transportation is already conducting a rulemaking on this subject.

### DISCLOSURE OF PASSENGER FEES

#### **H--/S405**

##### *House bill*

No similar provision.

*Senate bill*

Section 405 directs the Secretary of Transportation to complete a rulemaking that requires air carriers to provide the public a list of charges, besides airfare (e.g., baggage fees and meal fees), that the air carrier may be imposing on passengers. The Secretary would be authorized to require an air carrier to make the list of fees public, and the list must be updated every 90 days unless there is no increase in the amount or type of fees being imposed.

*Conference Substitute*

House bill.

DISCLOSURE OF AIR CARRIERS OPERATING FLIGHTS FOR TICKETS SOLD FOR AIR  
TRANSPORTATION

**H--/S406**

*House bill*

No similar provision.

*Senate bill*

Section 406 requires the Office of Aviation Consumer Protection in DOT to establish rules to ensure that all consumers are able to easily and fairly compare airfares and charges paid when purchasing tickets for air transportation, including taxes and fees. This section requires taxes and fees be disclosed on the website prior to the purchaser providing personal information and makes failure to disclose an "unfair and deceptive practice."

*Conference Substitute*

Senate provision dropped because it is included in P.L. 111-216, the Airline Safety and Federal Aviation Administration Extension Act of 2010.

NOTIFICATION REQUIREMENTS WITH RESPECT TO THE SALE OF AIRLINE  
TICKETS

**H--/S407**

*House bill*

No similar provision.

*Senate bill*

Section 407 requires the Office of Aviation Consumer Protection and Enforcement within the DOT to establish rules to clarify what must be disclosed in an aviation fare quote in order for consumers to easily and fairly compare airfares and charges among carriers. It directs the Secretary of Transportation, in consultation with the FAA, to prescribe such regulations as may be necessary.

*Conference Substitute*

House bill.

EAS CONNECTIVITY PROGRAM

**H--/S411***House bill*

No similar provision.

*Senate bill*

Section 411 directs the Secretary of Transportation to establish a program under which the DOT shall require, in up to ten communities, that air carriers participating in Essential Air Service (EAS), and major air carriers serving large hub airports, participate in code-share arrangements, consistent with normal industry practice, whenever and wherever the Secretary determines that such multiple code-sharing arrangements would improve air transportation services.

*Conference Substitute*

No provision.

EXTENSION OF FINAL ORDER ESTABLISHING MILEAGE ADJUSTMENT  
ELIGIBILITY

**H--/S412***House bill*

No similar provision.

*Senate bill*

Section 412 extends a provision that specifies that the most commonly used route between an eligible place and the nearest medium hub airport or large hub airport is to be used to measure the highway mileage considered in reviewing any action to eliminate compensation for EAS to such place, or terminate the location's compensation eligibility for such service. It would further terminate any such final order on September 30, 2011.

*Conference Substitute*

Extends to September 30, 2015, the date on which the final order issued under section 409 of Vision 100 shall terminate.

CONVERSION OF FORMER EAS AIRPORTS

**H--/S414***House bill*

No similar provision.

*Senate bill*

Section 414 requires the Secretary of Transportation to establish a program to provide general aviation conversion funding for airports serving eligible places that the Secretary has determined no longer qualify as eligible places for EAS subsidies.

*Conference Substitute*

No provision.

USE OF CERTAIN LANDS AT LAS VEGAS MCCARRAN INTERNATIONAL AIRPORT  
**H--/S434**

*House bill*

No similar provision.

*Senate bill*

Section 434 authorizes Clark County, Nevada, to permit the use of certain lands in the Las Vegas McCarran International Airport Environs Overlay District for transient lodging and associated facilities. This provision prohibits the construction of facilities that would constitute a hazard to air navigation, result in an increase to minimum flight altitudes, or otherwise pose a significant adverse impact on airport or aircraft operations.

*Conference Substitute*

*House bill.*

## TITLE V - ENVIRONMENTAL STREAMLINING AND STEWARDSHIP

### OVERFLIGHTS OF NATIONAL PARKS

#### **H501/S709**

##### *House bill*

Section 501 exempts operators in parks with 50 or fewer annual air tour flights from the statutory permitting requirement, with a provision for the National Park Service (NPS) director to withdraw an exemption on a park-specific basis if necessary to protect park resources or visitor experiences. It allows NPS and FAA to enter into a voluntary agreement with a commercial air tour operator as an alternative to creation of an air tour management plan. FAA and NPS must solicit public comments and must consult with occupants of affected tribal lands before entering into a voluntary agreement. It provides that a voluntary agreement may require payment of overflight fees. The FAA and NPS are permitted to terminate a voluntary agreement if: 1) NPS finds the agreement no longer protects park resources; or 2) FAA determines operations under the agreement adversely affect safety or the national aviation system. It permits modifications to interim operating authority, and allows a grant of interim authority to a new entrant operator, if: 1) the operator provides adequate information to NPS and FAA; 2) FAA determines modification would not adversely affect safety or the national aviation system; and 3) NPS determines modification would not adversely affect park resources. Commercial air tour operators must report the number of commercial air tours over parks.

##### *Senate bill*

Section 709 allows air tour overflights over a national park when a voluntary agreement has been reached between the operator and the appropriate representative of the national park. This section provides a waiver from the general rule prohibiting tour operations over national parks for national parks that have 100 or fewer air tour overflights each year. The Secretary of the Interior is instructed to assess a fee on commercial air tour operators operating over a national park to be used to fund the development of air tour management plans. It prescribes penalties for operators that do not pay this fee. This section provides the Director of NPS with flexibility in determining how to manage air tours at Crater Lake National Park.

##### *Conference Substitute*

House bill modified to include language on flexibility for Crater Lake National Park.

### STATE BLOCK GRANT PROGRAM

#### **H502/S209**

##### *House bill*

Section 502 requires the issuance of guidance for carrying out the AIP State Block Grant Program (SBGP) rather than regulations. It adds to required standards a State must agree to meet in order to be eligible for a grant under the program with: National Environmental Policy Act (NEPA) of 1969 standards, state and local environmental policy acts, executive orders, agency regulations and guidance, and other federal environmental requirements. Furthermore, it adds a provision that requires any federal agency, except the FAA, that is responsible for issuing an approval, license or permit to ensure compliance with a federal environmental requirement applicable to a project to be carried out by a State using funds from a block grant must: 1)

coordinate and consult with the State; 2) use the environmental analysis prepared by the State for the project; and 3) supplement such analysis as necessary.

*Senate bill*

Section 209 codifies current practice that State participants in the State Block Grant Program have responsibility and authority to comply with applicable environmental requirements for projects at non-commercial service airports within the purview of the SBGP. The FAA administers the SBGP by authorizing participating states once a year to receive a block of funds for any eligible non-primary airport project. This section would make a minor change to 49 U.S.C. section 47128(a) by replacing the term "regulations" with "guidance" because the FAA has issued guidance in the form of the AIP Handbook, 5100.38, to implement its airport improvement program. It establishes a pilot program for up to three States that are currently not in the program to participate in the program.

*Conference Substitute*

House bill.

## AIRPORT FUNDING OF SPECIAL STUDIES OR REVIEWS

### **H503/S210**

*House bill*

Section 503 authorizes the FAA to accept funds from airport sponsors to conduct: 1) special environmental studies for ongoing federally-funded airport projects; 2) special studies to support approved airport noise compatibility measures or environmental mitigation commitments in an agency record of decision or a finding of no significant impact; and 3) a review and completion of environmental activities associated with new or amended flight procedures, including performance-based navigation procedures and area navigation procedures.

*Senate bill*

Section 210 is a similar provision.

*Conference Substitute*

House bill.

## GRANT ELIGIBILITY FOR ASSESSMENT OF FLIGHT PROCEDURES

### **H506/S211**

*House bill*

Section 506 authorizes grants to airport operators to assist in completing environmental review and assessment activities for proposes to implement flight procedures that have been approved for airport noise compatibility planning purposes. It permits the Administrator to accept funds from an airport sponsor, including funds provided in noise compatibility planning grants, to hire additional staff or consultants to facilitate timely review and competition of environmental activities associated with the proposed changes in flight procedures. Funds received under this section shall be credited as offsetting collections to the account that finance the activities and services for which the funds are accepted; shall be available be for expenditure only to pay the costs of activities and services for which the funds are accepted; and shall remain available until expended.

*Senate bill*

Section 211 is a similar provision, but it specifies that funds received under this authority are exempt from the procedures applicable to gifts received by the Administrator.

*Conference Substitute*

House bill.

DETERMINATION OF FAIR MARKET VALUE OF RESIDENTIAL PROPERTIES

**H507/S--**

*House bill*

Section 507 requires the Secretary of Transportation to ensure that an appraisal for fair market value of any property to be acquired disregards any decrease or increase in the value caused by the project for which the property is being acquired or by the likelihood that the property would be acquired. It directs that physical deterioration within reasonable control of the owner should be considered.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill.

PROHIBITION ON OPERATING CERTAIN AIRCRAFT WEIGHING 75,000 POUNDS OR  
LESS NOT COMPLYING WITH STAGE 3 NOISE LEVELS

**H508/S710**

*House bill*

Section 508 requires that all civil subsonic jet aircraft under 75,000 pounds must meet Stage 3 noise levels within the 48 contiguous states by December 31, 2016, with some exceptions for the following types of temporary operations: 1) to sell, lease or use the aircraft outside the 48 contiguous States; 2) to scrap the aircraft; 3) to obtain modifications to the aircraft to meet Stage 3 noise levels; 4) to perform scheduled heavy maintenance or significant modifications at an overseas maintenance facility; 5) to deliver the aircraft to an operator leasing the aircraft from the owner or return the aircraft to the lessor; 6) to prepare, park, or store aircraft in anticipation of above activities; 7) to provide transport of persons or goods in an emergency situation; and 8) to divert the aircraft to an alternative airport on account of weather, or safety reasons. It authorizes the Secretary of Transportation to prescribe regulations as necessary.

*Senate bill*

Section 710 is a similar provision with minor technical differences, including a different deadline set at December 31, 2014. Airports are allowed to opt-out of this prohibition, at which time the Secretary of Transportation will post notices on its website or another place easily accessible to the public.

*Conference Substitute*

House bill modified, moving the deadline to December 31, 2015.

## AIRCRAFT DEPARTURE QUEUE MANAGEMENT PILOT PROGRAM

### **H509/S--**

#### *House bill*

Section 509 directs the Secretary of Transportation to carry out a pilot program at up to five public-use airports to design, develop, and test new air traffic flow management technology to better manage the flow of aircraft on the ground and reduce ground holds and idling times for aircraft. In selecting participating airports, the Secretary must give priority consideration to airports at which improvements in ground control efficiencies are likely to achieve the greatest fuel savings or air quality or other environmental benefits, as measured by the amount of reduced fuel, reduced emissions, or other environmental benefits. No more than \$2.5 million may be expended at any single public-use airport.

#### *Senate bill*

No similar provision.

#### *Conference Substitute*

House bill.

## HIGH-PERFORMANCE, SUSTAINABLE, AND COST-EFFECTIVE ATC FACILITIES

### **H510/S--**

#### *House bill*

Section 510 requires the implementation of sustainable practices for the incorporation of energy-efficient design, equipment, systems and other measures in the construction and major renovation of air traffic control facilities to the maximum extent practicable.

#### *Senate bill*

No similar provision.

#### *Conference Substitute*

House bill.

## SENSE OF CONGRESS

### **H511/S--**

#### *House bill*

Section 511 expresses Sense of Congress that the European Union (EU) should not extend its emissions trading proposal to international civil aviation operations without working through International Civil Aviation Organization (ICAO) and other relevant air services agreements, and that the EU should work with ICAO to develop a consensual approach to addressing aircraft greenhouse gas emissions. It expresses the Sense of Congress that the U.S. Government should use all political, diplomatic, and legal tools at their disposal to ensure that the EU's emission trading scheme is not applied to aircraft registered by the U.S. or the operators of those aircraft, including the mandates that U.S. carriers provide emissions data to and purchase emissions allowances from or surrender emissions allowances to the EU Member states.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill.

#### AVIATION NOISE COMPLAINTS

**H512/S--**

*House bill*

Section 512 requires owners or operators of a large hub airport to publish a telephone number to receive noise complaints on the airport's website within 90 days of enactment. Any owner or operator who receives 25 or more complaints per year will be required to submit an annual report to the FAA regarding the number of complaints and a summary of the nature of the complaints, which the Administrator must make available to the public electronically.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill modified to remove the annual reporting requirement.

#### NEXTGEN ENVIRONMENTAL EFFICIENCY PROJECTS STREAMLINING

**H503/S--**

*House bill*

Section 503 incorporates NextGen environmental efficiency projects into projects that are subject to streamlined environmental review and given high priority in environmental review. These include: 1) an airport capacity enhancement project at a congested airport; and 2) a NextGen environmental efficiency project at the 35 largest airports (i.e., OEP airports) or any congested airports. It also clarifies the jurisdictional agencies and the lead agency responsibility for these projects. Defines "NextGen environmental efficiency project" as a NextGen project that develops and certifies performance-based navigation procedures; or develops other environmental mitigation projects the Secretary of Transportation may designate as facilitating a reduction in noise, fuel consumption, or emissions from air traffic operations.

*Senate bill*

No similar provision.

*Conference Substitute*

Senate bill.

#### NOISE COMPATIBILITY PROGRAMS

**H505/S--**

*House bill*

Section 505 requires operators applying for noise compatibility programs to state the measures they have taken or propose to take to reduce existing noncompatible uses and prevent

introducing additional noncompatible uses in the area. It adds as one of the measures, conducting comprehensive land use planning jointly with neighboring local jurisdictions for community redevelopment in an area in which land or other property interests have been acquired by the operator, to encourage and enhance redevelopment opportunities that reflect zoning and uses that will prevent the introduction of additional incompatible uses and enhance redevelopment potential.

*Senate bill*

No similar provision.

*Conference Substitute*

Senate bill.

ENVIRONMENTAL MITIGATION DEMONSTRATION PILOT PROGRAM

**H--/S213**

*House bill*

No similar provision.

*Senate bill*

Section 213 authorizes the Secretary of Transportation to carry out up to six environmental mitigation projects at public-use airports and make grants under special apportionment funding for these demonstrations. To be eligible for the pilot program, an airport would be required to be open to the public, with priority consideration given to projects that would achieve the greatest reductions in aircraft noise, airport emissions, or airport water quality impacts. The federal government would be limited to providing 50 percent of the cost for the projects and limited to a total amount per project of \$2.5 million.

*Conference Substitute*

House bill.

PILOT PROGRAM FOR ZERO EMISSION AIRPORT VEHICLES

**H--/S609**

*House bill*

No similar provision.

*Senate bill*

Section 609 requires the Secretary of Transportation to establish a pilot program to foster the acquisition and use of zero emission vehicles on airports. Priority is given to those airports in non-attainment areas and where the greatest air quality benefits will be achieved. In 18 months, the Secretary of Transportation shall report to Congress on the effectiveness of the pilot program.

*Conference Substitute*

Senate bill modified to: change "shall" to "may" when directing the Secretary of Transportation to establish a pilot program; allowing public-use airports to be eligible in the pilot program; permitting the Secretary of Transportation to consider applications from public-use airports not in the prescribed areas if there is a shortage of applicants; and allowing participants

to use university transportation centers. New language is added that: establishes performance measures; creates assessments of the data collected used in the program; and makes a technical change.

#### INCREASING THE ENERGY EFFICIENCY OF AIRPORT POWER SOURCES

##### **H--/S610**

##### *House bill*

No similar provision.

##### *Senate bill*

Section 610 requires the Secretary of Transportation to establish a program to encourage airport operators to assess their energy requirements and identify ways to reduce emissions and increase energy efficiency. The Secretary of Transportation may make grants to eligible airports to acquire or construct equipment and infrastructure to reduce emissions and improve energy efficiency.

##### *Conference Substitute*

Senate bill modified by removing references to "reducing harmful emissions" and makes minor technical corrections.

## TITLE VI – EMPLOYEES AND ORGANIZATION

### FAA PERSONNEL MANAGEMENT SYSTEM

#### **H601/S313**

##### *House bill*

Section 601 reforms the process by which the FAA resolves labor disputes with employee unions arising in the collective bargaining process. It requires the FAA and employee representatives to use the services of the Federal Mediation and Conciliation Service (FMCS). If they are unable to come to an agreement on labor issues, or, by mutual agreement, they may adopt alternate procedures to resolve disputes. If the mediation is unsuccessful, the parties must submit their issues to the Federal Service Impasses Panel (FSIP) that will assist the parties in resolving the dispute by asserting jurisdiction and ordering binding arbitration by a private arbitration board of three members. The board will result from Executive Director of the FSIP will request a list of 15 names from the Director of the FMCS, the parties will select one arbitrator each from the list, and the two arbitrators selected with then choose the third. The arbitration board must render a decision within 90 days after the date of its appointment, and take into account the following factors: 1) the effect of its decision on the FAA's ability to attract and retain a qualified workforce; 2) the effect of its decision on the FAA budget; 3) the effect of its decision on other FAA employees; and 4) any other factors that would assist the board in reaching a fair resolution. Upon reaching a voluntary agreement or at the conclusion of the binding arbitration, the final agreement will be subject to ratification by the exclusive bargaining representative of the employees, if so requested by the bargaining representative. The final agreement must also be approved by the head of the agency.

##### *Senate bill*

Section 313 is a similar provision, but it specifies that jurisdiction over enforcement claims is limited to the U.S. District Court for the District of Columbia.

##### *Conference Substitute*

House bill modified by deleting language directing the board to take into consideration "the effect of its arbitration decisions on other Federal Aviation Administration employees" in making decisions.

### PRESIDENTIAL RANK AWARD PROGRAM

#### **H602/S307**

##### *House bill*

In 1996, the FAA reformed its personnel system under special authority provided by Congress (now codified under 49 U.S.C. section 40122), which exempted the FAA from many requirements of the federal government's personnel system, including the Presidential Rank Award Program. Section 602 would change the exemption and, through an amendment to 49 U.S.C. section 40122, allow the FAA's executives and senior professionals to participate in the program.

##### *Senate bill*

Section 307 is the same provision.

*Conference Substitute*  
House bill.

#### COLLEGIATE TRAINING INITIATIVE STUDY

**H608/S--**  
*House bill.*

Section 608 requires the U.S. Government Accountability Office to conduct a study on training options for graduates of the Collegiate Training Initiative, and submit the study to Congress within six months of enactment.

*Senate bill*  
No similar provision.

*Conference Substitute*  
House bill.

