

SMALL AIRPORT SAFETY, SECURITY, AND AIR SERVICE  
IMPROVEMENT ACT OF 2002

—————  
JUNE 6, 2002.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed  
—————

Mr. YOUNG of Alaska, from the Committee on Transportation and  
Infrastructure, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1979]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 1979) to amend title 49, United States Code, to provide assistance for the construction of certain air traffic control towers, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Small Airport Safety, Security, and Air Service Improvement Act of 2002”.

**SEC. 2. INCLUSION OF TOWERS IN AIRPORT DEVELOPMENT.**

Section 47102(3) of title 49, United States Code, is amended by adding at the end the following:

“(M) constructing an air traffic control tower or acquiring and installing air traffic control, communications, and related equipment at an air traffic control tower under the terms specified in section 47124(b)(4).”.

**SEC. 3. CONSTRUCTION OF AIR TRAFFIC CONTROL TOWERS.**

(a) IN GENERAL.—Section 47124(b)(4) of title 49, United States Code, is amended to read as follows:

“(4) CONSTRUCTION OF AIR TRAFFIC CONTROL TOWERS.—

“(A) GRANTS.—The Secretary may provide grants to a sponsor of—

“(i) a primary airport—

“(I) from amounts made available under sections 47114(c)(1) and 47114(c)(2) for the construction or improvement of a nonapproach control tower, as defined by the Secretary, and for the acquisition and installation of air traffic control, communications, and related equipment to be used in that tower;

“(II) from amounts made available under sections 47114(c)(1) and 47114(c)(2) for reimbursement for the cost of construction or improvement of a nonapproach control tower, as defined by the Secretary, incurred after October 1, 1996, if the sponsor complied with the requirements of sections 47107(e), 47112(b), and 47112(c) in constructing or improving that tower; and

“(III) from amounts made available under sections 47114(c)(1) and 47114(c)(2) for reimbursement for the cost of acquiring and installing in that tower air traffic control, communications, and related equipment that was acquired or installed after October 1, 1996; and

“(ii) a public-use airport that is not a primary airport—

“(I) from amounts made available under sections 47114(c)(2) and 47114(d) for the construction or improvement of a nonapproach control tower, as defined by the Secretary, and for the acquisition and installation of air traffic control, communications, and related equipment to be used in that tower;

“(II) from amounts made available under sections 47114(c)(2) and 47114(d)(3)(A) for reimbursement for the cost of construction or improvement of a nonapproach control tower, as defined by the Secretary, incurred after October 1, 1996, if the sponsor complied with the requirements of sections 47107(e), 47112(b), and 47112(c) in constructing or improving that tower; and

“(III) from amounts made available under sections 47114(c)(2) and 47114(d)(3)(A) for reimbursement for the cost of acquiring and installing in that tower air traffic control, communications, and related equipment that was acquired or installed after October 1, 1996.

“(B) ELIGIBILITY.—An airport sponsor shall be eligible for a grant under this paragraph only if—

“(i)(I) the sponsor is a participant in the Federal Aviation Administration contract tower program established under subsection (a) and continued under paragraph (1) or the pilot program established under paragraph (3); or

“(II) construction of a nonapproach control tower would qualify the sponsor to be eligible to participate in such program;

“(ii) the sponsor certifies that it will pay not less than 10 percent of the cost of the activities for which the sponsor is receiving assistance under this paragraph;

“(iii) the Secretary affirmatively accepts the proposed contract tower into a contract tower program under this section and certifies that the Secretary will seek future appropriations to pay the Federal Aviation Administration’s cost of the contract to operate the tower to be constructed under this paragraph;

“(iv) the sponsor certifies that it will pay its share of the cost of the contract to operate the tower to be constructed under this paragraph; and

“(v) in the case of a tower to be constructed under this paragraph from amounts made available under section 47114(d)(2) or 47114(d)(3)(B), the Secretary certifies that—

“(I) the Federal Aviation Administration has consulted the State within the borders of which the tower is to be constructed and the State supports the construction of the tower as part of its State airport capital plan; and

“(II) the selection of the tower for funding is based on objective criteria, giving no weight to any congressional committee report, joint explanatory statement of a conference committee, or statutory designation.

“(C) LIMITATION ON FEDERAL SHARE.—The Federal share of the cost of construction of a nonapproach control tower under this paragraph may not exceed \$1,100,000.”.

(b) CONFORMING AMENDMENTS.—Section 47124(b) of such title is amended—

(1) in paragraph (3)(A) by striking “Level I air traffic control towers, as defined by the Secretary,” and inserting “nonapproach control towers, as defined by the Secretary;” and

(2) in paragraph (3)(E) by striking “Subject to paragraph (4)(D), of” and inserting “Of”.

(c) SAVINGS CLAUSE.—Notwithstanding the amendments made by this section, the 2 towers for which assistance is being provided on the day before the date of enactment of this Act under section 47124(b)(4) of title 49, United States Code, as in effect on such day, may continue to be provided such assistance under the terms of such section.

#### **SEC. 4. NONAPPROACH CONTROL TOWERS.**

(a) IN GENERAL.—The Administrator of the Federal Aviation Administration may enter into a lease agreement or contract agreement with a private entity to provide for construction and operation of a nonapproach control tower as defined by the Secretary of Transportation.

