

OFFICE OF MANAGEMENT AND BUDGET
ROUTE SLIP

TO ✓ Mr. Adkins
Mr. Young
Mr. Krulwich

- Take necessary action
- Approval or signature
- Comment
- Prepare reply
- Discuss with me
- For your information
- See remarks below



FROM Kenneth Schwartz

DATE 10/18/72

REMARKS

Attached first draft of a proposed veto message on airports bill. Comments are welcome. I understand that OMB's input is due to the White House by Friday.

DRAFT VETO STATEMENT

I am withholding my approval from S. 3755, a bill which would (1) prohibit the levying, by State and local governments, of air passenger "head taxes", and (2) provide increased Federal participation in airport development. During congressional consideration of S. 3755, the executive branch strongly opposed enactment of selected provisions of the bill. The basic reasons for this opposition are both matters of principle and matters of practical concern.

First, I would like to comment upon the issue of the so-called airport "head tax." The enrolled bill would prohibit State and local governments from imposing user charges on the carriage of persons in air transportation on the grounds that such taxes would be inequitable and potentially chaotic. In so doing, Congress has rejected the principal established in the April 19, 1972, Supreme Court decision in Evansville - Vanderbergh Airport Authority District et al v. Delta Airlines, Inc. et al. In this case, the Court decided to uphold the legality of non-Federal passenger "head taxes" as long as they were based on some fair approximation of use, or privilege for use, and were neither discriminatory against interstate commerce nor excessive in comparison with the benefits conferred.

The Congressional action to ban airport "head taxes" is not based on careful evaluation or study of the "head tax" issue. Nor has there been sufficient experience since the Court's decision to determine if such legislation is needed. Further, I am concerned with a total ban because it would deny States, localities, and airport authorities the use of a potentially valuable and needed revenue source with which to support airport

activities. I do not believe that the Government should disallow local imposition of this revenue source without substantial compelling reasons to the contrary.

The banning of the airport "head tax" has ^{generated} ~~propelled~~ the issue of increasing Federal participation in airport development --for if the Government denies airports a revenue source, then some parties would argue that the Government should compensate airports for the revenue loss through some other means. In the enrolled bill, the "means" is an increase in the percentage and level of Federal funding. The annual airport grant program level is raised by \$70M, and the Federal percentage share of funding for all airports ^{but the largest} ~~except the largest 65~~ is raised from 50 to 75%.

I would point out, however, that the Federal grants-in-aid-to-airports program has already been greatly expanded through the provisions of the Administration-supported Airport and Airway Development Act of 1970 (P.L. 91-258). Whereby, before enactment of this Act, the program was authorized at \$75 million annually, the program has expanded to \$280 million in fiscal years 1972 and 1973.

^{This} ~~My~~ Administration's concern over increased Governmental spending is well-known. Although the levels of additional spending included in the enrolled bill may appear relatively small to some, it is the aggregation of series of "small" budget increases that lead to "big" budget deficits. Further, I believe that the issues of "head taxes" and increased Federal-aid are intertwined and should be studied comprehensively before sweeping legislation

is enacted. I have instructed the Secretary of Transportation to undertake such a study with a reporting date of January, 1974.

On the basis of the above considerations, I believe that the best interests of the aviation industry, the general taxpayer, and all forms of government will best be served by withholding approval of this bill.

THE WHITE HOUSE

WASHINGTON

October 19, 1972



MEMORANDUM FOR BUD KROGH

FROM: CHARLES L. CLAPP *clc*

SUBJECT: Possible Veto of S. 3755--Airport Development Acceleration Act

This can be argued either way. I'd opt against veto unless it is felt that in the broader context having vetoed the water bill, bills that are aiding the higher income groups should be vetoed, too. There has been a lot of pressure on this one and the general aviation group (doctors, businessmen, etc.) which supports it strongly is one solidly in our camp. A veto will arouse a strong reaction.