#### FRONT LINE MANAGER STAFFING

**H610/S716**  
*House bill*

Section 610 requires the Administrator to commission an independent study on front-line manager staffing requirements in air traffic control facilities, and submit the final report to Congress within nine months of enactment. Some considerations to take into account are: managerial tasks; number of supervisory positions; coverage requirements in relation to traffic demands; facility type; complexity of traffic and managerial responsibilities; and proficiency and training requirements.

*Senate bill*  
Section 716 requires the Administrator within 45 days after enactment to study air traffic control front line manager staffing requirements and submit any determinations made as a result of the study to the Congress within six months after enactment.

*Conference Substitute*  
House bill.

#### FAA TECHNICAL TRAINING AND STAFFING

**H603/S708(a),(b)**  
*House bill*

Section 603 requires the Administrator to conduct a study on the adequacy of FAA's technical training strategy and improvement plan for FAA transportation systems specialists. The plan must include: recommendations to improve technical training strategy and improvement planning; a description of actions having been undertaken; and recommendations regarding cost-effective approaches to training. The FAA is to report to Congress within one year of enactment. It directs the Administrator to contract with the National Academy of Sciences within 90 days of enactment to conduct a study on the assumptions and methods FAA uses to estimate staffing needs for FAA transportation systems specialists and to ensure proper

maintenance and certification in the most cost-effective manner. The Academy must submit its report to Congress one year after contracted.

*Senate bill*

Section 708(a) and (b) similar provisions but it requires the U.S. Government Accountability Office (GAO) to study FAA Airway Transportation Systems Specialists training and report to Congress within a year of enactment. It includes air traffic controllers and engineers as part of the study; and, the Academy must report to Congress on its study 24 months after the date of execution of the contract for the study.

*Conference Substitute*

House bill modified removing language requiring the study to be done in the most cost effective manner. The modified provision directs the National Academy of Sciences, when conducting the study on the assumptions and methods used by FAA to estimate staffing needs for FAA systems specialists, to consult with the exclusive bargaining representative of systems specialists. Additionally, language was added requiring the National Academy of Sciences to "include recommendations for objective staffing standards that maintain the safety of the national airspace."

## SAFETY CRITICAL STAFFING

### **H604/S708(c),(d)**

*House bill*

Section 604 requires the Administrator to implement, to the extent practicable and in the most cost-effective manner, the staffing model for aviation safety inspectors by October 1, 2011, following the recommendations outlined in the "Staffing Standards for Aviation Inspectors" report issued by the National Academy of Sciences in 2007. The FAA is required to consult with interested parties, including aviation safety inspectors, and submit the staffing model to Congress on an annual basis.

*Senate bill*

Section 708(c) and (d) directs the FAA to increase inspector staffing to levels in its staffing model. The Administrator is required to develop a staffing model for aviation safety inspectors, but differs from the House in that it allows 12 months from the date of enactment, development of a staffing model, but does not require the Administrator to follow the Academy's recommendations, and requires inspector staffing levels to be at least at the levels indicated in the staffing model. It specifies that no later than 180 days after enactment, the Administrator shall submit a report to Congress on the future of flight service stations in Alaska. The report will include: 1) an analysis of the number of flight service specials needed; 2) training needed and need for formal training and hiring program; 3) a schedule for necessary inspections, 4) upgrades and modernization of stations and equipment; and 5) a description of interaction between flight service stations operated by FAA and those operated by contractors.

*Conference Substitute*

House bill modified to require the FAA to consult with the exclusive bargaining representative for aviation safety inspectors when implementing the staffing model.

Additionally, the date of the report was changed from October 1 of each year to January 1 of each year.

## AIR TRAFFIC CONTROL SPECIALIST QUALIFICATION TRAINING AND SCHEDULING

### **H606/S--**

#### *House bill*

Section 606 authorizes the Administrator to appoint qualified air traffic control (ATC) specialist candidates for placement directly in ATC facilities. ATC specialists will receive the same benefits and compensation as any other developmental controller. Within 18 months after enactment, the FAA will submit to Congress a report that evaluates the effectiveness of the ATC specialist qualification training. If the Administrator determines that ATC specialists are more qualified in carrying out duties than ATC specialists hired from general public, the Administrator shall increase the number of appointments of candidates with such certification. It includes reimbursement for travel expenses associated with certifications from education entity that provided the training.

#### *Senate bill*

No similar provision.

#### *Conference Substitute*

House modified to change the due date of the required report from 18 months after enactment to two years after enactment.

## FAA AIR TRAFFIC CONTROLLER STAFFING

### **H605/S708**

#### *House bill*

Section 605 directs the FAA to enter into an arrangement, within 90 days, with the National Academy of Sciences to conduct a study of the air traffic controller standard used by the FAA to estimate staffing needs for FAA air traffic controllers to ensure the safe operation of the NAS in the most cost-effective manner. The study must include examination of representative information on productivity, human factors, traffic activity, and improved technology on ATC, as well as an examination of recent Academy reviews of models from MITRE, and consideration of Administration's current and estimated budgets. The Academy is required to consult employee groups and industry representative in conducting the study. The Academy must transmit the study to Congress within two years of enactment.

#### *Senate bill*

Section 708 is a similar provision, but it includes Airway Transportation Systems Specialists and engineers as part of the study.

#### *Conference Substitute*

House bill modified to require the National Academy of Sciences to consult with the exclusive bargaining representative of air traffic controllers in conducting the study.

## ASSESSMENT OF FAA AIR TRAFFIC CONTROLLER TRAINING PROGRAMS

**H607/S516***House bill*

Section 607 requires the Administrator to conduct a study to assess the adequacy of training programs for air traffic controllers, including the FAA's technical training strategy and improvement plan, and submit the study to Congress within six months of enactment. The study will include a review of current training systems, an analysis of competencies required of air traffic control for successful performance, an analysis of competence projected to be required in NextGen, an analysis of various training approaches, recommendations to improve current training system, and the most cost effective approach.

*Senate bill*

Section 516 requires FAA to conduct a comprehensive review of its Academy and facility training efforts, and establish standards to identify the number of developmental controllers that can be accommodated by each facility.

*Conference Substitute*

House and Senate bills modified and merged. This section includes Senate and House language, with language added requiring the Inspector General of the Department of Transportation to conduct an assessment of FAA's air traffic controller scheduling practices.

**FAA FACILITY CONDITIONS****H609/S323***House bill*

Section 609 requires the U.S. Government Accountability Office to conduct a study of the conditions of a sampling of FAA facilities across the U.S., including towers, centers, offices and Terminal Radar Approach Control Facilities (TRACONs), as well as reports from employees relating to health conditions resulting from exposure to mold, asbestos, poor air quality, radiation and facility-related hazards in FAA facilities; conditions of facilities that could interfere with employee's ability to perform their duties; the ability of managers and supervisors to promptly document and seek remediation for unsafe facility conditions; whether employees of the Administration who report facility-related illness are treated appropriately; and utilization of scientific remediation techniques to mitigate hazardous conditions. Its findings must be submitted to the FAA and Congress. Based on the results of the GAO study, the GAO is directed to make recommendations on which facilities are in need of immediate attention, and assist the Administration in making programmatic changes so that aging facilities do not deteriorate to unsafe levels. The GAO is required to submit its report to Congress within one year of enactment.

*Senate bill*

Section 323 directs the FAA to create a task force on air traffic control (ATC) facility conditions. This task force must be composed of 11 members (7 appointed by the Administrator and four appointed by employees' unions). Four members are required to have expertise in hazardous building conditions and two members must have expertise in rehabilitation of aging buildings. This task force will have the power to obtain official data. The task force's duties would include studying: 1) the conditions of all ATC facilities; 2) reports from employees; 3) whether employees who reported illness were treated fairly; 4) utilization of remediation.

techniques; and 5) resources allocated to facility maintenance and renovation. Also, the task force would be required to make recommendations necessary to ensure that: 1) facilities needing the most immediate attention are prioritized; 2) the Administration is using scientifically approved remediation techniques; and 3) ATC facilities do not deteriorate to unsafe levels. The task force also must submit a report to Congress and the Administrator regarding its recommendations and activities within 60 days. The Administrator would be required to submit a plan and timeline to implement the task force's recommendations within 30 days after receiving the task force's report.

*Conference Substitute*

House bill.

#### TECHNICAL CORRECTION

**H--/S707**

*House bill*

No similar provision.

*Senate bill*

Section 707 provides technical corrections to guarantee that the Merit Systems Protection Board has jurisdiction to investigate claims made against FAA, and has the enforcement ability at the agency that it does for all other federal employees.

*Conference Substitute*

Senate bill.

#### BACK PAY

**H--/S707(4)(J)**

*House bill*

No similar provision.

*Senate bill*

Section 707(4) (J) restores application of the Back Pay Act to FAA employees prospectively (i.e., does not have retroactive application to previously decided MSPB cases).

*Conference Substitute*

House bill.

#### FAMILY MEDICAL LEAVE ACT

**H--/S707(4)(K)**

*House bill*

No similar provision.

*Senate bill*

Section 707(4)(K) restores protections of Title II of the Family and Medical Leave Act (FMLA) for FAA employees. In contrast with Title I, there is no individual right of action and employee makes determination as to start of FMLA leave.

*Conference Substitute*  
House bill.

## TITLE VII – AVIATION INSURANCE

### GENERAL AUTHORITY

#### **H701/S701(c)**

##### *House bill*

Section 701 requires the Secretary of Transportation to extend the current aviation war risk insurance policies until September 30, 2013, and authorizes the Secretary to extend them until December 31, 2013. After December 31, 2013, coverage for the risks provided by the extended policies shall be provided in an airline industry sponsored risk-sharing arrangement approved by the Secretary. Premiums collected by the Secretary from the airline industry after September 22, 2001, through December 31, 2013, for any policy under this subsection, plus interest and less paid or pending claims, must be transferred to risk-sharing arrangement approved by the Secretary.

##### *Senate bill*

Section 701(c) is a similar provision, but it does not authorize a follow-on industry shared-risk program.

##### *Conference Substitute*

House bill modified to remove language creating a successor program.

### EXTENSION OF AUTHORITY TO LIMIT THIRD PARTY LIABILITY

#### **H702/S701(a)**

##### *House bill*

Section 702 extends for air carriers the current limitation of liability to third parties for losses arising out of acts of terrorism to December 31, 2013. Current law (section 44303(b)) allows the Secretary of Transportation to limit an airline's third-party liability to \$100 million and also prohibits punitive damages against either an airline or the Government for any cause resulting from a terrorist event. A principal objective of the limitation was to encourage commercial insurance companies to provide a reasonably priced amount of third party war risk insurance by defining the maximum third party liability exposure of the airline for a single event. The provision was later expanded by Congress at the request of aircraft manufacturers and aircraft engine manufacturers to permit DOT to similarly limit third-party liability for these parties.

##### *Senate bill*

Section 701(a) is the same provision.

##### *Conference Substitute*

House bill.

### CLARIFICATION OF REINSURANCE AUTHORITY

#### **H703/S--**

##### *House bill*

Section 703 amends the reinsurance section in title 49 U.S.C. to clarify that the DOT may, as a risk mitigation technique, purchase reinsurance from commercial reinsurers to supplement payment of claims from the aviation insurance revolving fund.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill.

#### USE OF INDEPENDENT CLAIMS ADJUSTERS

**H704/S--**

*House bill*

Section 704 authorizes the FAA to use commercial insurance carriers to underwrite insurance and adjust claims, and to use claims adjusters independent of an insurance underwriting agent. This permits expedited claims in the U.S. and foreign jurisdictions.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill.

## TITLE VIII – MISCELLANEOUS

### DISCLOSURE OF DATA TO FEDERAL AGENCIES IN INTEREST OF NATIONAL SECURITY

#### **H801/S--**

##### *House bill*

Section 801 clarifies that the FAA has limited authority to release data and reports that are pulled from the FAA's record systems, which are subject to the Privacy Act, to other federal agencies in the interest of national security.

##### *Senate bill*

No similar provision.

##### *Conference Substitute*

House bill.

### FAA AUTHORITY TO CONDUCT CRIMINAL HISTORY RECORD CHECKS

#### **H802/S505**

##### *House bill*

Section 702 provides legal authority for the FAA to continue to access the National Crime Information Center and related State criminal history databases for certification purposes only to conduct a criminal history background check of an airman in the criminal repositories of the Federal Bureau of Investigation and States by submitting fingerprint based repository in compliance with the National Crime Prevention and Privacy Compact Act, and to receive relevant criminal history record regarding airman check. In accessing repository information, the FAA shall be subject to procedures established by the Departments of Justice or State as appropriate. The Administrator may not use authority to conduct criminal investigations. The Administrator shall receive reimbursement to process the fingerprint based checks in providing these services. The Administrator shall designate employees of the FAA to carry out these actions.

##### *Senate bill*

Section 505 is a similar provision.

##### *Conference Substitute*

House bill.

### CIVIL PENALTIES TECHNICAL AMENDMENTS

#### **H803/S--**

##### *House bill*

Section 803 applies civil penalties to violations of chapter 451 on Alcohol and Controlled Substance Testing.

##### *Senate bill*

No similar provision.

*Conference Substitute*

House bill.

CONSOLIDATION AND REALIGNMENT OF FAA SERVICES AND FACILITIES

**H804/S308**

*House bill*

Section 804 directs the Administrator to develop proposed criteria for use in making recommendations for the realignment and consolidation of FAA services and facilities, and publish the proposed criteria within 30 days of enactment. The proposed criteria would be open to public comment for 30 days, and the FAA must publish final criteria within 90 days of enactment. It requires the Administrator to make recommendations for the realignment and consolidation of FAA services based on the final criteria and a justification for each recommendation. This information will be published and transmitted to Congress within 120 days of enactment. The Administrator is directed to submit the recommendations to a new Aviation Facilities and Services Board (not subject to the Federal Advisory Committee Act), consisting of: the Secretary of Transportation (DOT) or designee; two private sector members appointed by the DOT Secretary; and a U.S. Government Accountability Organization (GAO) representative (to be a non-voting member). Members would serve for three year terms. The Board will hold public hearings and develop a final report (with GAO input if requested by the Board) containing the Board's findings and conclusions based on public comments. The Board must publish the report and transmit a copy to Congress. The Administrator is prohibited from carrying out a Board recommendation if Congress passes a joint resolution of disapproval within 30 days of issuance of the Board's report. It authorizes the Administrator to make additional recommendations every two years. It specifies that Members of the Board will not receive compensation except for work injuries or travel expenses. The Administrator shall make available to the Board such staff, information and administrative services as may be required enabling the Board to carry out its responsibilities. In order for the Board to carry out its duties, the Administrator is authorized to appropriate for each of FYs 2011 through 2014, \$200,000 to carry out this section.

*Senate bill*

Section 308 creates a specific process for the FAA to complete a comprehensive study and analysis of the how the agency might realign its services and facilities to help reduce capital, operating, maintenance, and administrative costs on an agency-wide basis with no adverse effect on safety. The FAA would be required to develop criteria for realignment within nine months of passage and make any recommendations for action within nine months of the publication of the criteria. The Air Traffic Control Modernization Oversight Board would then be required to study the FAA's recommendations, provide opportunity for public comment, and report the Board's recommendations to Congress. The Administrator would be prohibited from consolidating additional approach control facilities into the Southern California TRACON, the Northern California TRACON, the Miami TRACON, or the Memphis TRACON until the Board's recommendations are completed.

*Conference Substitute*

House and Senate bills merged and modified. The language now requires the Administrator to develop, in conjunction with the Chief NextGen Officer and Chief Operating

Officer of the Air Transportation Organization, a National Facilities Realignment and Consolidation Report within 120 days of enactment and allow 45 days for the submission of public comments on that report. The report shall be developed with the participation of: 1) representatives of labor organizations representing operations and maintenance employees of the air traffic control system; and 2) industry stakeholders. The purpose of this report is to support the transition to NextGen and to reduce capital, operating, maintenance, and administrative costs of the FAA without adversely affecting safety. The report shall include recommendations with justification and project costs and savings. It instructs the Administrator to submit a report to Congress within 60 days after the last day of the public comment period on the Administrator's recommendations on realignment and consolidation of services and facilities of the FAA and it directs the Administrator to follow this report during the realignment process. It maintains the House language on Congressional Disapproval which prohibits the Administrator from carrying out a recommendation in the report should a joint resolution of disapproval be enacted within 30 days of submission of the report to Congress.

#### LIMITING ACCESS TO FLIGHT DECKS OF ALL-CARGO AIRCRAFT

##### **H805/S--**

###### *House bill*

Section 805 requires the FAA, within 180 days of enactment, to assess the feasibility of developing a physical means, or a combination of physical and procedural means, to prohibit individuals, other than authorized flight crewmembers, from accessing the flight decks of all-cargo aircraft. It requires a report within one year of enactment.

###### *Senate bill*

No similar provision.

###### *Conference Substitute*

House bill.

#### CONSOLIDATION OR ELIMINATION OF OBSOLETE, REDUNDANT, OR OTHERWISE UNNECESSARY REPORTS; USE OF ELECTRONIC MEDIA

##### **H806/S721**

###### *House bill*

Section 806 requires the Administrator to issue a report containing a list of obsolete, redundant, or otherwise unnecessary reports that the FAA is required by law to submit to the Congress or publish. It requires an estimate of the cost savings that would result from the elimination or consolidation of those reports.

###### *Senate bill*

Section 721 is an identical provision.

###### *Conference Substitute*

House and Senate bills.

#### PROHIBITION ON USE OF CERTAIN FUNDS

##### **H807/S--**

*House bill*

Section 807 prohibits the Secretary of Transportation from using funds available in this act to name, rename, designate or redesignate any authorized project or program after an individual who is currently serving in Congress.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill.

STUDY ON AVIATION FUEL PRICES

**H808/S727**

*House bill*

Section 808 requires the U.S. Government Accountability Office (GAO) to conduct a study and report to Congress within 180 days of enactment on the impact of aviation fuel price increases on the Airport and Airway Trust Fund and the aviation industry in general.

*Senate bill*

Section 727 is an identical provision.

*Conference Substitute*

Senate bill.

WIND TURBINE LIGHTING

**H809/S611**

*House bill*

Section 809 directs the Administrator to conduct a study, make recommendations, and report to Congress on wind turbine lighting systems within one year of the date of enactment. The study and recommendations must include the effect of wind turbine lighting on residential areas, the safety associated with alternative lighting strategies, the potential energy savings, and the feasibility of implementing alternative lighting strategies.

*Senate bill*

Section 611 requires the Administrator to survey and assess the leases for critical FAA facility sites and determine how close these facilities are to wind farms or areas suitable for the construction of wind farms. Following the assessment, the FAA would be required to report to Congress and the U.S. Government Accountability Office (GAO) on its findings and recommendations. It would require the GAO to assess the potential impact wind farms have on the FAA's navigational aids and would require an assessment on methods and restrictions to mitigate the effects of wind farms on navigational aids. Upon receiving the GAO report, the FAA would be directed to issue guidelines for the construction of wind farms near critical FAA facilities.

