

101st CONGRESS

2d Session

S. 3094

A BILL

To authorize certain programs of the Federal Aviation Administration, to require the Calendar No. 987

Secretary of Transportation to implement a National Noise Policy, to authorize airport passenger facility charges as an exception to the general prohibition of State taxation of air commerce, and to repeal certain regulations pertaining to airport operating slots.

October 16 (legislative day, OCTOBER 2), 1990

Reported with an amendment

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IN THE SENATE OF THE UNITED STATES

September 24 (legislative day, SEPTEMBER 10), 1990

Mr. FORD (for himself, Mr. MCCAIN, and Mr. DANFORTH) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

October 16 (legislative day, OCTOBER 2), 1990

Reported by Mr. HOLLINGS with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To authorize certain programs of the Federal Aviation Administration, to require the Secretary of Transportation to implement a National Noise Policy, to authorize airport passenger facility charges as an exception to the general prohibition of State taxation of air commerce, and to repeal certain regulations pertaining to airport operating slots.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I--SHORT TITLE; FINDINGS

SEC. 101. SHORT TITLE.

This Act may be cited as the 'Airport Capacity Act of 1990'.

SEC. 102. FINDINGS.

The Congress finds that--

- (1) aviation noise management is crucial to the continued increase in airport capacity;
- (2) community noise concerns have led to uncoordinated and inconsistent restrictions on aviation which have impeded its ability to meet transportation needs, and are imposing undue burdens on interstate and foreign commerce;
- (3) a noise policy must be implemented at the national level;
- (4) local interest in aviation noise management shall be considered in determining the national interest;
- (5) community concerns can be alleviated through the technology aircraft, combined with the use of revenues, including those available from passenger facility charges, for noise management;
- (6) federally controlled revenues can help resolve noise problems and carry with them a responsibility to the national airport system;
- (7) a precondition to the establishment or collection of a passenger facility charge shall be the establishment by the Secretary of Transportation of a national noise policy;
- (8) revenues derived from a passenger facility charge may be applied to noise management and increased airport capacity;
- (9) provisions of subpart S of part 93 of title 14, Code of

Federal Regulations (known as the 'buy-sell rule'), which allow a public right to be used as a private asset, not only restrict competition at the four airports whose use is controlled through slots but also can impede competition in air transportation throughout the northeastern and midwestern United States;

(10) passengers pay higher fares at slot controlled airports than at other airports;

(11) increasing the number of slots at high density traffic airports will make it easier for carriers not already engaged in regular operations at those airports to achieve regular operations; and

(12) improvements in the air traffic control system since the initiation of slot controls, including new technology and new methods of regulating air traffic, necessitate a complete review of the practice of using slots to control access to high density traffic airports.

TITLE III--NATIONAL AVIATION NOISE POLICY

SEC. 301. NATIONAL AVIATION NOISE POLICY DEVELOPMENT.

(a) The Secretary of Transportation shall, by regulation, not later than January 1, 1992, develop and articulate a National Aviation Noise Policy which takes into account the findings and determinations and provisions of this section.

(b) The National Aviation Noise Policy shall include the establishment of a date or dates for the phasing out of stage 2 technology aircraft as part of a comprehensive national noise management scheme. Such consideration must include a detailed economic analysis of the impact of any phaseout date on competition in the airline industry, including the carriers' ability to achieve capacity growth consistent with the projected rate of growth for the industry; the impact of constrained capacity and aircraft prices on airfares and competition within the airline and air cargo industries; the impact on non-hub and smaller community air service and the impact of such a phaseout on new entry into the airline industry. No phaseout date shall be approved if it would result in an unreasonably adverse impact on any of these considerations.

SEC. 302. NOISE AND ACCESS RESTRICTION REVIEWS.

(a) The National Aviation Noise Policy shall require the establishment of a program for the mandatory review and approval of all existing or proposed local airport noise or access restrictions by the Federal Aviation Administration, except for restrictions which have been approved by the Federal Aviation Administration by regulation prior to enactment of this Act.