Politics

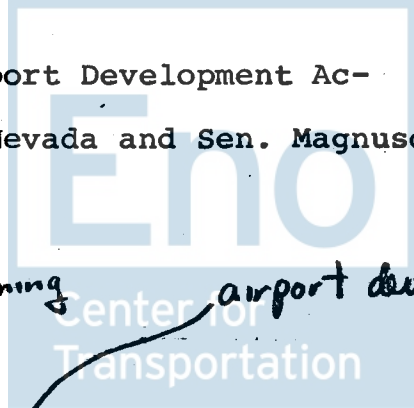
The head tax issue doesn't move me--frankly I think Congress may be right. To permit local head taxes will be very confusing and constitute a major irritation to travelers. I don't like the fact that the Federal matching share for airport development projects rises from 50-75% except for the 22 or so largest airports and the matching share for certain other items goes from 50 to 80%. The annual contract authority for airport development projects rises from \$280 million to \$350 million--not desirable from our view but not sufficient cause to veto either, and we don't have to spend it all. (OMB says this is far more serious than it seems, though since they had thought of spending only \$100 million of the \$250 million and feel with the increase to \$350 they'd have to spend in the neighborhood of \$280 million.)

Politics

Must spend more.

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S.3755 - Airport Development Acceleration Act of 1972
Sponsor - Sen. Cannon (D) Nevada and Sen. Magnuson (D) Washington



Last Day for Action

October 26, 1972 - Thursday

matching

airport development grant

Increases the Federal share of certain project costs; ~~under the Airport and Airway Development Act of 1970;~~ increases the ~~authorization~~ ^{contract authority} levels for airport development grants in 1974 and 1975; prohibits, subject to certain exceptions, the imposition by State or local governments of air passenger "head taxes."

Agency Recommendations

Office of Management and Budget

Disapproval (Memorandum attached)

Department of Transportation
Civil Aeronautics Board
Department of Justice

Discussion

The Airport and Airway Development Act of 1970, a major Administration initiative of the 91st Congress, established a trust fund from which expenditures are made for airport development grants and other ^{programs} [related projects]. The ^{principal} revenue sources for the trust fund are user taxes, including those on aviation gasoline and airline passenger tickets.

S.3755 contains several objectionable amendments to the Act as follows:

- increases the FY 1974 and 1975 annual contract authority for airport development projects by \$70 million, from a ^{to} currently authorized \$280 million to \$350 million.
- increases the Federal matching share for airport development projects at ^{all but the largest 25 air carrier} _A [small, medium and non-hub] airports from 50% to a maximum of 75%.
- increases the Federal matching share ^{from 50% to 82% certain} _A for safety equipment ^{e.g.} (i.e., firetrucks, ^{fencing} ~~protective clothing, etc.~~) required by DOT regulations for airport certification purposes, [from 50% to 82%] ~~(Opposed by DOT)~~.

These provisions were [all] added to the bill by the Senate Commerce Committee and were strongly opposed by the Administration. ^{In} a DOT letter to the Congressional Conference Committee ^{on the bill,} ~~considering S.3755~~, the Administration threatened a veto of the bill if provisions such as those increasing the annual contract authority and the Federal matching shares were included. The conferees did reduce the annual contract authority from \$420 million in the originally passed revision to \$350 million in the enrolled bill and they also eliminated an extension of the Act to cover terminal area improvements; however most of the objectionable provisions still remain.

The other significant provisions of S.3755 which DOT either supported or did not strongly oppose are as follows:

- prohibits a State or local government from imposing taxes or other charges on air passengers or on the sale of air transportation. The following two exceptions are provided: (1) any State or locality which was imposing such a tax prior to May 21, 1970 may continue to do so until July 1, 1973; and (2) any airport authority which is collecting a passenger head tax, without air carrier assistance, in order to repay an outstanding obligation the proceeds of which were used for airport improvements may continue to do so until July 1, 1973 so long as it has no authority to collect another type of tax to pay off the obligation. DOT supported a temporary moratorium on such head taxes in lieu of an outright law.

The arguments in favor of a veto of S.3755 are as follows:

- (1) Budget Impact: Annual contract authority for airport development grants in FY's 1974 and 1975 would be increased by 25% from the current annual amount -- from \$280 million in FY 1973 to \$350 million annually FY's 1974 and 1975. This major increase is contrary to the current Administration FY 1974 budget plans. In addition, expenditure limitation through impoundment would be difficult to sustain politically in view of the public reaction to our previous attempts to impound FY 1972 funds.

(2) Programmatic Impacts. Three studies, mandated by Congress, are now being carried out by DOT and are due for completion next year -- Cost Allocation Study, National Aviation System Plan and the report of the Aviation Advisory Commission. Upon completion of these studies there undoubtedly will be pressures to increase the scope of the program. Expanding the program now will make it even more difficult to hold the line next year.

We also question the wisdom of increasing the Federal matching share for developments grants to the smaller and medium sized airports. This will further weaken the incentives on the smaller local communities to resist unneeded and uneconomical expansion to airport facilities.