*Conference Substitute*

House bill.

## AIR-RAIL CODE SHARING STUDY

### **H810/S725**

#### *House bill*

Section 810 directs the U.S. Government Accountability Office (GAO) to conduct a study regarding existing airline and intercity passenger rail code-sharing arrangements, and the feasibility of increasing intermodal connectivity of airline and intercity passenger rail facilities and systems to improve passenger travel, and submit the study to Congress within six months of enactment. The GAO is directed to consider: 1) the potential costs to taxpayers and other parties, and the benefits of the implementation of more integrated scheduling between airlines and Amtrak or other intercity passenger rail carriers; 2) airport and intercity passenger rail operations that can improve connectivity between airports and intercity passenger rail facilities; 3) the experience of other countries with airport and intercity passenger rail connectivity; and 4) other issues the GAO deems appropriate.

#### *Senate bill*

Section 725 is a similar provision, but the GAO considerations are not as extensive. It requires the report to be completed within one year.

#### *Conference Substitute*

House bill.

## D.C. METROPOLITAN AREA SPECIAL FLIGHT RULES AREA

### **H811/S--**

#### *House bill*

Section 811 requires the Administrator to work with the Secretaries of Defense and Homeland Security on a plan to decrease the operational impacts and improve general aviation access to the Washington, D.C. region impacted by the D.C. Metropolitan Area Special Flight Rules Area, and submit the plan to Congress within six months of enactment. The plan must outline specific changes to the D.C. Metropolitan Area Special Flight Rules Area that will decrease operational impacts and improve general aviation access to airports in the Washington, D.C. region that are currently impacted by the zone.

#### *Senate bill*

No similar provision.

#### *Conference Substitute*

House bill.

## FAA REVIEW AND REFORM

### **H812/S--**

#### *House bill*

Section 812 requires the Administrator to undertake a thorough review of each program, office, and organization within the FAA, including the Air Traffic Organization, to identify: 1) duplicative positions, programs, roles or offices; 2) wasteful practices; 3) redundant, obsolete, or

unnecessary functions; 4) inefficient processes; and 5) ineffectual or outdated policies. Directs the Administrator to undertake such actions as may be necessary to address the findings of the review, streamline and reform FAA functions, and submit a report to Congress within 150 days of enactment.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill.

## USE OF MINERAL REVENUE AT CERTAIN AIRPORTS

### **H815/S224**

*House bill*

Section 815 specifies that the FAA may declare certain revenue derived from, or generated by mineral extraction at a general aviation airport to be revenue greater than the long term projects, operation, maintenance, planning and capacity needs of the airport. If the Administrator issues a declaration, the airport sponsor may allocate to itself or governing body within limits of the airport's locality the revenue identified in declaration for use in carrying out a Federal, State or local transportation infrastructure project. In generating revenue from mineral rights the airport sponsor shall not charge less than fair market value. The airport sponsor and Administrator shall agree on a 20 year capital improvement program that includes projected costs, charges and fees. Furthermore, the airport sponsor shall agree in writing to waive all rights to receive entitlement funds or discretionary funds, and operate as a public-use airport until the Administrator grants a request to allow airport to close. The airport sponsor shall create a provisional fund for current and future environmental impacts, assessments and mitigation plans. The Administrator shall conduct review and issue a determination within 90 days following receipt of an airport sponsor's application and requisite documentation.

*Senate bill*

Section 224 is a similar provision, but it contains a five year capital improvement program.

*Conference Substitute*

Senate bill.

## CONTRACTING

### **H818/S--**

*House bill*

Section 818 permits the Administrator to conduct a review, and submit to relevant Committees, a report describing how FAA weighs economic vitality of a region when considering contract proposals for training facilities.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill modified by removing language on "economic vitality" and inserting language that requires: 1) the proposal is drafted so that all parties can fairly compete; and (2) the proposal takes into consideration the most cost-effective location, accessibility, and services options.

## FLOOD PLANNING

**H819/S--**

*House bill*

Section 819 permits the Administrator, in consultation with the Federal Emergency Management Administration, to conduct a review and submit to relevant committees a report on the state of preparedness and response capability for airports located in flood plans to respond to and seek assistance in rebuilding after catastrophic flooding.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill modified to include a direction to the Federal Emergency Management Agency (FEMA) to consider as an eligible activity for purposes of the National Flood Insurance Act of 1968, "the demolition and rebuilding of properties to at least base flood levels or higher".

## HISTORICAL AIRCRAFT DOCUMENTS

**H823/S--**

*House bill*

Section 823 directs the Administrator to take actions, as seen necessary, to preserve original aircraft type certificate engineering and technical data in possession of the FAA. No later than one year after date of enactment, the Administrator shall revise an executive order to prohibit destruction of historical aircraft documents. The Administrator shall consult with Archivist of the U.S. and Administrator of General Services on the best methods to preserve these documents. The Administrator shall make these documents available under Freedom of Information Act. This provision does not affect the rights of the holder or owner of a type certificate identified above, or require holders or owners to provide, surrender or preserve any original or duplicate engineering data to FAA. Notwithstanding any other provision of the law, the holder of a type certificate identified in this section shall not be responsible for any continued airworthiness or FAA regulatory requirements.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill modified by changing the date from one year to three years for the revision of order. The language specifying that holders of type certificates shall not be responsible for any continued airworthiness is deleted. New language is added narrowing the definition of applicability to this section to those "having a standard airworthiness certificate issued prior to the date the documents are released to a person by the FAA under subsection (b) (1) .

## RELEASE FROM RESTRICTIONS

### **H824/S219**

#### *House bill*

Section 824 authorizes the Secretary of Transportation to grant an airport, city or county a release from any of the terms, conditions, reservations or restrictions contained in a deed in which the U.S. conveyed to the airport, city or county property for airport purposes pursuant to section 16 of Federal Airport Act or section 23 of the Airport and Airway Development Act. Any release granted by the Secretary shall be subject to the following conditions: 1) the applicable airport, city or country shall agree in conveying interest in the proper which U.S. conveyed to the airport and 2) the city or county will receive an amount for such interest equal to fair market value. Lastly, any amount received must be used exclusively for development, improvement, operation. or maintenance of public airport.

#### *Senate bill*

Section 219 is a similar provision, but it specifies airports in St. George, Utah, and Dona Ana County, New Mexico, for release in order to facilitate the development of a replacement airport.

#### *Conference Substitute*

House bill modified.

## AIR TRANSPORTATION OF LITHIUM CELLS AND BATTERIES

### **H814/S--**

#### *House bill*

Section 814 requires the Administrator to not issue or enforce any regulation regarding the transportation by aircraft of lithium metal cells or batteries or lithium ion cells or batteries, if the requirement is more stringent than the requirements of International Civil Aviation Organization.

#### *Senate bill*

No similar provision.

#### *Conference Substitute*

House bill modified to require that, in almost all circumstances, regulations governing the air transportation of lithium metal or lithium ion cells or batteries be consistent with the provisions of the International Civil Aviation Organization Technical Instructions for the Safe Transportation of Dangerous Goods by Air (commonly known as the ICAO Technical Instructions), as in effect at the time the regulations were adopted. The only exceptions to this directive would be (a) to allow the retention of an existing U.S. prohibition on transportation of lithium metal batteries and cells on passenger aircraft, even if it is not embodied in the ICAO Technical Instructions, and (b) to allow adoption and enforcement of a targeted rule more stringent than the ICAO Technical Instructions in the event that an authoritative national or international governmental body provides a formal report finding that the presence of lithium metal or lithium ion batteries on an aircraft in compliance with the ICAO Technical Instructions was a substantial contributing factor to the initiation or promulgation of an onboard fire.

Where the conditions set forth in this section are met, the Secretary may issue a targeted emergency regulation that addresses solely the deficiencies identified in the report that triggered the regulation. That regulation may remain in effect for up to one year and is not subject to renewal. Either alternatively or consecutively, the Secretary may undertake a rulemaking in accordance with the Administrative Procedure Act to adopt a permanent regulation. That permanent regulation must be based on substantial credible evidence that the cells or batteries of the type at issue could be expected to substantially contribute or propagate an on-board fire even if they were shipped in accordance with applicable ICAO Technical Regulations; be narrowly tailored to avoid disruption of the shipping of other cells, batteries or products; and employ the least expensive approach while addressing the identified safety concern.

#### LIABILITY PROTECTION FOR VOLUNTEER PILOT NONPROFIT ORGANIZATIONS THAT FLY FOR PUBLIC BENEFIT AND TO PILOTS AND STAFF OF SUCH NONPROFIT ORGANIZATION

##### **H816/S1211-1213**

###### *House Bill*

Section 816 amends the Volunteer Protection Act of 1997 (VPA) to include volunteer pilots and volunteer pilot organizations within the scope of its protections. Under present law, nonprofit volunteer pilot organizations and their pilots that provide life-saving medical flights without compensation are vulnerable to costly and often frivolous litigation that undermines the ability of these organizations to provide critical volunteer flight services in a timely manner. In addition, institutions that refer patients to volunteer pilot organizations are presently subject to legal jeopardy. Section 816 protects and promotes the important work of volunteer pilot organizations by creating limited protection against liability to volunteer pilot organizations and pilots so that they are able to procure necessary insurance and continue their important operations.

###### *Senate bill*

Sections 1221–1213 of the Senate bill contain a similar, but more limited, volunteer pilot provision. The Senate provision only includes volunteer pilots within the scope of its protections. Although the Senate provision does not provide protections to volunteer pilot organizations, it does protect and promote the important work of volunteer pilots.

###### *Conference Substitute*

No provision.

#### AIRCRAFT SITUATIONAL DISPLAY TO INDUSTRY

##### **H817/S--**

###### *House bill*

Section 817 specifies that Congress finds that the federal government's dissemination to the public of information relating to noncommercial flight does not serve a public policy objective. Upon request of private owner or operator the Federal Government should not disseminate to the public information relating to non-commercial flights carried out by that owner or operator as the information should be private and confidential. The FAA shall block the display of the owner or operator's aircraft registration number in aircraft situation display

data upon the private owner or operator request, except when the FAA provides such data to a government agency.

*Senate bill*

No similar provision.

*Conference Substitute*

Senate bill.

## SENSE OF CONGRESS

**H825/S--**

*House bill*

Section 825 states that it is the Sense of Congress that Los Angeles World Airports should consult on regular basis with representatives of the community surrounding the airport regarding ongoing operations, plans to expand, modify or realign the Los Angeles International Airport (LAX) facility, and include consultations with any organization which has at least 20 or more individuals.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill modified to include consultation with any organization which has at least 100 or more individuals.

## HUMAN INTERVENTION MOTIVATION STUDY

**H--/S702**

*House bill*

No similar provision.

*Senate bill*

Section 702 within six months of enactment the FAA shall develop a Human Intervention Motivation Study program for cabin crews employed by commercial air carriers in the United States.

*Conference Substitute*

Senate bill.

## STUDY OF AERONAUTICAL MOBILE TELEMETRY

**H--/S719**

*House bill*

No similar provision.

*Senate bill*

Section 719 requires the Administrator to report to Congress in 180 days on the aeronautical telemetry needs of civil aviation over the next decade and the potential impact of the

introduction of a new radio service operating at the same spectrum as aeronautical mobile telemetry service.

*Conference Substitute*  
Senate bill.

#### CLARIFICATION OF REQUIREMENTS FOR VOLUNTEER PILOTS OPERATING CHARITABLE MEDICAL FLIGHTS

**H--/S729**  
*House bill*

No similar provision.

*Senate bill*

Section 729 clarifies that an aircraft owner or aircraft operator can accept reimbursement for all or part of the fuel costs associated with operating a volunteer flight for medical purposes.

*Conference Substitute*

Senate bill modified by including original language, "notwithstanding any other law or regulation" for the administering of section 61.113(c) of 14 C.F.R. Furthermore, language is added to allow pilot to accept reimbursement from volunteer pilot organization for fuel costs association with flight operation for medical purpose, and add "organ" as a transported item in subsection (a). Language is added that in order for an owner or operator to be eligible for the referenced reimbursement, the aircraft owner or operator must have volunteered and notified any individual on the flight that the flight operation is for charitable purposes and is not subject to the same requirements as commercial flight. Lastly, language was added that allows the Administrator to impose minimum standards with respect to training and flight hours for single-engine, multi-engine and turbine engine operations that is being reimbursed for fuel costs in the above mentioned event, including the authority to mandate that pilot in command of aircraft hold an instrument rating and be current and qualified for the aircraft being flown to ensure safety of flight operations.

#### PILOT PROGRAM FOR A REDEVELOPMENT OF AIRPORT PROPERTIES

**H--/S712**  
*House bill*

No similar provision.

*Senate bill*

Section 702 directs the FAA to create a pilot program fostering the collaboration between airports who have submitted a noise compatibility program and the surrounding neighboring local jurisdictions to encourage airport-compatible land uses and generate economic benefits to the local airport authority and adjacent community. The FAA would also have the authority to issue grants for this program.

*Conference Substitute*  
Senate bill.

REPORT ON NEW YORK CITY AND NEWARK AIR TRAFFIC CONTROL FACILITIES  
**H--/S723**

*House bill*

No similar provision.

*Senate bill*

Section 723 requires the Administrator within 90 days to report to Congress on FAA's plan to staff Newark Liberty Airport's air traffic control tower at negotiated staffing levels within one year.

*Conference Substitute*

Senate bill modified to direct FAA to submit a report to Congress on the FAA's staffing and scheduling plans for air traffic control facilities in the New York and Newark Region for the one year period after the date of enactment.

CYLINDERS OF COMPRESSED OXYGEN OR OTHER OXIDIZING GASES

**H813/S730**

*House bill*

Section 813 directs that the transportation within the State of Alaska of cylinders of compressed oxygen or other oxidizing gases aboard aircraft is exempt from compliance from regulations that require such gases to be enclosed in outer packaging capable of passing the flame penetration and resistance test and the thermal resistance test, without regard to the end use of the cylinders. The exemption is to be applied in circumstances in which transportation of the cylinders by ground or vessel is unavailable and transportation by aircraft is the only practical means for transporting the cylinders to their destination.

*Senate bill*

Section 730 is a similar provision, but provides an exemption only for certain cylinders.

*Conference Substitute*

House bill modified to include new language that: 1) specifies that each cylinder is fully covered with fire or flame resistant blanket; 2) requires that the operator complies with the applicable notification procedures under 49 C.F.R. 175.33.; and 3) specifies that the exemption applies to cargo-only aircraft if the destination has cargo-only service at least once a week and passenger and cargo-only aircraft if the destination does not receive cargo-only service at least once a week.

ORPHAN EARMARKS ACT

**H--/S738**

*House bill*

No similar provision.

*Senate bill*

Section 738 requires all federal agencies to rescind amounts designated as earmarks back to the Treasury if they are nine years or older.

*Conference Substitute*  
Senate bill modified.

PRIVACY PROTECTIONS FOR AIRCRAFT PASSENGER SCREENING WITH  
ADVANCED IMAGING TECHNOLOGY

**H--/S739**

*House bill*

No similar provision.

*Senate bill*

Section 739 directs the Transportation Security Administration (TSA) Administrator to ensure that advanced imaging technology used for the screening of passengers is equipped with automatic target recognition software (which would produce a generic image of the individual being screened) beginning on January 1, 2012.

*Conference Substitute*

Senate bill modified to include language allowing the TSA Administrator to extend the deadline that requires the TSA Administrator to ensure that Advanced Imaging Technology machines meet requirements as specified in this section, if the resulting technology would perform inadequately or additional testing is necessary. In addition, the beginning date for implementation of automatic target recognition software is changed from January 1, 2012 to June 1, 2012.

TERMINATION OF CERTAIN RESTRICTIONS FOR BURKE LAKEFRONT AIRPORT

**H820/S--**

*House bill*

Section 820 states that any restriction in FAA Flight Data Center Notice to Airmen, the Administrator may not prohibit or impose airspace restrictions with respect to an air show or other aerial event located at the Burke Lakefront Airport in Cleveland, Ohio, due to a stadium event or event at other venues occurring at the same time. The Administrator may prohibit aircraft from flying directly over applicable stadiums or venues.

*Senate bill*

No similar provision.

*Conference Substitute*

Senate bill.

SANTA MONICA AIRPORT, CA.

**H821/S--**

*House bill*

Section 821 specifies that Congress finds that the Administrator should enter into good faith discussions with city of Santa Monica, California, to achieve a runway safety area solution consistent with FAA design guidelines.

*Senate bill*

No similar provision.

*Conference Substitute*  
Senate bill.

#### INSPECTOR GENERAL REPORT ON PARTICIPATION IN FAA PROGRAMS BY DISADVANTAGED SMALL BUSINESS CONCERNS

**H822/S--**

*House bill*

Section 822 directs the DOT IG to submit a report to Congress on the number of new small business concerns owned and controlled by socially and economically disadvantaged individuals, such as veterans, that participate in airport programs. The report shall list the top 25 and bottom 25 large and medium hub airports in terms of providing opportunities for such small businesses and provide results of the assessments and recommendations to the FAA and Congress on methods for other airports to achieve results similar to those of the top airports.

*Senate bill*

No similar provision.

*Conference Substitute*  
House bill.

#### ISSUING REGULATIONS

**H826/S--**

*House bill*

Section 826 requires that when proposing or issuing regulation the Administrator shall analyze the different industry segments and tailor any regulation to characteristics of each separate segment, taking into account that U.S. aviation industry is composed of different segments. The Administrator shall analyze for each industry segment: alternative forms of regulation, assess the costs and benefits, ensure proposed regulation is based on best reasonably obtainable scientific, technical and other information, and assess any adverse effects on efficient function of the economy, private markets together with quantification of such costs.

*Senate bill*

No similar provision.

*Conference Substitute*  
Senate bill.

#### WEIGHT RESTRICTIONS AT TETERBORO AIRPORT

**H--/S711**

*House bill*

No similar provision.

*Senate bill*

Section 711 prohibits the Administrator from taking action designed to challenge or influence the weight restrictions at Teterboro Airport, except in an emergency.

*Conference Substitute*  
House bill.

#### FLIGHT CREW MEMBER PAIRING AND CREW RESOURCE MANAGEMENT TECHNIQUES

**H--/S720**

*House bill*

No similar provision.

*Senate bill*

Section 720 requires the Administrator to conduct a study and issue a report on aviation industry best practices with regard to flight crew member pairing, crew resource management techniques, and pilot commuting.

*Conference Substitute*

House bill because the Senate provision is included in P.L. 111-216, the Airline Safety and Federal Aviation Administration Extension Act of 2010.

#### ONGOING MONITORING OF AIRSPACE REDESIGN

**H--/S726**

*House bill*

No similar provision.