(b) TERMS AND CONDITIONS.—An agreement entered into under this section—

(1) shall be negotiated under such procedures as the Administrator considers necessary to ensure the integrity of the selection process, the safety of air travel, and to protect the interests of the United States;

(2) may provide a lease option to the United States, to be exercised at the discretion of the Administrator, to occupy any general-purpose space in a facility covered by the agreement;

(3) shall not require, unless specifically determined otherwise by the Administrator, Federal ownership of a facility covered under the agreement after the expiration of the agreement;

(4) shall describe the consideration, duties, and responsibilities for which the United States and the private entity are responsible;

(5) shall provide that the United States will not be liable for any action, debt, or liability of any entity created by the agreement;

(6) shall provide that the private entity may not execute any instrument or document creating or evidencing any indebtedness with respect to a facility covered by the agreement unless such instrument or document specifically disclaims any liability of the United States under the instrument or document; and

(7) shall include such other terms and conditions as the Administrator considers appropriate.

#### **PURPOSE OF THE LEGISLATION**

The reported bill (H.R. 1979) was introduced by Mr. Wicker. It would allow a small airport to use its Airport Improvement Program (AIP) grant money to build or equip an air traffic control tower that would be operated under the FAA’s contract tower program. New tower construction and equipment purchases would be eligible for funding using AIP entitlements and the AIP State apportionment. Reimbursement for past construction or equipment purchases would be available only from an airport’s AIP entitlement. To be eligible for this funding, airports would have to qualify for the contract tower program and pay a 10% local share. The bill would also allow FAA to contract with a private company to both build and operate the tower.

#### **BACKGROUND AND NEED FOR THE LEGISLATION**

It is well established that safety is enhanced when air traffic controllers guide a plane through the skies and onto the runway. However, many smaller airports lack an air traffic control tower. As a result, passengers and pilots do not benefit from the safety enhancements provided by air traffic controllers. Pilots are on their own, responsible for seeing and avoiding other planes.

Currently, the FAA is responsible for building the towers that house the controllers. However, FAA’s Facilities and Equipment (F&E) construction budget is not large enough to pay for the construction of towers at many smaller airports. Yet many of these

smaller airports have commercial passenger service or are very active general aviation airports. Passengers flying there may be coming from big cities where air traffic control is commonplace. In any case, passengers and pilots in the small cities are entitled to the same level of safety as those using the larger airports.

Recognizing that FAA's facilities and equipment (F&E) control tower construction budget is limited, many smaller airports are willing to use their Airport Improvement Program (AIP) grant money (49 U.S.C. Chapter 471) to build the tower. However, under current law (49 U.S.C. section 47102(3)) contract tower construction is not listed as eligible for funding under the AIP program.

This bill would change the law to allow small airports to use their AIP money to build a new or replacement FAA contract tower. The FAA could then contract with a private company to actually operate the tower. The FAA now contracts with private companies to staff visual flight rule (VFR) towers at 217 airports in 46 States. This contract tower program has benefited from consistent bipartisan backing in Congress. Its track record at small airports shows that it improves air safety, efficiency and security as well as enhancing regional airline service opportunities in rural areas, providing significant savings to the FAA in air traffic control costs, and increasing economic productivity in smaller communities nationwide. Further, the program's track record has been validated in several comprehensive audits by DOT's Inspector General and is endorsed by participating airports and aviation system users.

Given the benefits and support for the contract tower program, additional actions to enhance it are warranted. By opening up another source of funding for tower construction, this bill will enhance the existing contract tower program and increase safety at small airports. It does not cost the Federal government any additional money because the AIP grant money is already provided for in AIR 21 (Public Law 106-181, 114 Stat. 65). The reported bill merely gives the airport and the FAA another purpose (tower construction) for which this grant money can be used.

While this bill allows Federal grant money to be used for tower construction, the Committee believes that FAA should continue its current practice of allowing airports to build their towers to FAA contract tower specifications instead of the specifications used when towers are built with funds derived from the FAA's facilities and equipment (F&E) account. The approximately 20 airports that have built towers themselves and are now in the contract tower program constructed these towers for about \$1 million by using FAA contract tower specifications. Similar towers built in the past by the FAA through the F&E program cost about \$4 million. Allowing contract tower specifications to be used is consistent with past practice and will ensure that AIP money is used wisely and cost-effectively.

The authority in the reported bill to utilize AIP funds applies not only to the construction of FAA contract air traffic control towers but also to the equipage of those tower facilities. AIP funds may be used to purchase all performance-based tower equipment such as communications and weather-related equipment, voice switching devices, radios, wind speed and direction systems, altimeter indication equipment, voice recorders, ATC light guns, stand alone terminal radar displays (TRDs), and other related equipment.

In particular, the committee believes TRDs, as supported by NTSB's April 27, 2001 recommendation, A-01-09, greatly enhance safety at VFR control towers. The determination of whether a TRD may be purchased and utilized should be based on the performance of the equipment. If a TRD is generating verifiable accurate information and performing in compliance with the manufacturer's specifications then it should be considered for use in contract towers.