(3) Air Passenger Head Taxes. Legislation to ban imposition of such taxes by States and localities results from a recent Supreme Court decision which permitted head taxes under certain circumstances. After several communities began to impose these taxes the airlines protested on the grounds that interstate commerce was being impeded and that such taxes would have an unfavorable impact on air travel.

The Administration took the position before the Conference Committee considering S.3755 that a moratorium on such head

taxes would be more appropriate so that the impact of these taxes on interstate commerce could be studied before permanently depriving local communities of needed revenues.

(§) Timing of Legislation. There is not a single provision in S.3755 which is needed at the current time. Legislation could be submitted to Congress in January which would provide the liquidation authority needed for FY 1974 and 1975.

The arguments for approval of S.3755 are as follows:

(1) The airport development program has a vocal and active constituency behind it which would undoubtedly be back next session proposing even larger increases in Federal expenditures.

(2) The increase in Federal matching shares in S.3755 are maximum figures and DOT could set the Federal share as close to current levels as possible.

(3) The Administration could take the heat and control expenditures through impoundment of funds. This would undoubtedly stimulate attempts in Congress to force Executive Branch expenditure of authorized amounts.

S.3755 SALIENT POINTS

- (1) No additional burden on the federal treasury or budget is involved. This program will continue to be supported by taxes on the users of the airport and airways system. The legislation simply revises the airport program to allow full and effective use of their money to provide the airport improvements they were promised when the Aviation Trust Fund was created in 1970. Since this is a unique funding mechanism, the modest increase in mandatory spending for airport grants should not be treated the same as an increased expenditure involving general tax funds.
- (2) The new program will not impact until FY '74. Appropriations for airport grants have already been made for FY '73.
- (3) There is more than enough money in the Trust Fund to finance the new program, according to FAA's figures, as the following chart shows: (Excerpt from S. Rept. 92-1005)

TABLE 6.—FEDERAL AVIATION ADMINISTRATION, AIRPORT AND AIRWAY TRUST FUND—COMPARISON OF REVENUES/OBLIGATION AUTHORITY, FISCAL YEARS 1971-80

[In millions]

	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980
Revenues:										
User taxes.....	563	676	752	851	946	1,051	1,168	1,294	1,432	1,583
Federal payment.....		647	4							
Total revenues.....	563	1,323	756	851	946	1,051	1,168	1,294	1,432	1,583
Obligational authority:										
Grants-in-aid for airports:										
Development grants.....	170	289	280	280	280	280	280	220	220	210
Planning grants.....	10	15	15	15	15	15	15	15	15	15
Facilities and equipment.....	48	302	250	250	295	295	295	295	295	295
Engineering and development.....	24	63	74	120	130	127	131	120	120	120
Operations.....	33	966								
Aviation Advisory Commission.....	1	1								
Total appropriations.....	286	1,627	619	705	720	717	721	650	650	640
Uncommitted surplus:										
Current.....	277	-304	137	146	226	334	447	644	782	943
Cumulative.....	277	-27	110	256	482	816	1,263	1,907	2,689	3,631

1 The cumulative uncommitted surplus of \$3,600,000,000 shown for fiscal year 1980 is based upon the forecast of appropriation levels contained in the current FAA National Aviation system plan. If the funding levels for the 10-year period were limited to the minimum amounts authorized by the Airport and Airway Development Act of 1970, the projected surplus would increase by \$826,000,000 to a total estimated cumulative surplus of approximately \$4,500,000,000.

Sources: Fiscal years 1971-73, FAA Office of Budget; Fiscal years 1974-80, FAA's National Aviation system plan; 10-year plan 1973-83 (revenues in current dollars, obligational authority in 1972 dollars).

- (4) S.3755 provides 82% federal funding for the government-mandated program to curb skyjacking. The Administration has publicly called for an aggressive program to protect citizens from air piracy, and this bill provides the means by which the President can carry out his commitment.
- (5) This bill provides 82% funding for airport certification, which arises from the mandate of the Administration, as well. No one is sure what the ultimate costs will be, but the need must be met expeditiously, if airports served by commercial carriers are to continue to receive air service.
- (6) Necessary airport improvements would be accommodated and increasing the federal funding to 75% for grants will offset any revenue lost to communities as a result of the prohibition of the head tax. Changing the federal-local share for airport grants will allow communities to proceed with the airport improvements which the users of the air system were promised when the Aviation Trust Fund was created.