*Senate bill*

Section 726 directs the Administrator to work with the New York and New Jersey Port Authority to monitor the noise impacts of the redesign and submit reports to Congress on those impacts within 270 days, and every 180 days thereafter until the New York, New Jersey and Philadelphia airspace redesign is completed.

*Conference Substitute*

House bill.

#### LAND CONVEYANCE FOR SOUTHERN NEVADA

**H--/S728**

*House bill*

No similar provision.

*Senate bill*

Section 728 adds language to Title VII to allow certain lands in Clark County, Nevada, to be used for the development of a flood mitigation infrastructure project once the Administrator has: 1) approved an airport layout plan for an airport in Ivanpah Valley, Nevada; and 2) issued a record of decision after the preparation of an environmental impact statement or similar analysis document on the construction and operation for the airport in Ivanpah Valley, Nevada.

*Conference Substitute*  
House bill.

#### TECHNICAL CORRECTION

**H--/S731**

*House bill*

No similar provision.

*Senate bill*

Section 731 amends the Consolidated Appropriations Act of 2010, to require inspections of rail containers containing firearms or ammunition and permits the temporary suspension of firearm carriage if credible intelligence information indicates that a threat related to the national rail system, specific routes, or trains is identified.

*Conference Substitute*  
House bill.

#### SCIENTIFIC INSTRUMENTS ON COMMERCIAL FLIGHTS

**H--/S732**

*House bill*

No similar provision.

*Senate bill*

Section 732 requires the Secretary of Transportation and the Secretary of Commerce to develop a plan to allow federal agencies to fly weather forecasting instruments on commercial flights within 270 days of enactment.

*Conference Substitute*  
House bill.

#### CONTROLLING HELICOPTER NOISE IN RESIDENTIAL AREAS

**H--/S740**

*House bill*

No similar provision.

*Senate bill*

Section 740 directs the FAA to prescribe standards to measure helicopter noise and regulations to control helicopter noise in residential areas. This section would mandate that within one year, the FAA finalize regulations with respect to helicopters operating over Long Island.

*Conference Substitute*  
House bill.

CRIMINAL PENALTY FOR UNAUTHORIZED RECORDING OR DISTRIBUTION OF  
SECURITY SCREENING IMAGES

**H--/S734**

*House bill*

No similar provision.

*Senate bill*

Section 734 establishes criminal penalties for unauthorized recording or distribution of security screening images. Includes images from backscatter x-rays or millimeter waves and devices. It provides an exception for certain law enforcement or intelligence purposes.

*Conference Substitute*

House bill.

APPROVAL OF APPLICATIONS FOR THE SECURITY SCREENING OPT-OUT  
PROGRAM

**H--/S735**

*House bill*

No similar provision.

*Senate bill*

Section 735 requires the Transportation Security Administration (TSA) Administrator to consider approving applications to participate in the Screening Partnership Program (SPP), which uses private screeners instead of TSA employees, for all airports with pending applications. This section requires the TSA Administrator to reconsider rejected applications for the SPP for a limited number of airports. If the TSA Administrator decides again to deny an application, they must report to Congress on the reason for the denial.

*Conference Substitute*

Senate bill modified to require the TSA Administrator to approve or deny, within 120 days, an application received by an airport to participate in the SPP. The Administrator is required to approve the application unless a determination is made that such approval would compromise security or have a detrimental effect on the on the cost-efficiency or effectiveness of security screening at that airport. The Administrator must provide a more in-depth explanation in a report to Congress if an SPP application is denied. This explanation must include: 1) the findings that served as a basis for the denial; 2) results of any cost or security analysis conducted in the reconsideration; and 3) recommendations on how the airport operator can address the reasons for the denial. This report has to be issued with 60 days of the denial. Airport Operators who apply for the SPP must also provide TSA a recommendation as to which company would best serve the airport along with an explanation for that choice. The modified provision also requires the reconsideration of SPP applications pending between January 1, 2011, and February 3, 2011, and outlines specific timelines to be followed in issuing decisions regarding SPP reapplications. The provision includes modifications to existing requirements which provide the Administrator with more flexibility in determining what companies can bid for SPP contracts.

The conference committee believes that in determining the cost efficiency and effectiveness of an applicant's screening services, the TSA Administrator shall compare the annual costs to the Federal government and related effectiveness measures associated with screening services at commercial airports using private-sector screeners with comparable costs associated with screening services by Federal screeners, applying the relevant cost and performance metrics equally to the private and Federal screening programs.

#### CONVEYANCE OF LAND TO CITY OF MESQUITE, NEVADA

##### **H--/S736**

##### *House bill*

No similar provision.

##### *Senate bill*

Section 736 directs the Secretary of the Interior to convey to the City of Mesquite, NV, without consideration, all right, title and interests of the U.S. in a land parcel at Mesquite Airport.

##### *Conference Substitute*

House bill.

#### TITLE IX-- NATIONAL MEDIATION BOARD

## AUTHORITY OF THE DOT INSPECTOR GENERAL

### **H901/S--**

#### *House bill*

Section 901 gives the DOT IG specific authority to conduct audits and evaluate the National Mediation Board's (NMB) financial management, property management, and business operations. In carrying out this authority, the Inspector General of the Department of Transportation (DOT IG) is to keep the Chairman of the Mediation Board and Congress fully and currently informed, issue findings and recommendations and report periodically to Congress. The Secretary of Transportation may only appropriate for use by the DOT IG no more than \$125,000 for each of FYs 2011 through 2014.

#### *Senate bill*

No similar provision.

#### *Conference Action*

No provision.

## EVALUATION AND AUDIT OF THE NATIONAL MEDIATION BOARD

### **H902/S--**

#### *House bill*

Section 902 directs the GAO to conduct audits and evaluate the NMB's programs, operations and activities, including: 1) information management and security; 2) resource management; 3) workforce development; 4) procurement and contracting policies; and 5) NMB processes for conducting investigations of representation applications, determining and certifying representation of employees, and ensuring that the process occurs without interference.

#### *Senate bill*

No similar provision.

#### *Conference Action*

House provision modified. The conference committee agreed to the following modifications. The conference committee agreed to amend the Railway Labor Act by requiring an evaluation and audit of the Mediation Board by the Comptroller General. The Comptroller General of the U.S. shall evaluate and audit the programs and expenditures of the Mediation Board at least every two years, however it may be conducted as determined necessary by the Comptroller or appropriate congressional committees. In conducting the evaluation and audit of the Mediation Board, the Conference Committee sets forth the minimum programs, operations and activities of the Board that shall be included. No later than 180 days after the date of enactment, the Comptroller General shall review the Mediation Board's processes to certify and decertify representation of employees by a labor organization and make recommendations to the Board and appropriate congressional committees regarding actions that may be taken by the Board to ensure the processes are fair and reasonable for all parties.

## REPEAL OF RULE

### **H903/S--**

*House bill*

Section 903 repeals the rule prescribed by the NMB on May 11, 2010, effective January 1, 2011. In May 2010, the NMB changed standing rules for union elections at airlines and railroads, which counted abstentions as votes "against" unionizing, to the current rule which counts only no votes as "against" unionizing, abstentions do not count either way.

*Senate bill*

No similar provision.

*Conference Action*

This provision was not agreed to by the Conference, and is not included in the final bill. The conference committee agreed to the following provisions.

*Rule Making*

The conference committee agreed to amend title I of the Railway Labor Act by inserting after section 10 that the Mediation Board has authority from time to time to make, amend, and rescind, in the manner prescribed by section 553 of title 5, United States Code and after opportunity for a public hearing, such rules and regulations as may be necessary to carry out the provisions of this Act.

*Runoff Elections*

The conference committee agreed to amend Paragraph Ninth of section 2 of the Railway Labor Act to require that in any runoff election for which there are 3 or more options (including the option of not being represented by any labor organization) on the ballot and no such option receives a majority of the valid votes cast, the Mediation Board shall arrange for a second election between the options receiving the largest and the second largest number of votes.

*Showing of Interest*

The conference committee agreed to amend section 2 of the Railway Labor Act by raising the showing of interest threshold for elections to not less than fifty percent of the employees in the craft or class.

## SHORT TITLE

### **H1001/S--**

#### *House bill*

Section 1001 titles the section the "Federal Aviation Research and Development Reauthorization Act of 2011".

#### *Senate bill*

No similar provision.

#### *Conference Substitute*

Senate bill.

## AUTHORIZATION OF APPROPRIATIONS (\$ IN MILLIONS)

### **H1003(a)/S103**

#### *House bill*

Section 1003(a) authorizes the Federal Aviation Administration's Research, Engineering and Development (R,E&D) account at \$165.2 million in FY 2011, and \$146.83 million in FY 2012, FY 2013, and FY 2014.

#### *Senate bill*

Section 103 authorizes the Federal Aviation Administration's Research, Engineering and Development account at \$200 million in FY 2010 and \$206 million in FY 2011.

#### *Conference Substitute*

House and Senate bills merged to provide \$168 million for Federal Aviation Administration's Research, Engineering and Development account in FYs 2012 through FY 2015.

## DEFINITIONS

### **H1002/S--**

#### *House bill*

Section 1001 defines the terms Administrator", "FAA", "Institution of Higher Education", "NASA", National Research Council", "NOAA", and "Secretary".

#### *Senate bill*

No similar provision.

#### *Conference Substitute*

House bill.

## PROGRAMS AUTHORIZED

### **H1003(b),(c)/S103**

#### *House bill*

Section 1003(b),(c) authorizes Research and Development activities listed in the National Aviation Research Plan.

*Senate bill*

Section 103 requires the FAA to establish a grant program to promote aviation research at undergraduate and technical colleges including schools serving Historically Black Colleges and Universities, Hispanic, Native Alaskan & Hawaiian populations.

*Conference Substitute*

House bill.

## UNMANNED AIRCRAFT SYSTEMS

### **H1004/S607(a)**

*House bill*

Section 1004 requires the Administrator in conjunction with other appropriate federal agencies to develop technologies and methods to assess the risk and prevent defects, failures, and malfunctions of products, parts and processes for use in all classes of Unmanned Aircraft Systems (UAS) that could result in catastrophic failure of UAS or endanger other aircraft in the NAS. The Administrator is required to supervise research which will develop better understanding of the relationship between human factors and UAS safety and develop simulation models for integration of all UASs into the NAS without degrading safety for current users.

*Senate bill*

Section 607(a) permits the FAA to conduct developmental research on UASs. It authorizes the FAA, in conjunction with other federal agencies as appropriate, to develop technologies and methods to assess the risk of and prevent defects, failures, and malfunctions of products, parts, and processes, for use in all classes of unmanned aircraft systems that could result in a catastrophic failure.

*Conference Substitute*

House bill.

## RESEARCH PROGRAM ON RUNWAYS

### **H1005/S605**

*House bill*

Section 1005 directs that when researching how to develop and maintain a safe and efficient NAS, the Administrator will include improved runway surfaces and engineered material restraining systems for runways at general aviation and commercial airports.

*Senate bill*

Section 605 allows the FAA to continue a program that authorizes awards to nonprofit research foundations to improve the construction and durability of pavement for runways..

*Conference Substitute*

House and Senate bills merged. The provision contains modified Senate language in subsection (a) that will allow the Administrator to maintain a program that will make awards to

carry out a research program under which the Administrator may make grants to and enter into cooperative agreements with institutions of higher education and nonprofit pavement research organization. The conference agreement includes House language to cover research that relates to engineered material restraining systems for runways at both general aviation and commercial airports. The conference agreement also includes Senate language on use of grants or cooperative agreements.

## RESEARCH ON DESIGN FOR CERTIFICATION

### **H1006/S--**

#### *House bill*

Section 1006 requires the Administrator to conduct research on methods and procedures to improve confidence in and the timeliness of certification of new technologies for introduction into the NAS within one year. It specifies that not later than six months after enactment, the FAA will develop a plan for the research that contains objectives, proposed tasks, milestones and a five year budget profile. The Administrator will enter into an arrangement with the National Research Council to conduct an independent review of the plan not later than 18 months after the date of enactment, with results of the review provided to Congress.

#### *Senate bill*

No similar provision.

#### *Conference Substitute*

House bill.

## AIRPORT COOPERATIVE RESEARCH PROGRAM

### **H1007/S601**

#### *House bill*

Section 1007 makes the Airport Cooperative Research Program permanent and requires a report on the program no later than September 30, 2012.

#### *Senate bill*

Section 601 is a similar provision, but it specifies that a maximum of \$15 million of aviation research grant funds may go to the Airport Cooperative Research Program. It directs that at least \$5 million of the Airport Cooperative Research Program funds must go to environmental research.

#### *Conference Substitute*

House bill.

## CENTERS OF EXCELLENCE

### **H1008/S608**

#### *House bill*

Section 1008 changes the current Government share of costs for the Centers of Excellence so that the government's share of cost will not exceed 50 percent, with the exception that the Administrator may increase the share to a maximum of 75 percent for a fiscal year if the Administrator determines a center would be unable to carryout authorized activities without

additional funds. An annual report is required listing the research projects initiated at each Center of Excellence, the amount of funding and funding source for each project, institutions participating, their shares of funding, and level of cost-sharing for the project.

*Senate bill*

Section 608 authorizes \$1 million per year for each of fiscal years 2008 through 2012 for a Center of Excellence in applied research and training in the use of advanced materials in transport category aircraft.

*Conference Substitute*

House bill.

CENTER OF EXCELLENCE FOR AVIATION HUMAN RESOURCE RESEARCH

**H1009/S--**

*House bill*

Section 1009 permits the Administrator to establish a Center of Excellence to conduct research on human performance in the air transportation environment, and any other aviation human resource issues pertinent to developing and maintaining a safe and efficient air transportation system. Activities conducted under this section may include research and development and evaluation of training programs, best practices for recruitment, development of a baseline of general aviation employment statistics, research and development of the airframe and power plant technician certification process, evaluation of aviation maintenance technician school environment, and transitioning mechanics into the aviation field.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill.

INTERAGENCY RESEARCH ON AVIATION AND THE ENVIRONMENT

**H1010/S--**

*House bill*

Section 1010 directs that the Administrator, in coordination with National Air and Space Administration (NASA), may maintain a research program to assess the potential effect of aviation on the environment. The research plan will be developed by the Administrator with NASA and other relevant agencies, and will contain an inventory of current interagency research, future research objectives, proposed tasks, milestones and a five year budgetary profile. The plan shall be completed within one year, and shall be updated as appropriate every three years after initial submission.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill.

## AVIATION FUEL RESEARCH AND DEVELOPMENT PROGRAM

### **H1011/S--**

#### *House bill*

Section 1011 specifies that, using Research, Engineering and Development (R,E&D) funds, the Administrator, in coordination with NASA Administrator, will continue R,E&D activities into the qualification of unleaded aviation fuel and safe transition to this fuel for the fleet of piston engine aircraft. It directs that the Administrator, not later than 270 days after enactment, will provide Congress with a report on a plan, policies, and guidelines on how this will be accomplished.

#### *Senate bill*

No similar provision.

#### *Conference Substitute*

House bill.

## RESEARCH PROGRAM ON ALTERNATIVE JET FUEL TECHNOLOGY FOR CIVIL AIRCRAFT

### **H1012/S603**

#### *House bill*

Section 1012 directs the Secretary of Transportation to conduct a research program related to developing and qualifying jet fuel from alternative sources through grants and other measures. The program will allow for participation of industry and educational and research institutions that have existing facilities and experience in the research and development of technology for alternative jet fuels. The Secretary may collaborate with existing interagency programs, including the Commercial Aviation Alternative Fuels Initiative (CAAFI).

#### *Senate bill*

Section 603 requires the DOT to establish a research program to develop jet fuel from natural gas, biomass, and other renewable sources. It directs that the FAA, within 180 days, designate a Center of Excellence for Alternative Jet-Fuel Research for Civil Aircraft.

#### *Conference Substitute*

Senate bill modified to add language permitting facilities to participate in the program that "leverage private sector partnerships and consortia with experience across the supply chain" and changing "shall" to "may" in directing the Administrator to designate an institution to carry out this section.

## REVIEW OF FAA'S ENERGY- AND ENVIRONMENT- RELATED RESEARCH PROGRAMS

### **H1013/S--**

#### *House bill*

Section 1013 directs the Administrator to review FAA energy-related and environment-related research programs. It initiates a report to be submitted on the agency's review to Congress no later than 18 months after enactment.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill modified to direct the FAA to “enter into an arrangement for an independent external review” to conduct the review, rather than the Administrator.

REVIEW OF FAA’S AVIATION SAFETY-RELATED RESEARCH PROGRAMS

**H1014/S--**

*House bill*

Section 1014 directs the Administrator to review FAA’s aviation safety-related research programs. It initiates a report to be submitted on the agency’s review to Congress no later than 14 months after enactment.

*Senate bill*

No similar provision.

*Conference Substitute*

House bill modified to direct the FAA to “enter into an arrangement for an independent external review” to conduct the review, rather than the Administrator.

RESEARCH GRANTS FOR UNDERGRADUATES

**H--/S103**

*House bill*

No similar provision.

*Senate bill*

Section 103 authorizes \$5 million for research grants program for undergraduate colleges, including those that are Historically Black Colleges and Universities, Hispanic Serving Institutions, tribally controlled institutions and Alaska Native and Native Hawaiian institutions.

*Conference Substitute*

House bill.

PRODUCTION OF CLEAN COAL FUEL TECHNOLOGY FOR CIVILIAN AIRCRAFT

**H--/S604**

*House bill*

No similar provision.

*Senate bill*

Section 604 requires the Secretary of Transportation to establish a Center of Excellence for a research program related to developing jet fuel from clean coal through grants or other measures, with a requirement to include educational and research institutions in the initiative.

*Conference Substitute*

Senate bill modified by changing "shall" to "may" in directing the Administrator to establish a Center of Excellence to carry out this section.

#### WAKE TURBULENCE, VOLCANIC ASH, AND WEATHER RESEARCH

**H--/S606**

*House bill*

No similar provision.

*Senate bill*

Section 606 directs the Administrator to initiate an evaluation of proposals that would: increase capacity throughout the NAS by reducing spacing requirements between aircraft through research of wake turbulence; begin implementation of a system to avoid volcanic ash; and establish weather research projects, including on ground de-icing.

*Conference Substitute*

Senate bill modified to include research on the nature of wake vortexes and to direct the Administrator to coordinate with National Oceanic and Atmospheric Administration (NOAA), National Air and Space Administration (NASA), and other appropriate federal agencies to conduct research.

#### REAUTHORIZATION OF CENTER OF EXCELLENCE IN APPLIED RESEARCH AND TRAINING IN THE USE OF ADVANCED MATERIALS IN TRANSPORT AIRCRAFT

**H--/S608**

*House bill*

No similar provision.