Terminal radar displays (TRD) are a form of radar that gives the controllers another set of eyes to make sure planes are where the pilots say they are. These displays are strongly supported by the airports and controllers because they allow them to verify pilots' positions and take corrective action when needed. The controllers in VFR non-approach control towers (such as those in the contract tower program) cannot use these tower displays to give enroute instructions to pilots (i.e. "turn right heading 180 degrees"). It simply gives the controllers another set of eyes to see what is going on within their area of responsibility near the airport. There have been a few accidents at both contract towers and FAA-operated VFR towers that might have been prevented if they had had a TRD.

As a matter of fairness, the reported bill also allows for limited reimbursement of costs incurred after October 1, 1996 for tower construction and equipment purchases. As explained above, building air traffic control towers enhances safety. At large airports, the FAA will build the tower. But many smaller airports have to build the towers themselves. Some smaller airports took the initiative and built towers at their airports to enhance safety without waiting for Congress to act. Airports that did so should be applauded for their actions, not penalized. Prohibiting reimbursement would effectively penalize these small airports for taking the initiative and building air traffic control towers themselves. It would not be fair if those airports that delayed tower construction were rewarded with Federal grants while those that acted before the reported bill was enacted were denied similar Federal grants.

The reported bill allows reimbursement only from an airport's AIP entitlement. This is money that the airport has a right to as a matter of the formula in the law (49 U.S.C. section 47114). The Committee has determined that in this case an airport should not be prevented from using its own money for any eligible airport purpose, including reimbursement.

Allowing reimbursement here does not set a new precedent. There are at least three other sections of the AIP chapter (49 U.S.C. Chapter 471) where this is done. Two (sections 47119 and 47135(c)(2)(D)) involve reimbursement for terminal development and one (section 47110(b)(2)(C)) allows reimbursement generally for any project built after 1996 at a primary airport (an airport with at least 10,000 passengers).

Reimbursement here will not take away money from capacity enhancing or other important projects. The bill only allows reimbursement from money allocated by law to these small airports. No money is taken away from other airports to pay this reimbursement.

Airports seeking reimbursement will not be able to avoid the statutory and administrative requirements that apply to other air-

ports receiving Federal AIP grants. This bill explicitly requires that airports will get reimbursement only if they complied with certain requirements that existed when the tower was built.

#### SUMMARY OF THE LEGISLATION

##### *Section 1. Short title*

The title of this Act is the “Small Airport Safety, Security, and Air Service Improvement Act of 2002.”

##### *Section 2. Inclusion of towers in airport development*

This section makes constructing and improving a FAA contract air traffic control tower and acquiring equipment for that tower eligible for Federal funding under the Airport Improvement Program.

##### *Section 3. Construction of air traffic control towers*

Subsection (a) amends the section of the law governing the FAA’s contract tower program.

Subparagraph (A) sets forth the rules for making AIP grants for the construction and equipage of air traffic control towers.

Subparagraph (i) sets forth the rules for making such grants to primary airports (those airports with more than 10,000 passengers per year).

Subparagraph (I) allows a primary airport to use its passenger or cargo entitlement for the construction or equipage of air traffic control towers.

Subparagraph (II) allows a primary airport to use its passenger and cargo entitlements to be reimbursed for costs incurred after October 1, 1996 in building an air traffic control tower as long as it complied with the existing specified statutory and administrative requirements.

Subparagraph (III) allows a primary airport to use its passenger or cargo entitlement for reimbursement for the cost of acquiring air traffic control equipment that was acquired or installed after October 1, 1996.

Subparagraph (ii) sets forth the rules for making AIP grants to general aviation airports and small commercial service airports to fund the construction and equipage of air traffic control.

Subparagraph (I) states that these airports can use their general aviation entitlement as well as state apportionment funding for the construction or improvement of an air traffic control tower and for the acquisition and installation of air traffic control equipment.

Subparagraph (II) allows these airports to use their general aviation entitlement to receive reimbursement for the costs of constructing an air traffic control tower if those costs were incurred after October 1, 1996 and the airport complied with the specified statutory and administrative requirements.

Subparagraph (III) allows these airports to use their general aviation entitlement to receive reimbursement for the cost of acquiring and installing air traffic control equipment if that equipment was acquired or installed after October 1, 1996.

Subparagraph (B) states that an airport will be eligible for the AIP grants described above only if (1) is a participant in the FAA’s contract tower program or building the tower would qualify it to participate in that program; (2) the airport will pay a 10%

local share for the cost of constructing or equipping the tower; (3) the Secretary accepts the proposed tower into the contract tower program and certifies that funding will be sought to pay the costs of operating the tower; (4) the airport certifies that it will pay its share of the cost of the operation of the tower, if any, and (5) where state apportionment funds will be used to build a tower, the Secretary certifies that the FAA has consulted with the state in which the tower will be located and the state supports the construction of the tower as part of the state's airport capital plan and selection of the tower for funding is based on objective criteria rather than on a congressional earmark.

Subparagraph (C) limits the Federal share for the cost of constructing a tower to \$1.1 million.