(7) The prohibition of the head tax and gross receipts tax is essential, in order to maintain a uniform national air transportation system. Obviously, this cannot be done if states and localities establish a hodge-podge of local taxes. This would not only disrupt the system but would levy a double burden on users who are already being taxed for airport improvements.

Center for
Transportation

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The Administration won a major victory in its efforts to curb federal spending by convincing the conferees to reduce the mandatory spending level for airport grants from \$420 million annually to only \$350, and exclude airport terminals from eligibility. S.3755 has strong congressional bi-partisan backing. This bill now is substantially in the form which passed the Senate 83 - 2. The House conferees accepted it unanimously.

* * * * *

10/17/'72

AIRPORT IMPROVEMENTS UNDER S.3755

S.3755 involves no additional burden on the federal treasury or budget. The Aviation Trust Fund derives its revenue from charges on the users of the airport/airways system and the revamped program would allow more effective use of their money, to fund the improvements which were promised when Congress passed the Airport and Airways Development Act in 1970.

S.3755 prohibits states and localities from levying direct or indirect taxes on persons traveling in interstate air commerce, or on the carriage of such persons. Landing fees and other legitimate service charges or taxes would not be prohibited.

S.3755 offers a viable alternative to such taxes and compensates for them by making user charge revenues in the Aviation Trust Fund more available to local communities to fund airport improvements. The bill would substantially benefit communities which operate the nation's airports and assure the continuance of a uniform national program for airport development.

S.3755 passed the Senate 83-2 and was endorsed unanimously by the House conferees.

1. The federal/local matching fund ratio for airport grants would be changed from the present 50-50% to 75-25% for medium, small hubs, non-hubs, and general aviation airports. This will primarily benefit many communities which have experienced difficulty in providing local matching funds. Of approximately 3,500 publicly-owned airports in the U. S., the largest 22 would continue to receive grants at the 50% federal participation level.
2. Federal participation would be 82% for all projects required to carry out the security and airport certification program. The need for an extensive anti-hijacking program was not envisioned when the Airport and Airways Act was passed in 1970, but it must be provided for immediately in order to assure safety in air transportation.
3. The minimum amount of Aviation Trust Fund revenues available for grants to air carrier airports would be increased to \$312.5 million for each year in FY '74 and FY '75. The amount for general aviation airports would be increased to \$37.5 million for each year. Present minimums are \$250 million for air carrier and \$30 million for general aviation airports, respectively.

The Aviation Trust Fund can support this revamped program, since a substantial surplus is accumulating. FAA figures indicate that a \$3.6 billion surplus will accumulate by 1980, under the existing program. (See Chart below). The changes proposed by S.3755 are estimated by the FAA to cost only \$70 million annually, so there would still be surplus of approximately \$3 billion in the Trust Fund in 1980, under the new airport program. (See p.28 of Senate report 92-1005.)

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Sources: Fiscal years 1971-73, FAA Office of Budget; Fiscal years 1974-80, FAA's National Aviation system plan; 10-year plan 1973-83 (revenues in current dollars, obligational authority in 1972 dollars).

(Excerpt from S. Rept. 92-1005)

THE WHITE HOUSE

WASHINGTON

December 5, 1972

MEMORANDUM FOR BUD KROGH

FROM: DICK NORDAHL *DN*

SUBJECT: AIRPORT HEAD TAX

Eno

Center for
Transportation

Attached is an excerpt from the OMB memo recommending veto of the airport bill which included the ban on airport head taxes as well as the President's brief veto statement in which he did not mention head taxes.

Conversations with John Mullinix of OMB (works for Fred Meister), confirm that their prime concern was the \$70 million dollar hike in the airport grant program and the increase in the Federal share from 50 to 75 per cent. The head tax issue was really irrelevant to OMB.

OMB is not happy with the present \$280 million airport grant program and wants to cut it back and pull the FAA operational budget back into the trust fund from the general fund. They really oppose expansion of any kind.

The airlines and ATA oppose head taxes, but want the fund increased so there is an obvious trade-off. They say there is no budgetary increase because grant money comes from trust fund financed mostly by user taxes. OMB unitary budget concept says an outlay is an outlay no matter where it comes from.

Pressure for a bill is still high both from anti-head tax view and expand the fund view. It is likely that new Congress will come out with perhaps the same bill at an early date and a veto would quite probably be overridden.