*Senate bill*

Section 608 authorizes \$1 million per year for FYs 2008 through 2012 for a Center of Excellence in applied research and training in the use of advanced materials in transport category aircraft.

*Conference Substitute*

Senate bill with modification removing authorization amounts.

#### RESEARCH AND DEVELOPMENT OF EQUIPMENT TO CLEAN AND MONITOR THE ENGINE AND APU BLEED AIR SUPPLIED ON PRESSURIZED AIRCRAFT

**H--/S612**

*House bill*

No similar provision.

*Senate bill*

Section 612 requires the FAA to conduct a research program for the identification or development of effective air cleaning technology and sensors technology for the engine and auxiliary power unit bleed air supplied to passenger cabins and flight decks of all pressurized aircraft. It would require the FAA submit a report to Congress within one year.

*Conference Substitute*  
Senate bill.

EXPERT REVIEW OF ENTERPRISE ARCHITECTURE FOR NEXTGEN

**H212/S314**

*House bill*

Section 212 directs the Administrator to enter into an arrangement with the National Research Council to review the enterprise architecture for NextGen. Also, the Administrator must report to Congress within one year on the results of this review.

*Senate bill*

Section 314 directs the Administrator to publish a report within six months, after consultation with stakeholders, including the development of: 1) RNP/RNAV procedures at 137 airports; 2) a description of the activities required for their implementation; 3) an implementation plan that includes baseline and performance metrics; 4) assessment of the benefits/costs of using third parties to develop the procedures; and 5) a process for the creation of future RNP and RNAV procedures. The Administrator must implement 30 percent of the procedures within 18 months of enactment, 60 percent within 36 months of enactment, and 100 percent by 2014. The Administrator is directed to create a plan for the implementation of procedures at the remaining airports across the country. It would require 25 percent of the procedures at these airports to be implemented within 18 months after enactment, 50 percent within 30 months after enactment; 75 percent within 42 months after enactment, and 100 percent before 2016. The charter of the Performance Based Navigation ARC is extended and directs it to establish priorities for development of RNP/RNAV procedures based on potential safety and congestion benefits. It would require that the process of the development of such procedures be subject to a previously established environmental review process. The FAA is directed to provide Congress with a deployment plan for the implementation of a nationwide data communications system to support NextGen ATC, and a report evaluating the ability of NextGen technologies to facilitate improved performance standards for aircraft in the NAS.

*Conference Substitute*

House bill modified to direct the FAA to “enter into an arrangement for an independent external review” to conduct the review, rather than the Administrator.

AIRPORT SUSTAINABILITY PLANNING WORKING GROUP

**H--/S221**

*House bill*

No similar provision.

*Senate bill*

Section 221 establishes an airport sustainability working group within the FAA that would submit a report on their findings to the Administrator within one year of enactment. The working group would be comprised of 15 members including the Administrator and industry representatives.

*Conference Substitute*

Senate bill with minor modifications.

## TITLE XI. –AIRPORT AND AIRWAY TRUST FUND PROVISIONS AND RELATED TAXES

### A. Extension of Taxes Funding the Airport and Airway Trust Fund (sec. 1103 of the House bill, sec. 801 of the Senate amendment, sec. 1101 of the conference agreement, and secs. 4261, 4271, and 4081 of the Code)

#### Present Law

#### Overview

Excise taxes are imposed on amounts paid for commercial air passenger and freight transportation and on fuels used in commercial aviation and noncommercial aviation (i.e., transportation that is not “for hire”) to fund the Airport and Airway Trust Fund. The present aviation excise taxes are as follows:

Tax (and Code section)	Tax Rates
Domestic air passengers (sec. 4261)	7.5 percent of fare, plus \$3.80 (2012) per domestic flight segment generally <sup>1</sup>
International travel facilities tax (sec. 4261)	\$16.70 (2012) per arrival or departure <sup>2</sup>
Amounts paid for right to award free or reduced rate passenger air transportation (sec. 4261)	7.5 percent of amount paid
Air cargo (freight) transportation (sec. 4271)	6.25 percent of amount charged for domestic transportation; no tax on international cargo transportation
Aviation fuels (sec. 4081): <sup>3</sup>	

<sup>1</sup> The domestic flight segment portion of the tax is adjusted annually (effective each January 1) for inflation (adjustments based on the changes in the consumer price index (the “CPI”).

<sup>2</sup> The international travel facilities tax rate is adjusted annually for inflation (measured by changes in the CPI).

<sup>3</sup> Like most other taxable motor fuels, aviation fuels are subject to an additional 0.1-cent-per-gallon excise tax to fund the Leaking Underground Storage Tank Trust Fund.

Tax (and Code section)	Tax Rates
1. Commercial aviation	4.3 cents per gallon
2. Non-commercial (general) aviation:  Aviation gasoline Jet fuel	19.3 cents per gallon 21.8 cents per gallon

All Airport and Airway Trust Fund excise taxes, except for 4.3 cents per gallon of the taxes on aviation fuels, are scheduled to expire after February 17, 2012. The 4.3-cents-per-gallon fuels tax rate is permanent.

### **Taxes on transportation of persons by air**

#### **Domestic air passenger excise tax**

Domestic air passenger transportation generally is subject to a two-part excise tax. The first component is an *ad valorem* tax imposed at the rate of 7.5 percent of the amount paid for the transportation. The second component is a flight segment tax. For 2012, the flight segment tax rate is \$3.80.<sup>4</sup> A flight segment is defined as transportation involving a single take-off and a single landing. For example, travel from New York to San Francisco, with an intermediate stop in Chicago, consists of two flight segments (without regard to whether the passenger changes aircraft in Chicago).

The flight segment component of the tax does not apply to segments to or from qualified “rural airports.” For any calendar year, a rural airport is defined as an airport that in the second preceding calendar year had fewer than 100,000 commercial passenger departures, and meets one of the following three additional requirements: (1) the airport is not located within 75 miles of another airport that had more than 100,000 such departures in that year; (2) the airport is receiving payments under the Federal “essential air service” program; or (3) the airport is not connected by paved roads to another airport.<sup>5</sup>

The domestic air passenger excise tax applies to “taxable transportation.” Taxable transportation means transportation by air that begins in the United States or in the portion of

<sup>4</sup> Sec. 4261(b)(1) and 4261(d)(4). Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the “Code”). The Code provides for a \$3 tax indexed annually for inflation, effective each January 1, resulting in the current rate of \$3.80.

<sup>5</sup> In the case of an airport qualifying as “rural” because it is not connected by paved roads to another airport, only departures for flight segments of 100 miles or more are considered in calculating whether the airport has fewer than 100,000 commercial passenger departures. The Department of Transportation has published a list of airports that meet the definition of rural airports. See Rev. Proc. 2005-45.

Canada or Mexico that is not more than 225 miles from the nearest point in the continental United States and ends in the United States or in such 225-mile zone. If the domestic transportation is paid for outside of the United States, it is taxable only if it begins and ends in the United States.

For purposes of the domestic air passenger excise tax, taxable transportation does not include “uninterrupted international air transportation.” Uninterrupted international air transportation is any transportation that does not both begin and end in the United States or within the 225-mile zone and does not have a layover time of more than 12 hours. The tax on international air passenger transportation is discussed below.

#### International travel facilities tax

For 2012, international air passenger transportation is subject to a tax of \$16.70 per arrival or departure in lieu of the taxes imposed on domestic air passenger transportation if the transportation begins or ends in the United States.<sup>6</sup> The definition of international transportation includes certain purely domestic transportation that is associated with an international journey. Under these rules, a passenger traveling on separate domestic segments integral to international travel is exempt from the domestic passenger taxes on those segments if the stopover time at any point within the United States does not exceed 12 hours.

In the case of a domestic segment beginning or ending in Alaska or Hawaii, the tax applies to departures only and is \$8.40 for calendar year 2012.

#### “Free” travel

Both the domestic air passenger tax and the use of international air facilities tax apply only to transportation for which an amount is paid. Thus, free travel, such as that awarded in “frequent flyer” programs and nonrevenue travel by airline industry employees, is not subject to tax. However, amounts paid to air carriers (in cash or in kind) for the right to award free or reduced-fare transportation are treated as amounts paid for taxable air transportation and are subject to the 7.5 percent ad valorem tax (but not the flight segment tax or the use of international air facilities tax). Examples of such payments are purchases of miles by credit card companies and affiliates (including airline affiliates) for use as “rewards” to cardholders.

#### Disclosure of air passenger transportation taxes on tickets and in advertising

Transportation providers are subject to special penalties relating to the disclosure of the amount of the passenger taxes on tickets and in advertising. The ticket is required to show the total amount paid for such transportation and the tax. The same requirements apply to advertisements. In addition, if the advertising separately states the amount to be paid for the transportation or the amount of taxes, the total shall be stated at least as prominently as the more prominently stated of the tax or the amount paid for transportation. Failure to satisfy these

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<sup>6</sup> Secs. 4261(c) and 4261(d)(4). The international air facilities tax rate of \$12 is indexed annually for inflation, effective each January 1, resulting in the current rate of \$16.70.

disclosure requirements is a misdemeanor, upon conviction of which the guilty party is fined not more than \$100 per violation.<sup>7</sup>

### **Tax on transportation of property (cargo) by air**

Amounts equivalent to the taxes received from the transportation of property by air are transferred to the Airport and Airway Trust Fund. Domestic air cargo transportation is subject to a 6.25 percent ad valorem excise tax on the amount paid for the transportation.<sup>8</sup> The tax applies only to transportation that both begins and ends in the United States. There is no disclosure requirement for the air cargo tax.

### **Aviation fuel taxes**

The Code imposes excise taxes on gasoline used in commercial aviation (4.3 cents per gallon) and noncommercial aviation (19.3 cents per gallon), and on jet fuel (kerosene) and other aviation fuels used in commercial aviation (4.3 cents per gallon) and noncommercial aviation (21.8 cents per gallon).<sup>9</sup> Amounts equivalent to these taxes are transferred to the Airport and Airway Trust Fund.

### **House Bill**

The provision extends the present-law Airport and Airway Trust Fund excise taxes through September 30, 2014.

Effective date.—The provision takes effect on the date of enactment.

### **Senate Amendment**

The provision extends the present-law Airport and Airway Trust Fund excise taxes through September 30, 2013.

Effective date.—The provision takes effect on April 1, 2011.

### **Conference Agreement**

The conference agreement extends the present-law Airport and Airway Trust Fund excise taxes through September 30, 2015.

Effective date.—The provision takes effect on February 18, 2012.

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<sup>7</sup> Sec. 7275.

<sup>8</sup> Sec. 4271.

<sup>9</sup> These fuels are also subject to an additional 0.1 cent per gallon for the Leaking Underground Storage Tank Trust Fund. If there was not a taxable sale of the fuel pursuant to section 4081 of the Code, a backup tax exists under section 4041(c) for such fuel that is subsequently sold or used in aviation.

**B. Extension of Airport and Airway Trust Fund Expenditure Authority**  
(sec. 1102 of the House bill, sec. 802 of the Senate amendment,  
sec. 1102 of the conference agreement, and sec. 9502 of the Code)

**Present Law**

**In general**

The Airport and Airway Trust Fund was created in 1970 to finance a major portion of Federal expenditures on national aviation programs. Operation of the Airport and Airway Trust Fund is governed by the Internal Revenue Code (the “Code”)<sup>10</sup> and authorizing statutes. The Code provisions govern deposit of revenues into the trust fund and approve the use of trust fund money (as provided by appropriation acts) for expenditure purposes in authorizing statutes as in effect on the date of enactment of the latest authorizing Act. The authorizing acts provide specific trust fund expenditure programs and purposes.

Authorized expenditures from the Airport and Airway Trust Fund include the following principal programs:

1. Airport Improvement Program (airport planning, construction, noise compatibility programs, and safety projects);
2. Facilities and Equipment program (costs of acquiring, establishing, and improving the air traffic control facilities);
3. Research, Engineering, and Development program (Federal Aviation Administration (“FAA”) research and development activities);
4. FAA Operations and Maintenance (“O&M”) programs; and
5. Certain other aviation-related programs specified in authorizing acts.

Part of the O&M programs is financed from General Fund monies as well.<sup>11</sup>

**Limits on Airport and Airway Trust Fund expenditures**

No expenditures are currently permitted to be made from the Airport and Airway Trust Fund after February 17, 2012. Because the purposes for which Airport and Airway Trust Fund monies are permitted to be expended are fixed as of the date of enactment of the Airport and

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<sup>10</sup> Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended.

<sup>11</sup> According to the Government Accountability Office, for FY 2000 through FY 2010 the contribution of general revenues has increased to cover a larger share of the FAA’s operation expenditures. United States Government Accountability Office, *Airport and Airway Trust Fund: Declining Balance Raises Concerns Over Ability to Meet Future Demands*, Statement of Gerald Dillingham, Director Physical Infrastructure Before the Committee on Finance, U.S. Senate (GAO-11-358T), February 3, 2011, p. 5, Fig. 2. Congressional Budget Office, *Financing Federal Aviation Programs: Statement of Robert A. Sunshine before the House Committee on Ways and Means*, May 7, 2009, p. 3.

Airway Extension Act of 2012, the Code must be amended to authorize new Airport and Airway Trust Fund expenditure purposes. In addition, the Code contains a specific enforcement provision to prevent expenditure of Airport and Airway Trust Fund monies for purposes not authorized under section 9502. Should such unapproved expenditures occur, no further aviation excise tax receipts will be transferred to the Airport and Airway Trust Fund. Rather, the aviation taxes would continue to be imposed, but the receipts would be retained in the General Fund.

### **House Bill**

The provision authorizes expenditures from the Airport and Airway Trust Fund through September 30, 2014, and revises the purposes for which money from the Airport and Airway Trust Fund funds are permitted to be expended to include those obligations authorized under the reauthorization legislation of 2011 (i.e., the "FAA Reauthorization and Reform Act of 2011," which sets forth aviation program expenditure purposes through September 30, 2014).

Effective date.—The provision takes effect on date of enactment.

### **Senate Amendment**

The provision authorizes expenditures from the Airport and Airway Trust Fund through September 30, 2013. The provision also amends the list of authorizing statutes to include the "FAA Air Transportation Modernization and Safety Improvement Act," which sets forth aviation program expenditure purposes through September 30, 2013.

Effective date.—The provision takes effect on April 1, 2011.

### **Conference Agreement**

The conference agreement authorizes expenditures from the Airport and Airway Trust Fund through September 30, 2015. The provision also amends the list of authorizing statutes to include the "FAA Modernization and Reform Act of 2012," which sets forth aviation program expenditure purposes through September 30, 2015.

Effective date.—The provision takes effect on February 18, 2012.

**C. Modification of Excise Tax on Kerosene Used in Aviation**  
**(sec. 803 of the Senate amendment)**

**Present Law**

**In general**

Under section 4081, an excise tax is imposed upon (1) the removal of any taxable fuel from a refinery or terminal,<sup>12</sup> (2) the entry of any taxable fuel into the United States, or (3) the sale of any taxable fuel to any person who is not registered with the Internal Revenue Service ("IRS") to receive untaxed fuel, unless there was a prior taxable removal or entry.<sup>13</sup> The tax does not apply to any removal or entry of taxable fuel transferred in bulk by pipeline or vessel to a terminal or refinery if the person removing or entering the taxable fuel, the operator of such pipeline or vessel (excluding deep draft vessels), and the operator of such terminal or refinery are registered with the Secretary.<sup>14</sup> If the bulk transfer exception applies, tax is not imposed until the fuel "breaks bulk," i.e., when it is removed from the terminal, typically by rail car or truck, for delivery to a smaller wholesale facility or retail outlet, or removed directly from the terminal into the fuel tank of an aircraft.<sup>15</sup>

The term "taxable fuel" means gasoline, diesel fuel (including any liquid, other than gasoline, that is suitable for use as a fuel in a diesel-powered highway vehicle or train), and kerosene.<sup>16</sup> The term includes kerosene used in aviation (jet fuel) as well as aviation gasoline.

Section 4041(c) provides a back-up tax for liquids (other than aviation gasoline) that are sold for use as a fuel in aircraft and that have not been previously taxed under section 4081.

**Kerosene for use in aviation**

**In general**

Present law generally imposes a total tax of 24.4 cents per gallon on kerosene. However, reduced rates apply for kerosene removed directly from a terminal into the fuel tank of an

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<sup>12</sup> A "terminal" is a taxable fuel storage and distribution facility that is supplied by pipeline or vessel and from which taxable fuel may be removed at a rack. A "rack" is a mechanism capable of delivering taxable fuel into a means of transport other than a pipeline or vessel. A terminal can be located at an airport, or fuel may be delivered to the airport from a terminal located off the airport grounds.

<sup>13</sup> Sec. 4081(a)(1).

<sup>14</sup> Sec. 4081(a)(1)(B).

<sup>15</sup> In general, the party liable for payment of the taxes when the fuel breaks bulk at the terminal is the "position holder," the person shown on the records of the terminal facility as holding the inventory position in the fuel. However, when fuel is removed directly into the fuel tank of an aircraft for use in commercial aviation, the person who uses the fuel is liable for the tax. The fuel is treated as used when such fuel is removed into the fuel tank. Sec. 4081(a)(4).

<sup>16</sup> Sec. 4083(a).

aircraft.<sup>17</sup> For kerosene removed directly from a terminal into the fuel tank of an aircraft for use in commercial aviation, the tax rate is 4.4 cents per gallon.<sup>18</sup> For kerosene removed directly from a terminal into the fuel tank of an aircraft for use in noncommercial aviation, the tax rate is 21.9 cents per gallon. All of these tax rates include 0.1 cent per gallon for the Leaking Underground Storage Tank Trust Fund. For kerosene removed directly from a terminal into the fuel tank of an aircraft for an exempt use (such as for the exclusive use of a State or local government), generally only the Leaking Underground Storage Tank Trust Fund tax of 0.1 cent per gallon applies.

“Commercial aviation” generally means any use of an aircraft in the business of transporting by air persons or property for compensation or hire.<sup>19</sup> Commercial aviation does not include transportation exempt from the ticket taxes and air cargo taxes by reason of sections 4281 or 4282 or by reason of section 4261(h) or 4261(i). Thus, small aircraft operating on nonestablished lines (sec. 4281), air transportation for affiliated group members (sec. 4282), air transportation for skydiving (sec. 4261(h)), and certain air transportation by seaplane (sec. 4261(i)) are excluded from the definition of commercial aviation, and accordingly are subject to the tax regime applicable to noncommercial aviation.