Subsection (b) describes the type of control towers that could benefit from the funding opportunities in the reported bill. They were formally known as Level I air traffic control towers but are now known as non-approach control towers in the FAA's airway manual. Non-approach control towers are towers where controllers authorize aircraft to land or takeoff at the airport where the tower is located or to transit Class D airspace. The primary function of a non-approach control tower is the sequencing of aircraft in the traffic pattern and on the landing area. Non-approach control towers also separate aircraft operating under instrument flight rule clearances from approach controls and centers. They provide ground control services to aircraft, vehicles, personnel, and equipment on the airport.

Subsection (c) makes clear that the two towers that were made eligible for funding under section 131 of Air 21 (P.L. 106-181, 114 Stat 78, 49 U.S.C. 47124(b)(4)) may continue to be funded under the terms of that section.

#### *Section 4. Non-approach control towers*

As an alternative to the approach described in Section 3, this section allows the FAA to enter into an arrangement with a private entity where that entity would both construct and operate an air traffic control tower at a small airport. This section is based on section 3 of Public Law 106-407, 114 Stat. 1758.

#### LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

H.R. 1979 was introduced by Congressman Wicker on May 23, 2001 and referred to the Committee on Transportation & Infrastructure. The Committee's Subcommittee on Aviation met on April 18, 2002 and adopted, by voice vote, an amendment in the nature of a substitute offered by Subcommittee Chairman Mica. Subsequently, by voice vote, the Subcommittee approved and ordered the bill reported to the full Committee. The full Committee approved the bill and favorably reported it to the House, by voice vote on April 24, 2002, with a quorum present after defeating an Oberstar amendment to strike the reimbursement provisions.

#### ROLLCALL VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each rollcall vote on a motion to report and on any

amendment offered to the measure or matter, and the names of those members voting for and against. There was one rollcall vote to strike the reimbursement provisions which follows.

Bill No.: H.R. 1979.

Short title: Contract Towers.

Amendment or matter voted on: Oberstar Amendment.

Total votes: 34 yeas; 35 nays.

Representative	Yeas	Nays	Present	Representative	Yeas	Nays	Present
Mr. Young, Chairman		X		Mr. Oberstar	X		
Mr. Petri		X		Mr. Rahall	X		
Mr. Boehlert				Mr. Borski	X		
Mr. Coble		X		Mr. Lipinski	X		
Mr. Duncan				Mr. DeFazio	X		
Mr. Gilchrest				Mr. Clement	X		
Mr. Horn		X		Mr. Costello	X		
Mr. Mica		X		Ms. Norton	X		
Mr. Quinn		X		Mr. Nadler	X		
Mr. Ehlers		X		Mr. Menendez	X		
Mr. Bachus		X		Ms. Brown	X		
Mr. LaTourette		X		Mr. Barcia	X		
Mrs. Kelly		X		Mr. Filner	X		
Mr. Baker		X		Ms. Johnson	X		
Mr. Ney		X		Mr. Mascara	X		
Mr. Thune				Mr. Taylor	X		
Mr. LoBiondo		X		Ms. Millender-McDonald	X		
Mr. Moran		X		Mr. Cummings	X		
Mr. Pombo		X		Mr. Blumenauer	X		
Mr. DeMint		X		Mr. Sandlin	X		
Mr. Bereuter				Ms. Tauscher	X		
Mr. Simpson		X		Mr. Pascrell	X		
Mr. Isakson		X		Mr. Boswell	X		
Mr. Hayes		X		Mr. McGovern	X		
Mr. Simmons		X		Mr. Holden	X		
Mr. Rogers		X		Mr. Lampson	X		
Mrs. Capito		X		Mr. Baldacci	X		
Mr. Kirk		X		Mr. Berry	X		
Mr. Brown		X		Mr. Baird	X		
Mr. Johnson		X		Ms. Berkley	X		
Mr. Kerns		X		Mr. Carson	X		
Mr. Rehberg		X		Mr. Matheson	X		
Mr. Platts		X		Mr. Honda	X		
Mr. Ferguson				Mr. Larsen	X		
Mr. Graves		X					
Mr. Otter		X					
Mr. Kennedy		X					
Mr. Culberson		X					
Mr. Shuster		X					
Mr. Boozman		X					
Mr. Sullivan		X					

#### COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

#### COST OF LEGISLATION

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely

submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

#### COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objective of this legislation are to facilitate the construction of air traffic control towers at small airports.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1979 from the Director of the Congressional Budget Office.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 4, 2002.*

Hon. DON YOUNG,  
*Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1979, the Small Airport Safety, Security, and Air Service Improvement Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Rachel Milberg.

Sincerely,

STEVEN LIEBERMAN  
(For Dan L. Crippen, Director).

Enclosure.

*H.R. 1979—Small Airport Safety, Security, and Air Service Improvement Act of 2002*

Summary: H.R. 1979 would allow the Federal Aviation Administration (FAA) to provide some airport operators with grants to construct and equip certain types of control towers. Based on information from the FAA and historical spending patterns for this program, CBO estimates that implementing H.R. 1979 would cost \$47 million over the 2003–2007 period, subject to appropriation of the necessary amounts. H.R. 1979 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

H.R. 1979 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Public airports that participate in the contract tower program would be required to provide 10 percent of the costs covered under the grant; such costs would be incurred voluntarily.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1979 is shown in the following table. For this estimate, we assume that the bill will be enacted near the start of 2003 and that the necessary amounts will be provided each year.