(b) No airport noise or access restriction could be submitted for

approval or approved in accordance with the program if it contains any restriction on the operation of a stage 3, quiet technology aircraft, including but not limited to--

- (1) any restriction as to noise levels generated on either a single event or cumulative basis;
- (2) any limit, direct or indirect, on the total number of stage 3 aircraft operations;
- (3) any noise budget or noise allocation program which would include stage 3 aircraft;
- (4) any restriction imposing limits on hours of operations;
- (5) any other limit on stage 3 aircraft.

(c) No airport noise or access restriction could include a restriction on other than stage 3 aircraft, unless the airport operator submitting the existing or proposed noise or access regulation to the Administrator for review and approval in accordance with this Act has submitted concurrently--

- (1) a complete analysis of the anticipated or actual costs and benefits of the existing or proposed noise regulation;
- (2) a detailed description of alternative regulations;
- (3) a detailed description of the alternative measures considered not involving aircraft restrictions, and a comparison of the costs and benefits of such alternative measures to the costs and benefits of the proposed noise or access regulation. The analysis of anticipated costs and benefits shall include an estimate of the potential economic and operational impact of the noise or access regulation on the national air transportation system.

(d) After review of the information described in subparagraph (c) and any other information the Administrator deems necessary, the Administrator shall approve or disapprove such proposed noise regulation subject to the provision of subsection (e).

(e) The Administrator shall not approve a noise or access regulation unless the Administrator finds the following conditions to be supported by substantial evidence--

- (1) the regulation is reasonable, nonarbitrary and nondiscriminatory;
- (2) the regulation does not create an undue burden on interstate or foreign commerce;
- (3) the regulation is not inconsistent with maintaining the safe and efficient utilization of the navigable airspace;

(4) the regulation does not conflict with any existing Federal statute or regulation;

(5) the airport operator provided an adequate opportunity for public comment with respect to the regulation;

(6) the airport operator's rejection of alternative means of minimizing or otherwise managing noise was reasonable; and

(7) the benefits accruing from the regulation outweigh the associated costs, including all costs attributable to the impact or potential impact of the regulation on the national air transportation system.

(f) Sponsors of facilities operating under noise or access restrictions at the time of passage of this Act, except as specified in subsection (a), shall not be eligible to impose a Passenger Facility Charge, and shall not be eligible for grants authorized by section 505 of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2204) 90 days after the date on which the Secretary promulgates the final rule called for under section 301 of this Act, unless the Administrator has approved the restriction under section (e), or the restriction has been rescinded.

(g) The Administrator shall reevaluate any previously approved noise regulation upon the request of any aircraft or airport operator able to demonstrate to the satisfaction of the Administrator that there has been a change in the noise environment of the affected airport and that a review and reevaluation of the benefits and costs of the previously approved noise regulation is therefore justified.

(h) The Administrator shall establish by regulation procedures under which the evaluation provided in subsection (g) of this section shall be accomplished. Such evaluation shall not occur less than 2 years after a determination under subsection (g) of this section has been made.

SEC. 303. FEDERAL LIABILITY FOR NOISE DAMAGES.

In the event of a disapproval of a proposed noise or access restriction, the Federal Government shall assume liability for noise damages only to the extent that a taking has occurred as a direct result of such disapproval. Action for the resolution of such a case shall be brought solely in the United States Claims Court.

SEC. 304. PRIVATE RIGHT OF ACTION.

An aircraft operator may commence a civil action against an airport proprietor for the purpose of protecting its rights under this title, in any United States District Court without regard to citizenship or amount in controversy.

SEC. 305. LIMITATION ON AIRPORT IMPROVEMENT PROGRAM REVENUE.

Under no conditions shall any airport receive revenues under the provisions of the Airport and Airway Improvement Act of 1982, as amended, or impose or collect a passenger facility charge, unless the Administrator--

(1) has approved any noise or access restriction in place at that airport; and

(2) assures that the airport is not imposing any noise or access restriction not submitted and approved in compliance with this title.

SEC. 306. NOISE COMPATIBILITY PROGRAM.

No proposal for the imposition of a passenger facility charge shall be approved by the Secretary if the airport has not conducted an airport noise compatibility program pursuant to section 104(b) of the Aviation Safety and Noise Abatement Act of 1979.