#### Refunds and credits to obtain the appropriate aviation tax rate

If the kerosene is not removed directly into the fuel tank of an aircraft, the fuel is taxed at 24.4 cents per gallon, the rate applied to diesel fuel and kerosene used in highway vehicles. A claim for credit or payment may be made for the difference between the tax paid and the appropriate aviation rate (21.9 cents per gallon for noncommercial aviation, 4.4 cents per gallon for commercial aviation, and 0.1 cent per gallon for an exempt use).<sup>20</sup>

For noncommercial aviation, other than for exempt use, only the registered ultimate vendor may make the claim for the 2.5-cent-per-gallon difference between the 24.4 cents per

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<sup>17</sup> If certain conditions are met, present law permits the removal of kerosene from a refueler truck, tanker, or tank wagon to be treated as a removal from a terminal for purposes of determining whether kerosene is removed directly into the fuel tank of an aircraft. A refueler truck, tanker, or tank wagon is treated as part of a terminal if: (1) the terminal is located within an airport; (2) any kerosene which is loaded in such truck, tanker, or tank wagon at such terminal is for delivery only into aircraft at the airport in which such terminal is located; and (3) no vehicle licensed for highway use is loaded with kerosene at such terminal, except in exigent circumstances identified by the Secretary in regulations. To qualify for the special rule, a refueler truck, tanker, or tank wagon must: (1) have storage tanks, hose, and coupling equipment designed and used for the purposes of fueling aircraft; (2) not be registered for highway use; and (3) be operated by the terminal operator (who operates the terminal rack from which the fuel is unloaded) or by a person that makes a daily accounting to such terminal operator of each delivery of fuel from such truck, tanker, or tank wagon. Sec. 4081(a)(3).

<sup>18</sup> Tax is imposed at this rate if the commercial aircraft operator is registered with the IRS, and the fuel terminal is located within a secured area of an airport. The IRS has identified airports with secured areas in which a terminal is located. See Notice 2005-4, 2005-1 C.B. 289, at sec. 4(d)(2)(ii) (2005) and Notice 2005-80, 2005-2 C.B. 953, at sec. 3(c)(2) (2005). If the fuel terminal is located at an unsecured airport, the fuel is taxed at 21.9 cents per gallon if the fuel is removed directly from the terminal into the fuel tank of an aircraft.

<sup>19</sup> Sec. 4083(b).

<sup>20</sup> Sec. 6427(l)(4).

gallon rate and the noncommercial aviation rate of 21.9 cents per gallon.<sup>21</sup> For commercial aviation and exempt use (other than State and local government use), the ultimate purchaser may make a claim for the difference in tax rates, or the ultimate purchaser may waive the right to make the claim for payment to the ultimate vendor.<sup>22</sup> For State and local government use, the registered ultimate vendor is the proper claimant.<sup>23</sup>

Commercial aviation claimants are permitted to credit their fuel tax claims against their other excise tax liabilities, thereby reducing the amount of excise tax to be paid with the excise tax return.

Transfers between the Highway Trust Fund and the Airport and Airway Trust Fund to account for aviation use

Kerosene that is not removed directly from the terminal into an airplane (e.g., the jet fuel is transferred from the terminal by highway vehicle to the airport) is taxed at the highway fuel rate of 24.4 cents per gallon. The Highway Trust Fund is credited with 24.3 cents per gallon of the 24.4 cents per gallon imposed. The remaining 0.1 cent is credited to the Leaking Underground Storage Tank Trust Fund. If a claim for payment is later made indicating that the fuel was used in aviation, the Secretary then transfers to the Airport and Airway Trust Fund 4.3 cents per gallon for commercial aviation use and 21.8 cents per gallon for noncommercial aviation use. These transfers initially are based on estimates, and proper adjustments are made in amounts subsequently transferred to the extent prior estimates were in excess of, or less than, the amounts required to be transferred. Thus, to the extent claims for credit or payment are not made for the difference between the highway rate and the aviation rate, the Airport and Airway Trust Fund will not be credited for fuel used in aviation that was taxed at the 24.4 cents per gallon rate.

Aviation gasoline

The tax on aviation gasoline is 19.4 cents per gallon (including a 0.1 cent per gallon Leaking Underground Storage Tank Trust Fund component). If aviation gasoline is used in commercial aviation, the ultimate purchaser may obtain a credit or payment in the amount of 15 cents per gallon, such that the tax rate on such gasoline is 4.4 cents per gallon.<sup>24</sup> If aviation gasoline is sold for an exempt use, a credit or refund is allowable for all but the Leaking Underground Storage Tank Trust Fund tax (0.1 cent per gallon).<sup>25</sup>

House Bill

No provision.

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<sup>21</sup> Sec. 6427(l)(4)(C)(ii).

<sup>22</sup> Sec. 6427(l)(4)(C)(i).

<sup>23</sup> See sec. 6427(l)(5). Special rules apply if the kerosene is purchased with a credit card issued to a State or local government.

<sup>24</sup> Sec. 6421(f)(2).

<sup>25</sup> Sec. 6416(a); sec. 6420 (farming purposes); sec. 6421(c); and sec. 6430.

### Senate Amendment

The provision creates a separate category of kerosene for tax purposes: aviation-grade kerosene.<sup>26</sup> Aviation-grade kerosene is taxed at 35.9 cents per gallon plus 0.1 cent per gallon for the Leaking Underground Storage Tank Trust Fund. Under the provision, aviation-grade kerosene used in noncommercial aviation will be taxed at the full rate. The rate of tax for aviation-grade kerosene used in commercial aviation and exempt use remains unchanged.<sup>27</sup>

Because the tax on aviation-grade kerosene used in noncommercial aviation is equal to the full rate of tax collected, the provision repeals the ultimate vendor refund provisions for noncommercial aviation. In addition, the provision eliminates the inter-fund transfers from the Highway Trust Fund to the Airport and Airway Trust Fund for kerosene used in aviation. Instead, the taxes imposed on aviation-grade kerosene will be credited to the Airport and Airway Trust Fund only.<sup>28</sup> The provision also provides a refund mechanism for aviation-grade kerosene used for a taxable purpose other than in an aircraft.

In the case of aviation-grade kerosene held on April 1, 2011, by any person, a floor stocks tax is imposed equal to the tax that would have been imposed if the increased rates had been in effect before such date less the tax actually imposed on such fuel. The tax is to be paid at such time and in such manner as the Secretary shall prescribe.

The floor stocks tax does not apply to fuel held exclusively for any use to the extent a refund or credit of tax is allowable under the Code. The floor stocks tax does not apply if the amount of fuel held by a person does not exceed 2,000 gallons.

For purposes of the floor stocks tax, a controlled group is treated as one person. "Controlled group" for these purposes means a parent-subsidiary, brother-sister, or combined corporate group with more than 50-percent ownership with respect to either combined voting power or total value. Under regulations, similar principles may apply to a group of persons under common control where one or more persons are not a corporation.

All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 also apply to the floor stocks taxes to the extent not inconsistent with the provisions of the provision. For purposes of determining receipts to the Airport and Airway Trust Fund, the floor stocks tax is treated as if it were a tax listed in section 9502(b)(1) (governing transfers of tax receipts to the Airport and Airway Trust Fund).

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<sup>26</sup> Aviation-grade kerosene means, as defined by the IRS, kerosene-type jet fuel covered by ASTM specification D1655, or military specification MIL-DTL-5624 (Grade JP-5), or MIL-DTL-83133E (Grade JP-8). See section 4(b) of Notice 2005-4.

<sup>27</sup> Accordingly, commercial aviation use will continue to be subject to a tax of 4.4 cents per gallon and exempt use will be subject to 0.1 cent per gallon.

<sup>28</sup> The 0.1 cent per gallon will continue to be transferred to the Leaking Underground Storage Tank Trust Fund.

Effective date.—The provision is generally effective for fuel removed, entered, or sold after March 31, 2011. The floor stocks tax is effective April 1, 2011.

### **Conference Agreement**

The conference agreement does not include the Senate amendment provision.

**D. Air Traffic Control System Modernization Account  
(sec. 804 of the Senate amendment)**

**Present Law**

Under present law, there is no special sub-account of the Airport and Airway Trust Fund to which funds are dedicated for air traffic control system modernization.

**House Bill**

No provision.

**Senate Amendment**

The provision creates an Air Traffic Control System Modernization Account ("Modernization sub-account") within the Airport and Airway Trust Fund to ensure sufficient funding is provided for modernization of the air traffic control system. The Modernization sub-account is supported through annual transfers of \$400 million from the Airport and Airway Trust Fund that are attributable to the taxes on aviation-grade kerosene. The funds are available, subject to appropriation, for expenditures relating to the modernization of the air traffic control system. Use of the funds also may include facility and equipment account expenditures.

Effective date.—The provision is effective on the date of enactment.

**Conference Agreement**

The conference agreement does not include the Senate amendment provision.

**E. Treatment of Fractional Ownership Aircraft Program Flights**  
**(sec. 805 of the Senate amendment, sec. 1103 of the**  
**conference agreement, and new sec. 4043 of the Code)**

**Present Law**

For excise tax purposes, fractional ownership aircraft flights are treated as commercial aviation. As commercial aviation, for 2012, such flights are subject to the *ad valorem* tax of 7.5 percent of the amount paid for the transportation, a \$3.80 segment tax, and tax of 4.4 cents per gallon on fuel. For international flights, fractional ownership flights pay the \$16.70 international travel facilities tax.

For purposes of the FAA safety regulations, fractional ownership aircraft programs are treated as a special category of general aviation.<sup>29</sup> Under those FAA regulations, a “fractional ownership program” is defined as any system of aircraft ownership and exchange that consists of all of the following elements: (i) the provision for fractional ownership program management services by a single fractional ownership program manager on behalf of the fractional owners; (ii) two or more airworthy aircraft; (iii) one or more fractional owners per program aircraft, with at least one program aircraft having more than one owner; (iv) possession of at least a minimum fractional ownership interest in one or more program aircraft by each fractional owner; (v) a dry-lease aircraft exchange arrangement among all of the fractional owners; and (vi) multi-year program agreements covering the fractional ownership, fractional ownership program management services, and dry-lease aircraft exchange aspects of the program.

**House Bill**

No provision.

**Senate Amendment**

Under the provision, transportation as part of a fractional ownership aircraft program is not classified as commercial aviation for Federal excise tax purposes. Instead, such flights would be subject to the increased Airport and Airway Trust Fund fuel tax rate for noncommercial aviation and an additional fuel surtax of 14.1 cents per gallon. For this purpose, a “fractional ownership aircraft program” is defined as a program in which:

- A single fractional ownership program manager provides fractional ownership program management services on behalf of the fractional owners;
- Two or more airworthy aircraft are part of the program;
- There are one or more fractional owners per program aircraft, with at least one program aircraft having more than one owner;

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<sup>29</sup> 14 C.F.R. Part 91, subpart k.

- Each fractional owner possesses at least a minimum fractional ownership interest in one or more program aircraft;<sup>30</sup>
- There exists a dry-lease aircraft exchange arrangement among all of the fractional owners;<sup>31</sup> and
- There are multi-year program agreements covering the fractional ownership, fractional ownership program management services, and dry-lease aircraft exchange aspects of the program.

The fuel taxes are dedicated to the Airport and Airway Trust Fund. Consistent with the general extension of the taxes dedicated to the Airport and Airway Trust Fund, the provision sunsets September 30, 2013.

Effective date.—The provision is effective for taxable transportation provided after, and fuel used after, March 31, 2011.

### **Conference Agreement**

The conference agreement provides an exemption, through September 30, 2015, from the commercial aviation taxes (secs. 4261, 4271 and the 4.4 cents-per-gallon tax on fuel) for certain fractional aircraft program flights. In place of the commercial aviation taxes, the conference agreement applies a fuel surtax to certain flights made as part of a fractional ownership program.

Through September 30, 2015, these flights are treated as noncommercial aviation, subject to the fuel surtax and the base fuel tax for fuel used in noncommercial aviation.<sup>32</sup> Specifically, the additional fuel surtax of 14.1 cents per gallon will apply to fuel used in a fractional program aircraft (1) for the transportation of a qualified fractional owner with respect to the fractional aircraft program of which such aircraft is a part, and (2) with respect to the use of such aircraft on the account of such a qualified owner. Such use includes positioning flights (flights in deadhead service).<sup>33</sup> Through September 30, 2015, the commercial aviation taxes do not apply to fractional program aircraft uses subject to the fuel surtax. Under the conference agreement,

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<sup>30</sup> A “minimum fractional ownership interest” means: (1) A fractional ownership interest equal to or greater than one-sixteenth (1/16) of at least one subsonic, fixed wing or powered lift program aircraft; or (2) a fractional ownership interest equal to or greater than one-thirty-second (1/32) of at least one rotorcraft program aircraft. A “fractional ownership interest” is (1) the ownership interest in a program aircraft; (2) the holding of a multi-year leasehold interest in a program aircraft; or (3) the holding or a multi-year leasehold interest that is convertible into an ownership interest in a program aircraft.

<sup>31</sup> A “dry-lease aircraft exchange” means an arrangement, documented by the written program agreements, under which the program aircraft are available, on an as-needed basis without crew, to each fractional owner.

<sup>32</sup> No inference is intended as to the treatment of these flights as noncommercial aviation under present law.

<sup>33</sup> A flight in deadhead service is presumed subject to the fuel surtax unless the costs for such flight are separately billed to a person other than a qualified owner. For example, if the costs associated with a positioning flight of a fractional program aircraft are separately billed to a person chartering the aircraft, that positioning flight is treated as commercial aviation.

flight demonstration, maintenance, and crew training flights by a fractional program aircraft are excluded from the fuel surtax and are subject to the noncommercial aviation fuel tax only.<sup>34</sup> The fuel surtax of 14.1 cents per gallon sunsets September 30, 2021.

A “fractional program aircraft” means, with respect to any fractional ownership aircraft program, any aircraft which is listed as a fractional program aircraft in the management specifications issued to the manager of such program by the Federal Aviation Administration under subpart K of part 91 of title 14, Code of Federal Regulations and is registered in the United States.

A “fractional ownership aircraft program” is a program under which:

- A single fractional ownership program manager provides fractional ownership program management services on behalf of the fractional owners;
- There are one or more fractional owners per program aircraft, with at least one program aircraft having more than one owner;
- With respect to at least two fractional program aircraft, none of the ownership interests in such aircraft can be less than the minimum fractional ownership interest, or held by the program manager;
- There exists a dry-lease aircraft exchange arrangement among all of the fractional owners; and
- There are multi-year program agreements covering the fractional ownership, fractional ownership program management services, and dry-lease aircraft exchange aspects of the program.

The term “qualified fractional owner” means any fractional owner that has a minimum fractional ownership interest in at least one fractional program aircraft. A “minimum fractional ownership interest” means: (1) A fractional ownership interest equal to or greater than one-sixteenth (1/16) of at least one subsonic, fixed wing or powered lift program aircraft; or (2) a fractional ownership interest equal to or greater than one-thirty-second (1/32) of at least one rotorcraft program aircraft. A “fractional ownership interest” is (1) the ownership interest in a program aircraft; (2) the holding of a multi-year leasehold interest in a program aircraft; or (3) the holding of a multi-year leasehold interest that is convertible into an ownership interest in a program aircraft. A “fractional owner” means a person owning any interest (including the entire interest) in a fractional program aircraft.

Amounts equivalent to the revenues from the fuel surtax are dedicated to the Airport and Airway Trust Fund.

Effective date.—The provision is effective for taxable transportation provided after, uses of aircraft after, and fuel used after, March 31, 2012.

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<sup>34</sup> It is the understanding of the conferees that a prospective purchaser does not pay any amount for transportation by demonstration flights, and that if an amount were paid for the flight, the flight would be subject to the commercial aviation taxes and not treated as noncommercial aviation.

**Termination of Exemption For Small Jet Aircraft on Nonestablished Lines**  
**(sec. 806 of the Senate amendment, sec. 1107 of the**  
**conference agreement and sec. 4281 of the Code)**

**Present Law**

Under present law, transportation by aircraft with a certificated maximum takeoff weight of 6,000 pounds or less is exempt from the excise taxes imposed on the transportation of persons by air and the transportation of cargo by air when operating on a nonestablished line. Similarly, when such aircraft are operating on a flight for the sole purpose of sightseeing, the taxes imposed on the transportation of persons or cargo by air do not apply.

**House Bill**

No provision.

**Senate Amendment**

The provision repeals the exemption as it applies to turbine engine powered aircraft (jet aircraft).

Effective date.—The provision is effective for transportation provided after March 31, 2011.

**Conference Agreement**

The conference agreement follows the Senate amendment provision, repealing the exemption as it applies to jet aircraft, effective for transportation provided after March 31, 2012.

**F. Transparency in Passenger Tax Disclosures**  
**(sec. 807 of the Senate amendment, sec. 1104 of the**  
**conference agreement, and sec. 7275 of the Code)**

**Present Law**

Transportation providers are subject to special penalties relating to the disclosure of the amount of the passenger taxes on tickets and in advertising. The ticket is required to show the total amount paid for such transportation and the tax. The same requirements apply to advertisements. In addition, if the advertising separately states the amount to be paid for the transportation or the amount of taxes, the total shall be stated at least as prominently as the more prominently stated of the tax or the amount paid for transportation. Failure to satisfy these disclosure requirements is a misdemeanor, upon conviction of which the guilty party is fined not more than \$100 per violation.<sup>35</sup>

There is no prohibition against airlines including other charges in the required passenger taxes disclosure (e.g., fuel surcharges retained by the commercial airline). In practice, some but not all airlines include such other charges in the required passenger taxes disclosure.

**House Bill**

No provision.

**Senate Amendment**

The provision prohibits all transportation providers from including amounts other than the passenger taxes imposed by section 4261 in the required disclosure of passenger taxes on tickets and in advertising when the amount of such tax is separately stated. Disclosure elsewhere on tickets and in advertising (e.g., as an amount paid for transportation) of non-tax charges is allowed.

Effective date.—The provision is effective for transportation provided after March 31, 2011.

**Conference Agreement**

The conference agreement follows the Senate amendment, except the effective date is for transportation provided after March 31, 2012.

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<sup>35</sup> Sec. 7275.

**G. Tax-Exempt Private Activity Bond Financing for Fixed-Wing  
Emergency Medical Aircraft**  
**(sec. 808 of the Senate amendment, sec. 1105 of the  
conference agreement, and sec. 147(e) of the Code)**

**Present Law**

Interest on bonds issued by State and local governments generally is excluded from gross income for Federal income tax purposes.<sup>36</sup> Bonds issued by State and local governments may be classified as either governmental bonds or private activity bonds. Governmental bonds are bonds the proceeds of which are primarily used to finance governmental functions or which are repaid with governmental funds. In general, private activity bonds are bonds in which the State or local government serves as a conduit providing financing to nongovernmental persons (e.g., private businesses or individuals).<sup>37</sup> The exclusion from income for State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes (“qualified bonds”) and other Code requirements are met.<sup>38</sup>

Section 147(e) of the Code provides, in part, that a private activity bond is not a qualified bond if issued as part of an issue and any portion of the proceeds of such issue is used for airplanes.<sup>39</sup> The IRS has ruled that a helicopter is not an “airplane” for purposes of section 147(e).<sup>40</sup>

A fixed-wing aircraft providing air transportation for emergency medical services and that is equipped for, and exclusively dedicated on that flight to, acute care emergency medical services is exempt from the air transportation excise taxes imposed by sections 4261 and 4271.<sup>41</sup>

**House Bill**

No provision.

