

July 27, 1987

MEMORANDUM

Center for
Transportation

TO: Senator Hollings
FROM: Steve Palmer and Harris Livingstain
RE: Bill Summary: S. 1159, Creation of the National
Aviation Authority

On May 6th, Senators Inouye and Stevens introduced S. 1159, a bill to create an independent, user-fee supported Federal corporation for the purpose of operating and maintaining the nation's air traffic control system. The corporation, the National Aviation Authority (Authority), would be vested with powers typical of those held by government corporations, including the right to sue and be sued, contract, determine and maintain accounts, along with other powers incidental or necessary to its functions. In order to provide for the business-like operations of the Authority, it would be generally exempt from laws and regulations concerning federal contracts, property, employees, budgets and funds.

Consistent with promoting its business-like structure and environment, the Authority would be authorized to establish independent personnel management and compensation systems. However, certain provisions of title 5 of the United States Code would still apply. For example, provisions relating to civil service disability and civil service retirement benefits would remain in effect for employees already participating in these programs. Additionally, there are provisions which establish a general prohibition against strikes and which provide for collective bargaining subject to binding arbitration.

The remainder of this memo will summarize the major portions of this bill. They are as follows:

POWERS:

The Authority would have under its jurisdiction the functions currently performed by the FAA pursuant to Section 401 of the Federal Aviation Act. Included are those powers necessary in controlling, monitoring,

and/or advising aircraft operating in airspace, as well as developing, improving, implementing, operating, and maintaining the equipment to conduct these activities.

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STRUCTURE OF THE NATIONAL AVIATION AUTHORITY

Director:

The Authority would be under the direction of a Director, nominated by the President and confirmed by the Senate. A nominee for this position must have no less than 15 successful years in business, the government, or the military.

Policy Advisory Board:

The bill calls for the designation of a National Policy Board consisting of the Secretaries of Defense, Commerce, Transportation, and the Chairmen and ranking minority members of the Senate and House Aviation Subcommittees. The Board would meet annually to review operations and future plans.

Technical Advisory Committee:

The members of this committee would be nominated by the President and confirmed by the Senate. It would be composed of 10 people who represent a broad spectrum of interests in the aviation field. The Committee would act in an advisory fashion to the Director and would prepare and submit to the Director a semiannual report concerning the operations of the Authority.

General Powers:

The Authority would have all powers normally granted to a private corporation by its Board of Directors. For example, the Authority may institute suits on its behalf and be sued, it may enter into contracts, acquire property, and settle disputes. Unlike a private entity, the Authority would be granted the power to exercise eminent domain and establish a schedule of user fee rates for financing its various programs.

With respect to legal proceedings, the Authority may either employ its own attorneys or request the Department of Justice to furnish any needed representation.

APPLICATION OF OTHER LAWS:

The Authority would not be required to adhere to Federal laws regarding Federal employees, contracts, property, budgets, funds, or the disclosure of information. Additionally, the Authority would not be required to disclose trade secrets or other marketing or planning information if such disclosure is objected to by the person or entity supplying the information.

COOPERATION WITH OTHER AGENCIES:

The Authority would be empowered to use the services of other Federal agencies on a compensable basis.

EMPLOYEE COMPENSATION AND BENEFITS:

Terms and conditions of employment for current FAA employees would continue as provided by either the FAA or the Executive Branch until a complete transfer to the Authority has occurred and new terms and conditions are provided. In no event, however, would a reduction in salary occur due to a new pay system for the first two years immediately following the transfer of power to the Authority.

LABOR MANAGEMENT RELATIONS:

A majority of the employees may select a labor organization to represent them in collective bargaining. Upon the failure to reach an agreement within 180 days after commencing labor negotiations, either party may submit the matter to arbitration.

CAPITAL FORMATION:

To provide for the initial funding of the Authority, S. 1159 proposes to transfer the accumulated Trust Fund balance, including appropriated but unobligated funds, reserve funds equivalent to cumulative shortfalls below minimum annual authorizations, and uncommitted funds to the public corporation. All equipment and property necessary to operate the air traffic control system would also be transferred to the Authority.

For purposes of providing capital infusion, the Authority would be permitted to borrow money and to issue and sell obligations necessary to finance its operations. Total outstanding obligations must not exceed \$10 billion and any one fiscal year's outstanding

obligations must not exceed \$1.5 billion. Net increases in outstanding obligations issued for the purpose of defraying operational expenses must not exceed \$500,000. Security for these obligations may be provided by pledging the assets of the Authority and by using revenues and receipts generated to apply toward the retirement of these obligations. The bill specifically provides for the creation of a sinking fund reserve as additional security for the obligations.

USER FEES

Under the proposed legislation, the Authority may establish user fees calculated to fund its operations, research and development. However, for its first two years, the schedule of fees established by the Authority could not exceed current amounts.

Of the amounts collected during the first two fiscal years of operation, three billion dollars would be paid to the Treasury in eight installments for the purpose of financing airport construction, expansion, and improvements.

Incidental to the collection of these user fees would be the establishment of a separate account in the Treasury for the exclusive benefit and use of the Authority. All moneys to be paid or transferred to the Authority, along with accumulated interest thereon, would be paid or credited to this account.

TREASURY DEPARTMENT'S ROLE IN THE NAA'S FINANCING

Pursuant to S. 1159, the Treasury would have a right of first refusal to purchase no more than \$2 billion of the obligations representing the debt instruments issued by the Authority. If the Treasury refuses to exercise its option, the Authority may then sell the obligations to the public upon affording the Treasury prior notice as to the date of issuance, rates of interest, and other terms and conditions of the obligations.

Obligations of the Authority would be deemed obligations of the Federal Government, and payment as to principal and interest due thereon will be fully guaranteed.

FINANCIAL REPORTING

Audits are to be conducted annually and reported to the Comptroller General, the President, and the House and Senate Aviation Subcommittees. The Authority must also

prepare annual budgets which must contain a statement of its financial condition for the previous fiscal year as well as estimates for the current and ensuing fiscal years.

TRANSFER OF POWERS

S. 1159 proposes that all functions, powers, and authorities of the FAA relating to the management of the air traffic control system would be transferred to the Authority along with all its assets on October 1, 1988, the date at which the Authority is to commence operations. The Director would also assume all the powers necessary to operate the airways and air traffic control system on that date.

Personnel would be transferred to the Authority without any interruption in the period by which criteria for available positions or promotions are measured. Presidential appointee positions will terminate upon the date of transfer; however, such persons may be reappointed.

TRANSITION

In order to facilitate the transfer as proposed under this bill, the services of the employees and other personnel of the DOT and FAA, as well as the funds appropriated to the DOT and the FAA, may be utilized.