The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—				
	2003	2004	2005	2006	2007
CHANGES IN SPENDING SUBJECT TO APPROPRIATION <sup>1</sup>					
Estimated Authorization Level .....	1	5	6	7	7
Estimated Outlays .....	5	13	12	9	8

<sup>1</sup> A portion of the estimated outlays would come from contract authority (a mandatory form of budget authority) already provided to FAA under current law. Use of that authority, however, is subject to approval in annual appropriations acts.

Basis of estimate: CBO estimates that implementing H.R. 1979 would cost \$47 million over the 2003–2007 period, assuming appropriation of the necessary amounts. CBO estimates that providing federal grants for control tower construction would cost about \$22 million over the 2003–2007 period. In addition, CBO estimates that federal assistance for operating these towers would cost an additional \$25 million over this period.

#### *Control Towers*

H.R. 1979 would authorize the FAA to provide grants to airport operators to construct and equip control towers. Such grants could be no more than \$1.1 million per tower. Based on information from the FAA and the American Association of Airport Executives, CBO estimates that the FAA would provide grants for about 20 control towers over the next five years. Under the bill, grants would be made from the Airport Improvement Program (AIP), which is funded with contract authority (a mandatory form of budget authority) through 2003. H.R. 1979 would not increase the total amount of contract authority available to the Airport Improvement Program. Expenditures from AIP contract authority are governed by obligation limitations contained in annual appropriation acts, and are considered discretionary spending. Assuming appropriation acts increase the obligation limitation for this program by the necessary amounts, CBO estimates that implementing this provision of H.R. 1979 would cost about \$22 million over the 2003–2007 period.

#### *Operation of Control Towers*

Additional towers constructed under the bill would be eligible to participate in the FAA's Contract Tower program. Under that program, the FAA shares the cost of operating towers with airport operators. The FAA spends an average of \$350,000 a year to support each contract tower in this program. CBO estimates that supporting 20 additional towers would cost about \$7 million a year. Because the FAA would incur operating costs only after the towers are constructed and equipped, CBO estimates that the FAA would spend about \$25 million over the 2003–2007 period to support additional towers, assuming appropriation of the necessary amounts.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: H.R. 1979 contains no intergovernmental or private-sector mandates as defined in UMRA. Public airports that participate in the contract tower program would be required to provide 10 percent of the costs covered under the grant; such costs would be incurred voluntarily.

Previous CBO estimate: On September 4, 2001, CBO transmitted a cost estimate of S. 633, the Aviation Delay Prevention Act, as or

dered reported by the Senate Committee on Commerce, Science, and Transportation on August 2, 2001. S. 633 has provisions similar to the grants program that would be authorized by H.R. 1979, and CBO estimates that the cost of this grant program would be the same under both bills.

Estimate prepared by: Federal Costs: Rachel Milberg; Impact on State, Local, and Tribal Governments: Susan Sieg Tompkins; and Impact on the Private Sector: Jean Talarico.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (3)(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act. (Public Law 104–4).

#### PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1994 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local or tribal law. The Committee states that H.R. 1979 does not preempt any state, local, or tribal law.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

#### APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

\* \* \* \* \*

SUBTITLE VII—AVIATION PROGRAMS

\* \* \* \* \*

PART B—AIRPORT DEVELOPMENT AND NOISE

CHAPTER 471—AIRPORT DEVELOPMENT

\* \* \* \* \*

§ 47102. Definitions

In this subchapter—

(1) \* \* \*

\* \* \* \* \*

(3) “airport development” means the following activities, if undertaken by the sponsor, owner, or operator of a public-use airport:

(A) \* \* \*

\* \* \* \* \*

(M) constructing an air traffic control tower or acquiring and installing air traffic control, communications, and related equipment at an air traffic control tower under the terms specified in section 47124(b)(4).

\* \* \* \* \*

§ 47124. Agreements for State and local operation of airport facilities

(a) \* \* \*

(b) AIR TRAFFIC CONTROL CONTRACT PROGRAM.—(1) \* \* \*

\* \* \* \* \*

(3) CONTRACT AIR TRAFFIC CONTROL TOWER PILOT PROGRAM.—

(A) IN GENERAL.—The Secretary shall establish a pilot program to contract for air traffic control services at [Level I air traffic control towers, as defined by the Secretary,] nonapproach control towers, as defined by the Secretary, that do not qualify for the contract tower program established under subsection (a) and continued under paragraph (1) (in this paragraph referred to as the “Contract Tower Program”).

\* \* \* \* \*

(E) FUNDING.—[Subject to paragraph (4)(D), of] Of the amounts appropriated pursuant to section 106(k), not more than \$6,000,000 per fiscal year may be used to carry out this paragraph.

[(4) CONSTRUCTION OF AIR TRAFFIC CONTROL TOWERS.—

(A) IN GENERAL.—Notwithstanding any other provision of this subchapter, the Secretary may provide grants under this subchapter to not more than two airport sponsors for the construction of a low-level activity visual flight rule

(level 1) air traffic control tower, as defined by the Secretary.