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<sup>36</sup> Sec. 103(a).

<sup>37</sup> See sec. 141 defining “private activity bond.”

<sup>38</sup> See sec. 103(b) and sec. 141(e).

<sup>39</sup> Other prohibited facilities include any skybox, or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises. Sec. 147(e).

<sup>40</sup> Rev. Rul. 2003-116, 2003-46 I.R.B. 1083, 2003-2 C.B. 1083, November 17, 2003, (released: October 29, 2003).

<sup>41</sup> Sec. 4261(g)(2).

### **Senate Amendment**

The provision amends section 147(e) so that the prohibition on the use of proceeds for airplanes does not apply to any fixed-wing aircraft equipped for, and exclusively dedicated to, providing acute care emergency medical services (within the meaning of section 4261(g)(2)).

Effective date.—The provision is effective for obligations issued after the date of enactment.

### **Conference Agreement**

The conference agreement follows the Senate amendment.

## **H. Protection of Airport and Airway Trust Fund Solvency (sec. 809 of the Senate amendment)**

### **Present Law**

The uncommitted cash balance in the Airport and Airway Trust Fund has declined significantly in recent years. At the end of Fiscal Year 2001, the uncommitted cash balance was \$7.3 billion. At the end of Fiscal Year 2010, the balance was approximately \$770 million.<sup>42</sup>

The current statutory formula requires that estimated Airport and Airway Trust Fund receipts each year must equal trust fund expenditures. However, amounts appropriated from the Airport and Airway Trust Fund are based on revenue receipt projections and have exceeded the amounts actually deposited into the Airport and Airway Trust Fund, resulting in declines in the uncommitted cash balance.

### **House Bill**

No provision.

### **Senate Amendment**

The provision amends section 9502 to limit the budgetary resources initially made available each fiscal year from the Airport and Airway Trust Fund to 90 percent, rather than 100 percent, of forecasted revenues for that year.

Effective date.—The provision is effective for fiscal years 2012 and 2013.

### **Conference Agreement**

The conference agreement does not include the Senate amendment provision, but this matter is addressed by section 104 of Title I of the conference agreement.

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<sup>42</sup> Government Accountability Office, *Airport and Airway Trust Fund: Declining Balance Raises Concerns Over Ability to Meet Future Demands*, February 3, 2011, p. 5.

**J. Rollover of Amounts Received in Airline Carrier Bankruptcy**  
**(sec. 810 of the Senate amendment and sec. 1106 of the conference agreement)**

**Present Law**

The Code provides for two types of individual retirement arrangements (“IRAs”): traditional IRAs and Roth IRAs.<sup>43</sup> In general, contributions (other than a rollover contribution) to a traditional IRA may be deductible from gross income, and distributions from a traditional IRA are includible in gross income to the extent not attributable to a return of nondeductible contributions. In contrast, contributions to a Roth IRA are not deductible, and qualified distributions from a Roth IRA are excludable from gross income. Distributions from a Roth IRA that are not qualified distributions are includible in gross income to the extent attributable to earnings. In general, a qualified distribution is a distribution that (1) is made after the five taxable year period beginning with the first taxable year for which the individual first made a contribution to a Roth IRA, and (2) is made on or after the individual attains age 59½, death, or disability or which is a qualified special purpose distribution.

The total amount that an individual may contribute to one or more IRAs for a year is generally limited to the lesser of: (1) a dollar amount (\$5,000 for 2012); or (2) the amount of the individual’s compensation that is includible in gross income for the year.<sup>44</sup> As under the rules relating to traditional IRAs, a contribution of up to the dollar limit for each spouse may be made to a Roth IRA provided the combined compensation of the spouses is at least equal to the contributed amount.

If an individual makes a contribution to an IRA (traditional or Roth) for a taxable year, the individual is permitted to recharacterize (in a trustee-to-trustee transfer) the amount of that contribution as a contribution to the other type of IRA (traditional or Roth) before the due date for the individual’s income tax return for that year.<sup>45</sup> In the case of a recharacterization, the contribution will be treated as having been made to the transferee plan. The amount transferred must be accompanied by any net income allocable to the contribution and no deduction is allowed with respect to the contribution to the transferor plan. Both regular contributions and conversion contributions to a Roth IRA can be recharacterized as having been made to a traditional IRA. However, Treasury regulations limit the number of times a contribution for a taxable year may be recharacterized.<sup>46</sup>

Taxpayers generally may convert a traditional IRA into a Roth IRA.<sup>47</sup> The amount converted is includible in income as if a withdrawal had been made, except that the early

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<sup>43</sup> Traditional IRAs are described in section 408, and Roth IRAs are described in section 408A.

<sup>44</sup> The maximum contribution amount is increased for individuals 50 years of age or older.

<sup>45</sup> Sec. 408A(d)(6).

<sup>46</sup> Treas. Reg. sec. 1.408A-5.

<sup>47</sup> For taxable years beginning prior to January 1, 2010, taxpayers with modified AGI in excess of \$100,000, and married taxpayers filing separate returns, were generally not permitted to convert a traditional IRA

distribution tax (discussed below) does not apply. However, the early distribution tax is applied if the taxpayer withdraws the amount within five years of the conversion.

If certain requirements are satisfied, a participant in an employer-sponsored qualified plan (which includes a tax-qualified retirement plan described in section 401(a), an employee retirement annuity described in section 403(a), a tax-sheltered annuity described in section 403(b), and a governmental section 457(b) plan) or a traditional IRA may roll over distributions from the plan, annuity or IRA into another plan, annuity or IRA. For distributions after December 31, 2007, certain taxpayers also are permitted to make rollover contributions into a Roth IRA (subject to inclusion in gross income of any amount that would be includible were it not part of the rollover contribution).

Under section 125 of the Worker, Retiree, and Employer Recovery Act of 2008 (“WRERA”),<sup>48</sup> a “qualified airline employee” may contribute any portion of an “airline payment amount” to a Roth IRA within 180 days of receipt of such amount (or, if later, within 180 days of enactment of the provision). Such a contribution is treated as a qualified rollover contribution to the Roth IRA. Thus, the portion of the airline payment amount contributed to the Roth IRA is includible in gross income to the extent that such payment would be includible were it not part of the rollover contribution.

A qualified airline employee is an employee or former employee of a commercial passenger airline carrier who was a participant in a defined benefit plan maintained by the carrier which: (1) is qualified under section 401(a); and (2) was terminated or became subject to the benefit accrual and other restrictions applicable to plans maintained by commercial passenger airlines pursuant to section 402(b) of the Pension Protection Act of 2006 (“PPA”).

An airline payment amount is any payment of any money or other property payable by a commercial passenger airline to a qualified airline employee: (1) under the approval of an order of a Federal bankruptcy court in a case filed after September 11, 2001, and before January 1, 2007; and (2) in respect of the qualified airline employee’s interest in a bankruptcy claim against the airline carrier, any note of the carrier (or amount paid in lieu of a note being issued), or any other fixed obligation of the carrier to pay a lump sum amount. An airline payment amount does not include any amount payable on the basis of the carrier’s future earnings or profits. The amount that may be contributed to a Roth IRA is the gross amount of the payment; any reduction in the airline payment amount on account of employment tax withholding is disregarded.

### **House Bill**

No provision.

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into a Roth IRA. Under the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. No. 109-222, these limits on conversion are repealed for taxable years beginning after December 31, 2009.

<sup>48</sup> Pub. L. No. 110-455.

### Senate Amendment

The amendment expands the choices for recipients of airline payment amounts by allowing qualified airline employees to contribute airline payment amounts to a traditional IRA as a rollover contribution. An individual making such a rollover contribution may exclude the contributed airline payment amount from gross income in the taxable year in which the airline payment amount was paid.

Qualified airline employees who made a qualified rollover contribution of an airline payment amount to a Roth IRA pursuant to WRERA are permitted to recharacterize all or a portion of the qualified rollover contribution as a rollover contribution to a traditional IRA by transferring, in a trustee-to-trustee transfer, the contribution (or a portion thereof) plus attributable earnings (or losses) from the Roth IRA. As in the case of a recharacterization under present law, the airline payment amount so transferred (with attributable earnings) is deemed to have been contributed to the traditional IRA at the time of the initial rollover contribution into the Roth IRA. The trustee-to-trustee transfer to a traditional IRA must be made within 180 days of the amendment's enactment.

If an amount contributed to a Roth IRA as a rollover contribution is recharacterized as a rollover contribution to a traditional IRA, the amount so recharacterized may not be contributed to a Roth IRA as a qualified rollover contribution (i.e., reconverted to a Roth IRA) during the five taxable years immediately following the taxable year in which the transfer to the traditional IRA was made.

Qualified airline employees who were eligible to make a qualified rollover to a Roth IRA under WRERA, but declined to do so, are now permitted to roll over the airline payment amount to a traditional IRA within 180 days of the receipt of the amount (or, if later, within 180 days of enactment of the amendment). As mentioned above, any portion of an airline payment amount recharacterized as a rollover contribution to a traditional IRA pursuant to the amendment is excluded from gross income in the taxable year in which the airline payment amount was paid to the qualified airline employee by the commercial passenger airline carrier. Individuals recharacterizing such contributions may file a claim for a refund until the later of: (1) the period of limitations under section 6511(a) (generally, three years from the time the return was filed or two years from the time the tax was paid, whichever period expires later); or (2) April 15, 2012.

An airline payment amount does not fail to be treated as wages for purposes of Social Security and Medicare taxes under the Federal Insurance Contributions Act<sup>49</sup> and section 209 of the Social Security Act, merely because the amount is excluded from gross income because it is rolled over into a traditional IRA pursuant to the amendment.

Surviving spouses of qualified airline employees are granted the same rights as qualified airline employees under section 125 of WRERA and under the amendment.

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<sup>49</sup> Chapter 21 of the Code.

Effective date.—Effective for all transfers (made after date of enactment) of qualified airline payment amounts received before, on, or after date of enactment.

### **Conference Agreement**

The conference agreement follows the Senate amendment with three modifications. First, a qualified airline employee is not permitted to contribute (using either a rollover or recharacterization) an airline payment amount to a traditional IRA for a taxable year if, before the end of the taxable year, the employee was at any time a covered employee, as defined in section 162(m)(3),<sup>50</sup> of the commercial passenger airline carrier making the qualified airline payment. Second, a qualified airline employee who was not at any time a covered employee may only roll over, or recharacterize, into a traditional IRA 90 percent of the aggregate amount of airline payment amounts received before the end of the taxable year. Third, individuals recharacterizing their contributions may file a claim for a refund until the later of: (1) the period of limitations under section 6511(a) (generally, three years from the time the return was filed or two years from the time the tax was paid, whichever period expires later); or (2) April 15, 2013.

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<sup>50</sup> Section 162(m) defines a covered employee as (1) the chief executive officer of the corporation (or an individual acting in such capacity) as of the close of the taxable year and (2) the four most highly compensated officers for the taxable year (other than the chief executive officer). Treas. Reg. sec. 1.162-27(c)(2) provides that whether an employee is the chief executive officer or among the four most highly compensated officers should be determined pursuant to the executive compensation disclosure rules promulgated under the Securities Exchange Act of 1934. Notice 2007-49, 2007-25 I.R.B. 1429 provides that “covered employee” means any employee who is (1) the principal executive officer (or an individual acting in such capacity) defined in reference to the Exchange Act, or (2) among the three most highly compensated officers for the taxable year (other than the principal executive officer) to reflect the 2006 change by the Securities and Exchange Commission to its rules.

**K. Application of Levy to Payments to Federal Vendors Relating to Property  
(sec. 811 of the Senate amendment)**

**Present Law**

**In general**

Levy is the IRS's administrative authority to seize a taxpayer's property, or rights to property, to pay the taxpayer's tax liability.<sup>51</sup> Generally, the IRS is entitled to seize a taxpayer's property by levy if a Federal tax lien has attached to such property,<sup>52</sup> and the IRS has provided both notice of intention to levy<sup>53</sup> and notice of the right to an administrative hearing (the notice is referred to as a "collections due process notice" or "CDP notice" and the hearing is referred to as the "CDP hearing")<sup>54</sup> at least 30 days before the levy is made. A Federal tax lien arises automatically when: (1) a tax assessment has been made; (2) the taxpayer has been given notice of the assessment stating the amount and demanding payment; and (3) the taxpayer has failed to pay the amount assessed within 10 days after the notice and demand.<sup>55</sup>

The notice of intent to levy is not required if the Secretary finds that collection would be jeopardized by delay. The standard for determining whether jeopardy exists is similar to the standard applicable when determining whether assessment of tax without following the normal deficiency procedures is permitted.<sup>56</sup>

The CDP notice (and pre-levy CDP hearing) is not required if the Secretary finds that collection would be jeopardized by delay or the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund. In addition, a levy issued to collect Federal employment taxes is excepted from the CDP notice and the pre-levy CDP hearing requirement if the taxpayer subject to the levy requested a CDP hearing with respect to unpaid employment taxes arising in the two-year period before the beginning of the taxable period with respect to which the employment tax levy is served. In each of these three cases, however, the taxpayer is provided an opportunity for a hearing within a reasonable period of time after the levy.<sup>57</sup>

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<sup>51</sup> Sec. 6331(a). Levy specifically refers to the legal process by which the IRS orders a third party to turn over property in its possession that belongs to the delinquent taxpayer named in a notice of levy.

<sup>52</sup> *Ibid.*

<sup>53</sup> Sec. 6331(d).

<sup>54</sup> Sec. 6330. The notice and the hearing are referred to collectively as the CDP requirements.

<sup>55</sup> Sec. 6321.

<sup>56</sup> Secs. 6331(d)(3), 6861.

<sup>57</sup> Sec. 6330(f).

### **Federal payment levy program**

To help the IRS collect taxes more effectively, the Taxpayer Relief Act of 1997<sup>58</sup> authorized the establishment of the Federal Payment Levy Program ("FPLP"), which allows the IRS to continuously levy up to 15 percent of certain "specified payments," such as government payments to Federal contractors (including vendors) that are delinquent on their tax obligations. With respect to Federal payments to vendors of goods, services, or property, the continuous levy may be up to 100 percent of each payment.<sup>59</sup> The levy (either up to 15 percent or up to 100 percent) generally continues in effect until the liability is paid or the IRS releases the levy.

Under FPLP, the IRS matches its accounts receivable records with Federal payment records maintained by the Department of the Treasury's Financial Management Service ("FMS"), such as certain Social Security benefit and Federal wage records. When these records match, the delinquent taxpayer is provided both the notice of intention to levy and the CDP notice. If the taxpayer does not respond after 30 days, the IRS can instruct FMS to levy the taxpayer's Federal payments. Subsequent payments are continuously levied until such time that the tax debt is paid or IRS releases the levy.

### **House Bill**

No provision.

### **Senate Amendment**

The provision amends section 6331(h)(3) to add "property" to "goods or services" to allow the IRS to levy 100 percent of any payment due to a Federal vendor with unpaid Federal tax liabilities, including payments made for the sale or lease of real estate and other types of property not considered "goods or services."

Effective date.—The provision is effective for levies issued after the date of enactment.

### **Conference Agreement**

The conference agreement does not include the Senate amendment provision. Section 6331(h)(3) was amended to add "property" to "goods or services" to allow the IRS to levy 100 percent of any payment due to a Federal vendor with unpaid Federal tax liabilities in section 301 of the "3% Withholding Repeal and Job Creation Act," Pub. L. No. 112-56.

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<sup>58</sup> Pub. L. No. 105-34.

<sup>59</sup> Sec. 6331(h)(3). The word "property" was added to "goods or services" in section 301 of the "3% Withholding Repeal and Job Creation Act," Pub. L. No. 112-56.

**L. Modification of Control Definition for Purposes of Section 249**  
**(sec. 812 of the Senate amendment, sec. 1108 of the**  
**conference agreement, and sec. 249 of the Code)**

**Present Law**

In general, where a corporation repurchases its indebtedness for a price in excess of the adjusted issue price, the excess of the repurchase price over the adjusted issue price (the “repurchase premium”) is deductible as interest.<sup>60</sup> However, in the case of indebtedness that is convertible into the stock of (1) the issuing corporation, (2) a corporation in control of the issuing corporation, or (3) a corporation controlled by the issuing corporation, section 249 provides that any repurchase premium is not deductible to the extent it exceeds “a normal call premium on bonds or other evidences of indebtedness which are not convertible.”<sup>61</sup>

For purposes of section 249, the term “control” has the meaning assigned to such term by section 368(c). Section 368(c) defines “control” as “ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.” Thus, section 249 can apply to debt convertible into the stock of the issuer, the parent of the issuer, or a first-tier subsidiary of the issuer.

**House Bill**

No provision.

**Senate Amendment**

The provision modifies the definition of “control” in section 249(b)(2) to incorporate indirect control relationships of the nature described in section 1563(a)(1). Section 1563(a)(1) defines a parent-subsidary controlled group as one or more chains of corporations connected through stock ownership with a common parent corporation if (1) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned (within the meaning of subsection (d)(1)) by one or more of the other corporations; and (2) the common parent corporation owns (within the meaning of subsection (d)(1)) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of

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<sup>60</sup> See Treas. Reg. sec. 1.163-7(c).

<sup>61</sup> Regulations under section 249 provide that “[f]or a convertible obligation repurchased on or after March 2, 1998, a call premium specified in dollars under the terms of the obligation is considered to be a normal call premium on a nonconvertible obligation if the call premium applicable when the obligation is repurchased does not exceed an amount equal to the interest (including original issue discount) that otherwise would be deductible for the taxable year of repurchase (determined as if the obligation were not repurchased).” Treas. Reg. sec. 1.249-1(d)(2). Where a repurchase premium exceeds a normal call premium, the repurchase premium is still deductible to the extent that it is attributable to the cost of borrowing (e.g., a change in prevailing yields or the issuer’s creditworthiness) and not attributable to the conversion feature. See Treas. Reg. sec. 1.249-1(e).

stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

Effective date.—The provision is effective for repurchases after the date of enactment.

### **Conference Agreement**

The conference agreement follows the Senate amendment provision.

## **M. Repeal of Expansion of Information Reporting Requirements (sec. 1101 of the Senate amendment)**

### **Present Law**

A variety of information reporting requirements apply under present law.<sup>62</sup> These requirements are intended to assist taxpayers in preparing their income tax returns and to help the IRS determine whether such returns are correct and complete. The primary provision governing information reporting by payors requires an information return by every person engaged in a trade or business who makes payments for services or determinable gains to any one payee aggregating \$600 or more in any taxable year in the course of that payor's trade or business.<sup>63</sup> Payments subject to reporting include fixed or determinable income or compensation, but do not include payments for goods or certain enumerated types of payments that are subject to other specific reporting requirements.<sup>64</sup> The payor is required to provide the recipient of the payment with an annual statement showing the aggregate payments made and contact information for the payor.<sup>65</sup> The regulations generally provide exceptions from reporting of payments to corporations,<sup>66</sup> exempt organizations, governmental entities, international organizations, or retirement plans.<sup>67</sup> However, the following types of payments to corporations must be reported: Medical and health care payments;<sup>68</sup> fish purchases for cash;<sup>69</sup> attorney's fees;<sup>70</sup> gross proceeds

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<sup>62</sup> Secs. 6031 through 6060.

<sup>63</sup> Sec. 6041(a). Information returns are generally submitted electronically on Forms 1096 and Forms 1099, although certain payments to beneficiaries or employees may require use of Forms W-3 and W-2, respectively. Treas. Reg. sec. 1.6041-1(a)(2). The requirement that businesses report certain payments is generally not applicable to payments by persons engaged in a passive investment activity. However, for a brief period starting in 2011, the recipients of rental income from real estate were generally subject to the same information reporting requirements as taxpayers engaged in a trade or business such that recipients of rental income making payments of \$600 or more to a service provider (such as a plumber, painter, or accountant) in the course of earning rental income were required to provide an information return to the IRS and to the service provider. Small Business Jobs Act of 2010, Pub. L. No. 111-240, sec. 2101, September 27, 2010. This rule was repealed in the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, Pub. L. No. 112-9, sec. 3, April 14, 2011.

<sup>64</sup> Sec. 6041(a) requires reporting as to "other fixed or determinable gains, profits, and income (other than payments to which section 6042(a)(1), 6044(a)(1), 6047(c), 6049(a) or 6050N(a) applies and other than payments with respect to which a statement is required under authority of section 6042(a), 6044(a)(2) or 6045)[.]" The payments thus excepted include most interest, royalties, and dividends.

<sup>65</sup> Sec. 6041(d).

<sup>66</sup> The regulatory carveout for payments to corporations was expressly overridden for payments made after December 31, 2011 in the Patient Protection and Affordable Care Act ("PPACA"), Pub. L. No. 111-148, sec. 9006 March 23, 2010, which expanded the class of payments subject to reporting to include payments to corporations and payments of gross proceeds paid in consideration for any type of property. However, these rules were repealed in the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, Pub. L. No. 112-9, sec. 2, April 14, 2011.

<sup>67</sup> Treas. Reg. sec. 1.6041-3(p). Certain for-profit health provider corporations are not covered by this general exception, including those organizations providing billing services for such companies.

<sup>68</sup> Sec. 6050T.

paid to an attorney;<sup>71</sup> substitute payments in lieu of dividends or tax-exempt interest;<sup>72</sup> and payments by a Federal executive agency for services.<sup>73</sup>

Detailed rules are provided for the reporting of various types of investment income, including interest, dividends, and gross proceeds from brokered transactions (such as a sale of stock).<sup>74</sup> In general, the requirement to file Form 1099 applies with respect to amounts paid to U.S. persons and is linked to the backup withholding rules of section 3406. Thus, a payor of interest, dividends or gross proceeds generally must request that a U.S. payee (other than certain exempt recipients) furnish a Form W-9 providing that person's name and taxpayer identification number.<sup>75</sup> That information is then used to complete the Form 1099.

Failure to comply with the information reporting requirements results in penalties, which may include a penalty for failure to file the information return,<sup>76</sup> and a penalty for failure to furnish payee statements,<sup>77</sup> or failure to comply with other various reporting requirements.<sup>78</sup>

### **House Bill**

No provision.

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<sup>69</sup> Sec. 6050R.

<sup>70</sup> Sec. 6045(f)(1) and (2); Treas. Reg. secs. 1.6041-1(d)(2) and 1.6045-5(d)(5).

<sup>71</sup> *Ibid.*

<sup>72</sup> Sec. 6045(d).

<sup>73</sup> Sec. 6041A(d)(3). In addition, section 6050M provides that the head of every Federal executive agency that enters into certain contracts must file an information return reporting the contractor's name, address, TIN, date of contract action, amount to be paid to the contractor, and any other information required by Forms 8596 (Information Return for Federal Contracts) and 8596A (Quarterly Transmittal of Information Returns for Federal Contracts).

<sup>74</sup> Secs. 6042 (dividends), 6045 (broker reporting) and 6049 (interest), as well as the Treasury regulations thereunder.

<sup>75</sup> See Treas. Reg. sec. 31.3406(h)-3.

<sup>76</sup> Sec. 6721. The penalty for failure to file an information return generally is \$100 for each return for which such failure occurs. The total penalty imposed on a person for all failures during a calendar year cannot exceed \$1,500,000. Additionally, special rules apply to reduce the per-failure and maximum penalties where the failure is corrected within a specified period. Small Business Jobs Act of 2010, Pub. L. No. 111-240, sec. 2102, September 27, 2010.

<sup>77</sup> Sec. 6722. The penalty for failure to provide a correct payee statement is \$100 for each statement with respect to which such failure occurs, with the total penalty for a calendar year not to exceed \$1,500,000. Special rules apply that increase the per-statement and total penalties where there is intentional disregard of the requirement to furnish a payee statement. Small Business Jobs Act of 2010, Pub. L. No. 111-240, sec. 2102, September 27, 2010.

<sup>78</sup> Sec. 6723. The penalty for failure to timely comply with a specified information reporting requirement is \$50 per failure, not to exceed \$100,000 for a calendar year.

### **Senate Amendment**

The provisions repeals section 9006 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, which expanded the class of payments subject to reporting to include payments made to corporations and payments of gross proceeds paid in consideration for any type of property.

Effective date.—The provision is effective on the date of enactment.

### **Conference Agreement**

The conference agreement does not include the Senate amendment provision. The expanded information reporting requirements for payments made to corporations and for payments of gross proceeds paid in consideration for any type of property were repealed in section 2 of the “Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011,” Pub. L. No. 112-9.

## **N. Tax Complexity Analysis**

Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 (the "IRS Reform Act") requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code (the "Code") and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that have "widespread applicability" to individuals or small businesses.

## TITLE XII - COMPLIANCE WITH STATUTORY PAY-AS-YOU-GO ACT OF 2010

### COMPLIANCE PROVISION

#### **H1201/S901**

##### *House bill*

Section 1201 specifies that the budgetary effects of this Act, in complying with the Statutory Pay-As-You-Go act of 2010, shall be determined by reference to the latest statement titled "Budgetary Effects of PAYGO Legislation" for this Act.

##### *Senate bill*

Section 901 provides that the budgetary effects of the amendment, for purposes of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the "Budgetary Effects" statement of the House and Senate Budget Committee Chairmen provided that such statement has been submitted prior to the vote on passage in the House acting first on this conference report or amendments between the Houses.

##### *Conference Substitute*

##### *Senate bill.*

## TITLE XIII - COMMERCIAL SPACE

### COMMERCIAL SPACE LAUNCH LICENSE REQUIREMENTS

#### **H1301/S--**

##### *House bill*

Section 1301 would extend the original eight year learning period passed in the Commercial Space Launch Amendments Act of 2004, which expires in 2012. Current law includes an eight-year regulatory "waiting period," starting with the first FAA-licensed launch of a "spaceflight participant" (a person who pays to experience spaceflight), during which commercial spaceflight providers would not be subject to any FAA regulation, barring any perceived or realized endangerment of public safety.

##### *Senate bill*

No similar provision.

##### *Conference Substitute*

House bill modified to prohibit proposing regulations until October 1, 2015. Nothing in this provision is intended to prohibit the FAA and industry stakeholders from entering into discussions intended to prepare the FAA for its role in appropriately regulating the commercial space flight industry when this provision expires.

## SENATE TITLE X - RESCISSION OF UNUSED TRANSPORTATION EARMARKS AND GENERAL REPORTING REQUIREMENTS

### DEFINITIONS

#### **H--/S1001**

##### *House bill*

No similar provision.

##### *Senate bill*

Section 1001 defines the term "earmark" as a congressionally directed spending item as defined by Senate rules or a congressional earmark as defined by the rules of the House.

##### *Conference Substitute*

House bill.

### RESCISSION

#### **H--/S1002**

##### *House bill*

No similar provision.

##### *Senate bill*

Section 1002 rescinds DOT earmark funds with more than 90 percent of the amount remaining available for obligation at the end of the 9th fiscal year following the fiscal year in which the earmark was made available for obligation. Also, it provides an exception if the Secretary of Transportation determines that additional obligation of the earmark is likely to occur during the following 12 month period.

##### *Conference Substitute*

House bill.

### AGENCY WIDE IDENTIFICATION AND REPORTS

#### **H--/S1003**

##### *House bill*

No similar provision.

##### *Senate bill*

Section 1003 requires each federal agency to identify and report every project that is an earmark with an unobligated balance at the end of each fiscal year to the Director of the Office of Management and Budget (OMB). Also, it requires the Director of OMB to submit an annual report on these earmarks to Congress and publically post the report on the OMB website.

##### *Conference Substitute*

House bill.

## SENATE TITLE XI--REPEAL OF EXPANSION OF INFORMATION REPORTING REQUIREMENTS

### REPEAL OF EXPANSION OF INFORMATION REPORTING REQUIREMENTS

#### **H--/S1101**

##### *House bill*

No similar provision.

##### *Senate bill*

Section 1101 repeals a section of the Patient Protection and Affordable Care Act which required businesses to report purchases of \$600 or more to the Internal Revenue Service (IRS).

##### *Conference Substitute*

Senate bill dropped because the language was used to create P.L. 112-9, The Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011.

TITLE XII – EMERGENCY MEDICAL SERVICE PROVIDERS PROTECTION ACT

DALE LONG EMERGENCY MEDICAL SERVICES PROVIDERS PROTECTION ACT  
**H--/S1201,1211,1212,1213**

*House bill*

No similar provision.

*Senate bill*

Section 1201 provides liability protection for volunteer pilots that fly for public benefit, including transportation at no cost to financially needy medical patients for medical treatment, evaluation and diagnosis; flights for humanitarian and charitable purposes; and other flights of compassion.

Section 1211 provides a title for the subtitle, the Volunteer Pilot Protection Act of 2011.”

Section 1212 states findings of Congress on the necessity of protections for pilots who volunteer their services.

Section 1213 allows pilots who operate volunteer flights for most charitable institutions to receive reimbursement form those institutions for some operations costs including fuel.

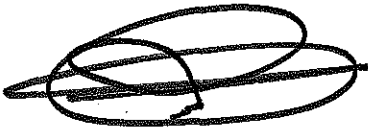
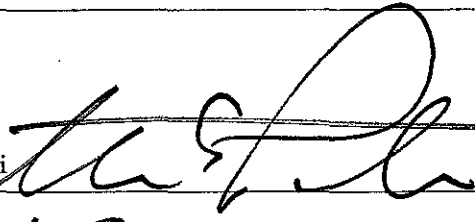
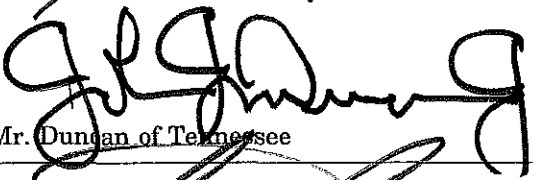
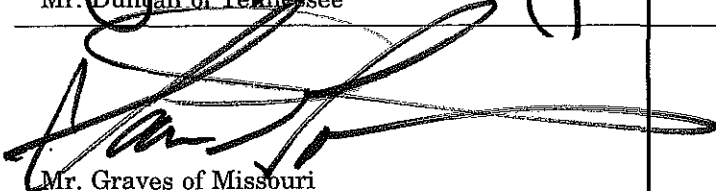

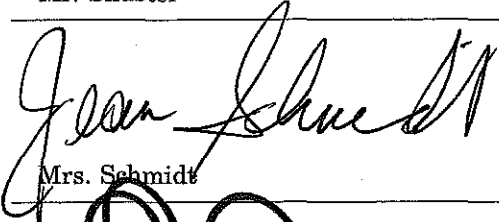
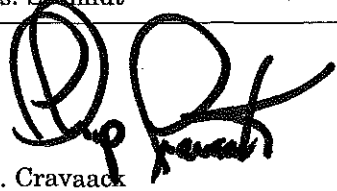
*Conference Substitute*

No provision.

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, no provision in this conference report or joint explanatory statement includes a congressional earmark, limited tax benefit, or limited tariff benefit.


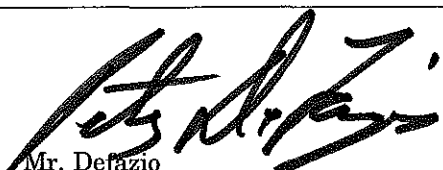


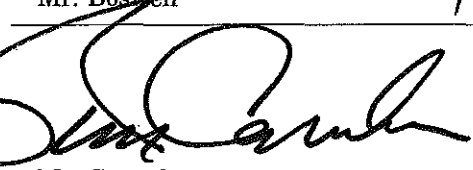


**H.R. 658**

<i>Managers on the part of the HOUSE</i>	<i>Managers on the part of the SENATE</i>
From the Committee on Transportation and Infrastructure, for consideration of the House bill and the Senate amendment, and modifications committed to conference:	
 Mr. Mica	
 Mr. Petri	
 Mr. Duncan of Tennessee	
 Mr. Graves of Missouri	
 Mr. Shuster	
 Mrs. Schmidt	
 Mr. Cravaack	


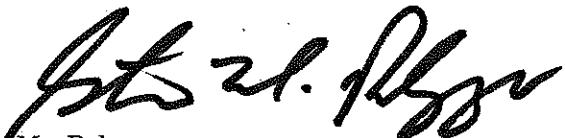
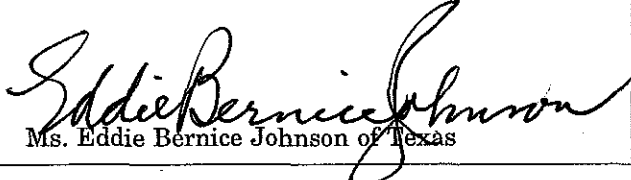


**H.R. 658—Continued**

<i>Managers on the part of the HOUSE</i>	<i>Managers on the part of the SENATE</i>
 Mr. Rahall	
 Mr. Defazio	
 Mr. Costello	
 Mr. Boswell	
 Mr. Carnahan	

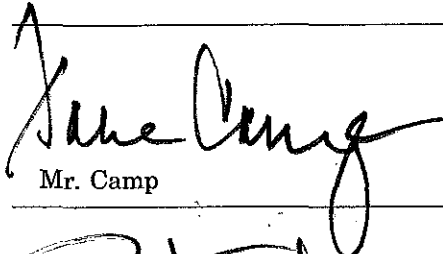
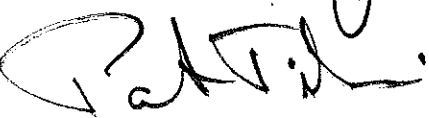
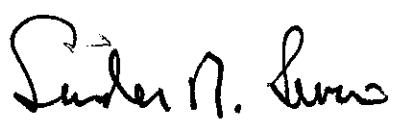


**H.R. 658—Continued**

<i>Managers on the part of the HOUSE</i>	<i>Managers on the part of the SENATE</i>
From the Committee on Science, Space, and Technology, for consideration of sections 102, 105, 201, 202, 204, 208, 209, 212, 220, 321, 324, 326, 812, title X, and title XIII of the House bill and sections 102, 103, 106, 216, 301, 302, 309, 320, 327, title VI, and section 732 of the Senate amendment, and modifications committed to conference:	
 Mr. Hall	
 Mr. Palazzo	
 Ms. Eddie Bernice Johnson of Texas	

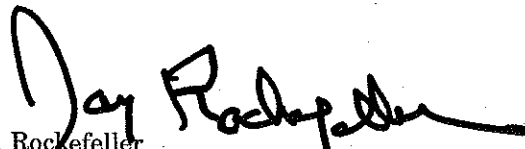


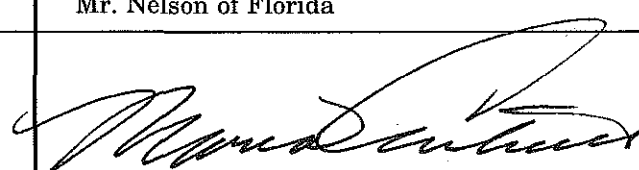
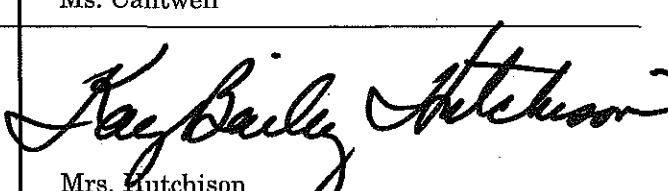
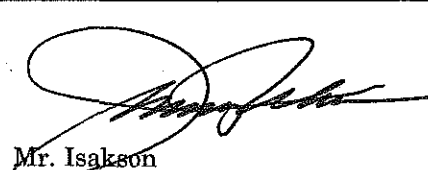


**H.R. 658—Continued**

<i>Managers on the part of the HOUSE</i>	<i>Managers on the part of the SENATE</i>
From the Committee on Ways and Means, for consideration of title XI of the House bill and titles VIII and XI of the Senate amendment, and modifications committed to conference:	
 Mr. Camp	
 Mr. Tiberi	
 Mr. Levin	

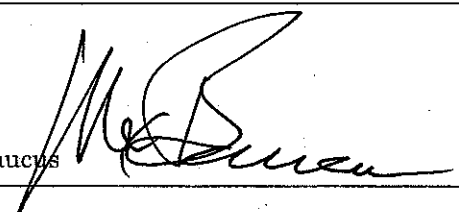


**H.R. 658—Continued**

<i>Managers on the part of the HOUSE</i>	<i>Managers on the part of the SENATE</i>
	 Mr. Rockefeller
	 Mrs. Boxer
	 Mr. Nelson of Florida
	 Ms. Cantwell
	 Mrs. Hutchison
	 Mr. Isakson
	<del>Mr. Delahunt</del>



**H.R. 658—Continued**

<i>Managers on the part of the HOUSE</i>	<i>Managers on the part of the SENATE</i>
	From the Committee on Finance:
	 Mr. Baucus
	<del>Mr. Hatch</del>