【(B) ELIGIBILITY.—A sponsor shall be eligible for a grant under this paragraph if—

【(i) the sponsor would otherwise be eligible to participate in the pilot program established under paragraph (3) except for the lack of the air traffic control tower proposed to be constructed under this subsection; and

【(ii) the sponsor agrees to fund not less than 25 percent of the costs of construction of the air traffic control tower.

【(C) PROJECT COSTS.—Grants under this paragraph shall be paid only from amounts apportioned to the sponsor under section 47114(c)(1).

【(D) FEDERAL SHARE.—The Federal share of the cost of construction of an air traffic control tower under this paragraph may not exceed \$1,100,000.】

(4) CONSTRUCTION OF AIR TRAFFIC CONTROL TOWERS.—

(A) GRANTS.—*The Secretary may provide grants to a sponsor of—*

(i) *a primary airport—*

(I) *from amounts made available under sections 47114(c)(1) and 47114(c)(2) for the construction or improvement of a nonapproach control tower, as defined by the Secretary, and for the acquisition and installation of air traffic control, communications, and related equipment to be used in that tower;*

(II) *from amounts made available under sections 47114(c)(1) and 47114(c)(2) for reimbursement for the cost of construction or improvement of a nonapproach control tower, as defined by the Secretary, incurred after October 1, 1996, if the sponsor complied with the requirements of sections 47107(e), 47112(b), and 47112(c) in constructing or improving that tower; and*

(III) *from amounts made available under sections 47114(c)(1) and 47114(c)(2) for reimbursement for the cost of acquiring and installing in that tower air traffic control, communications, and related equipment that was acquired or installed after October 1, 1996; and*

(ii) *a public-use airport that is not a primary airport—*

(I) *from amounts made available under sections 47114(c)(2) and 47114(d) for the construction or improvement of a nonapproach control tower, as defined by the Secretary, and for the acquisition and installation of air traffic control, communications, and related equipment to be used in that tower;*

(II) *from amounts made available under sections 47114(c)(2) and 47114(d)(3)(A) for reimbursement for the cost of construction or improvement of a*

*nonapproach control tower, as defined by the Secretary, incurred after October 1, 1996, if the sponsor complied with the requirements of sections 47107(e), 47112(b), and 47112(c) in constructing or improving that tower; and*

*(III) from amounts made available under sections 47114(c)(2) and 47114(d)(3)(A) for reimbursement for the cost of acquiring and installing in that tower air traffic control, communications, and related equipment that was acquired or installed after October 1, 1996.*

*(B) ELIGIBILITY.—An airport sponsor shall be eligible for a grant under this paragraph only if—*

*(i)(I) the sponsor is a participant in the Federal Aviation Administration contract tower program established under subsection (a) and continued under paragraph (1) or the pilot program established under paragraph (3); or*

*(II) construction of a nonapproach control tower would qualify the sponsor to be eligible to participate in such program;*

*(ii) the sponsor certifies that it will pay not less than 10 percent of the cost of the activities for which the sponsor is receiving assistance under this paragraph;*

*(iii) the Secretary affirmatively accepts the proposed contract tower into a contract tower program under this section and certifies that the Secretary will seek future appropriations to pay the Federal Aviation Administration's cost of the contract to operate the tower to be constructed under this paragraph;*

*(iv) the sponsor certifies that it will pay its share of the cost of the contract to operate the tower to be constructed under this paragraph; and*

*(v) in the case of a tower to be constructed under this paragraph from amounts made available under section 47114(d)(2) or 47114(d)(3)(B), the Secretary certifies that—*

*(I) the Federal Aviation Administration has consulted the State within the borders of which the tower is to be constructed and the State supports the construction of the tower as part of its State airport capital plan; and*

*(II) the selection of the tower for funding is based on objective criteria, giving no weight to any congressional committee report, joint explanatory statement of a conference committee, or statutory designation.*

*(C) LIMITATION ON FEDERAL SHARE.—The Federal share of the cost of construction of a nonapproach control tower under this paragraph may not exceed \$1,100,000.*

\* \* \* \* \*

## MINORITY VIEWS

Although we support the concept of making contract air traffic control towers eligible for federal assistance under the Airport Improvement Program (AIP), we cannot support the reported bill because it includes provisions that would undermine our federal programs to enhance airport safety, security, and efficiency.

The major problem with the reported bill is that it makes AIP funds available to reimburse airports for towers they have already built. The federal government is not indifferent to the benefits of these towers. It is giving assistance to these towers by paying the costs of operating them. As a condition of this assistance, the airports agreed that, although the federal government would pay the costs of operating the towers, the government would not pay the costs of constructing the towers. The bill ordered reported by the Committee would allow airports to abandon their side of the agreement and obtain reimbursement for construction.

Moreover, use of limited AIP funds for reimbursement of work already done would make these funds unavailable for safety and security needs. Funds used for reimbursement would not be available for the \$252 million in safety, security, and capacity needs currently requested by the 26 airports potentially eligible for reimbursement. The needed improvements include airport enhancements to augment security in response to September 11; improvements to bring runway safety areas up to full Federal Aviation Administration (FAA) design standards; improvements to protect aircraft and passengers in the event an aircraft inadvertently leaves the runway; runway and taxiway construction to reduce the incidence of runway incursions; reconstruction of critical airfield pavements to maintain existing airport capacity; and construction of new or expanded runways and taxiways to increase capacity.

A further problem with the report bill is that it does not require airports seeking reimbursement to have complied with all of the statutory and regulatory requirements that apply to an AIP project. This means that, under the bill, there can be reimbursement for construction that did not comply with such laws as the Fair Labor Standards Act or the Uniform Relocation Act. The result will be two classes of contract towers: those that were built in compliance with federal law, and those that were not, but get a windfall nonetheless.

No precedent exists for reimbursement for projects that were not eligible for AIP when they were constructed. Reimbursement for towers establishes a terrible precedent when we are faced with enormous security, safety, and capacity needs, and available resources are limited by the pressures on the federal budget created by reduced revenues and the added expenses of the war on terrorism.

In Committee, Congressman Oberstar offered an amendment to strike the reimbursement provisions and correct the flaws in the overall bill. The amendment was rejected 35 to 34, on a party-line vote.

#### 1. REIMBURSEMENT FOR PREVIOUSLY CONSTRUCTED PROJECTS UNDERMINES THE AIRPORT IMPROVEMENT PROGRAM

The Airport Improvement Program was designed to enhance the safety, security, and efficiency of our National Airport System (NAS). It is a forward-looking program that encourages airports to grow in a manner that benefits local communities as well as the NAS. Members of the Transportation and Infrastructure Committee have a responsibility not only to their constituent airports, but also to the NAS as a whole. Improvements, or the lack thereof, of one airport impact the security, safety, and efficiency of the NAS.

The reported bill, however, would undermine the purpose of AIP and, as a result, delay security, safety and efficiency enhancements to the NAS. The reported bill allows scarce AIP resources to be used to provide reimbursement to airport sponsors that built or equipped contract towers between October 1, 1996, and the present—when these towers were not AIP eligible and the airports did not have any reasonable expectations of reimbursement. The funds used to reimburse airports for non-eligible AIP projects will not be available for new projects that would enhance security, safety, and capacity, including necessary projects already identified by the airport sponsors seeking reimbursement.

##### A. TWENTY-SIX AIRPORTS, \$252 MILLION IN AIRPORT SPONSOR-IDENTIFIED NEEDS

Under the reimbursement provision of the reported bill, 26 airports would be eligible to seek reimbursement for the costs of contract towers previously built and paid for. The FAA has advised that, on average, the federal share of each of these towers would reach the \$1.1 million ceiling specified in the bill. If all 26 airports applied for reimbursement, a total of \$28.6 million would be used for work already completed.<sup>1</sup> These funds would be unavailable to finance future security, safety, and capacity-enhancing airport capital projects at the 26 airports potentially eligible for reimbursement for contract towers built since 1996.

Indeed, these 26 airports have identified and requested from the FAA a total of \$252 million in federal funding for future AIP-eligible projects in the National Plan for Integrated Airports (NPIAS). The NPIAS lists the infrastructure development projects eligible for federal aid that will be required over a five-year period to meet the needs of all segments of civil aviation.

Among the 26 airports' requests are \$6.3 million in AIP-eligible security projects, including access control, perimeter fencing, patrol

<sup>1</sup>The reported bill also permits the use of AIP entitlement funds to reimburse airport sponsors for the cost of acquiring and installing air traffic control, communications and related equipment that was installed after October 1, 1996. Because equipment was an ineligible AIP-project, FAA has no records or projections on the amount of entitlement funds necessary to reimburse those costs. Nevertheless, it would be an additional drain on the AIP program that would prevent security, safety, and capacity-enhancements to the NAS.

vehicles, infrared cameras, closed circuit monitors, terminal modifications, blast analyses and berm construction—all needed in the wake of the horrific events of September 11. Necessary safety enhancements for which these 26 airports are seeking future funding include the installation and rehabilitation of lighting systems, acquisition of deicing systems and snow removal equipment, installation of weather reporting equipment, installation of wildlife fencing, beacon replacement, rehabilitation and relocation, and installation of runway visual guidance systems. Capacity-enhancing projects for which future funding is requested by the 26 airport sponsors include runway extensions, taxiway rehabilitations, apron expansions, and construction of cargo aprons and GA taxiways.

The majority (17) of the 26 airports receive a maximum of \$150,000 per year in entitlement funds, authorized by our Committee in AIR 21, etc. If these airports seek full reimbursement of \$1.1 million for building their towers, they will be using their entitlement funds for the next seven years. During this time, the entitlement funds will not be available for new projects to enhance safety and security.

#### B. NO REASONABLE EXPECTATION OF REIMBURSEMENT

Under the contract tower program, the FAA pays the cost of operating the tower. At the time the 26 towers were built, FAA did not have authority to use AIP funds to reimburse the airports for the costs of constructing the towers. When airports entered the contract tower program, they agreed that funding for construction of the contract tower was not part of the deal; thus, they had no expectation of reimbursement.

The contract for the program expressly stated that construction of a tower was not part of the Contract Tower program. When the individual airport sponsor applied to participate in the Contract Tower program, it received a letter that stated:

The program provides for air traffic control (ATC) services only; tower construction is outside the scope of the program.

Once accepted into the Contract Tower program, these airports signed a “Contract Airport Traffic Control Tower Operating Agreement” that plainly stated:

In consideration of the air traffic control (ATC) service being provided to the Airport Sponsor by the Government at [the airport], the Airport Sponsor agrees to the following terms and conditions at *no cost to the Government*: 1. The Airport Sponsor shall provide an airport traffic control tower (ATCT) structure meeting all applicable state and local standards \* \* \* (emphasis added)

Thus, 26 airport sponsors had full knowledge that the contract towers were ineligible for AIP funding when the towers were built. If Congress were to pass the reported bill, which would be contrary to the unambiguous agreements between the airport sponsor and the FAA Contract Tower Program, we would call into question any contract or agreement the FAA has entered or will enter into with any airport sponsor. During the next AIP reauthorization debate,

we would be likely to find ourselves debating reimbursement for other types of non-eligible AIP projects or for the non-federal share of an AIP-project that a sponsor agreed to pay.

The supporters of reimbursement argue that, by failing to reimburse the airports for the non-AIP-eligible contract towers, Congress will “penalize” them for taking the risk to build contract towers, which have enhanced air safety. While we applaud the airports for their foresight and proactive steps to enhance safety, federal funding is limited and cannot be expected to fund every safety, security, and capacity-enhancement project. It is not a “penalty” to ask an airport to live up to the terms of an agreement it entered into voluntarily, to obtain federal funding for the costs of operating a tower.

The continued success of the United States aviation system is dependent on a partnership between the airport sponsors, local authorities, and the federal government—with each party contributing its fair share. By providing reimbursement for these non-eligible projects, Congress will undermine the willingness of airport sponsors to enhance safety and security without an expectation of federal funding. Federal funds are not infinite; some burden must continue to fall on airport sponsors to fund projects and ensure safety and security for their communities and users.

#### C. SOME TOWERS FAILED TO MEET BENEFIT/COST ANALYSIS FOR FULL FEDERAL FUNDING OF CONTROLLERS

At least five of the Contract Towers potentially eligible for reimbursement do not meet the benefit/cost ratio for full funding of the expenses of operating the tower. These airports agreed not only to build the tower but to also pay some of the costs of the controllers because the benefits from safety and efficiency were less than the upfront investment and on-going operating costs for the expense of operating the tower. If the benefits of the tower are limited such that the federal government is unwilling to pay the entire cost of operation, why should the government retroactively pay the cost of constructing the tower?

#### 2. THE REPORTED BILL EXEMPTS PROJECTS FROM AIP STATUTORY AND REGULATORY REQUIREMENTS

The reported bill only requires an airport to demonstrate that it complied with Davis Bacon, Small Business, and Veterans Preference requirements, but not the rest of the statutory and administrative requirements, which govern AIP projects, including the Fair Labor Standards Act, Uniform Relocation Assistance and Real Property Acquisition Policies Act, National Historic Preservation Act, Age Discrimination Act, Copeland Antikickback Act, and Contract Work Hours and Safety Standards Act. This means that contract towers constructed prior to becoming AIP-eligible would be reimbursed with AIP funds, but subject to lower standards than all other AIP projects, including new contract towers built pursuant to the reported bill.

### 3. THE REPORTED BILL INCLUDES NO REQUIREMENT THAT THE REIMBURSEMENT FUNDS BE USED FOR AN AIP-ELIGIBLE PROJECT

The reported bill places no restriction or requirement on the use of the reimbursement funds. With the 26 airports potentially eligible for reimbursement having identified and sought funding for \$252 million in future AIP work, it would be irresponsible for this Committee and for Congress as a whole to permit airport sponsors to use \$28.6 million in federal reimbursement funds for anything other than their identified safety, security, and capacity needs.

#### CONCLUSION

There is no precedent in existing law for providing reimbursements with AIP funds for projects that were ineligible for AIP funding at the time of construction. Some may try to find a precedent in statutory language added in 1996 (49 U.S.C. 47110(b)(2)(C)), but that provision looked forward, not backward, to ensure that future airport improvement projects, begun after the date of enactment, would not be stalled in the event Congress were delayed in reauthorizing the AIP program.

Moreover, the provision in existing law requires the project to have been an eligible project at the time the cost was incurred, and it requires airport sponsors to have complied with all statutory and administrative requirements applicable to AIP projects. Again, the reported bill only requires compliance with three of numerous statutory and administrative requirements, and provides reimbursement for towers that were not eligible at the time the cost was incurred without requiring the reimbursement funds to be used for future AIP-eligible projects.

We agree with the forward-looking aspect of the reported bill, which permits new construction and equipage of contract towers with primary, cargo, and General Aviation entitlement funds, and with limited use of state apportionment discretionary funds.

But, no precedent exists for reimbursement of non-AIP-eligible projects, and it is a precedent we are unwilling to establish in an era of enormous security, safety and capacity needs, and with federal resources limited by reduced revenues and the expenses of the war on terrorism and related domestic security needs.

We, therefore, oppose the reported bill.

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 WILLIAM O. LIPINSKI.  
 JERRY F. COSTELLO.  
 ROBERT MENENDEZ.  
 ELIJAH E. CUMMINGS.  
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