

**Calendar No. 637**

116TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
116-331 }

EXPEDITED DELIVERY OF AIRPORT  
INFRASTRUCTURE ACT OF 2020

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 3958



DECEMBER 15, 2020.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

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### EXPEDITED DELIVERY OF AIRPORT INFRASTRUCTURE ACT OF 2020

DECEMBER 15, 2020.—Ordered to be printed

Mr. WICKER, from the Committee on Commerce, Science, and  
Transportation, submitted the following

### R E P O R T

[To accompany S. 3958]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 3958) to amend title 49, United States Code, to permit the use of incentive payments to expedite certain federally financed airport development projects, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

#### PURPOSE OF THE BILL

S. 3958, the Expedited Delivery of Airport Infrastructure Act of 2020, would permit an airport sponsor to use Airport Improvement Program funds to provide incentive payments for certain airport development projects.

#### BACKGROUND AND NEEDS

Airports draw funding resources from a number of different avenues, including through Federal support via the Airport Improvement Program (AIP), which is administered by the Federal Aviation Administration (FAA). AIP provides grants to public use airports for eligible construction projects, terminal development, safety equipment, and other safety, capacity, or noise reduction projects.<sup>1</sup> AIP funding is only used at public-use airports, with Federal shares capped at 75 percent for large and medium hub airports, 80 percent for noise compatibility projects, and 90 to 95 per-

<sup>1</sup> Federal Aviation Administration, "Overview: What Is AIP?" (<https://www.faa.gov/airports/aip/overview/>) (accessed Oct. 26, 2020).

cent for other airports.<sup>2</sup> Usually, airport sponsors get AIP grants for airfield improvements or rehabilitation projects, and eligibility for these projects is strictly dictated by statutory requirements.<sup>3</sup> AIP currently is authorized at \$3.35 billion a year through fiscal year 2023.

#### LEGISLATIVE HISTORY

S. 3958, the Expedited Delivery of Airport Infrastructure Act of 2020, was introduced on June 15, 2020, by Senator Young (for himself and Senators Sinema and Cruz) and was referred to the Committee on Commerce, Science, and Transportation of the Senate. On July 22, 2020, the Committee met in open Executive Session and, by voice vote, ordered S. 3958 reported favorably with an amendment. S. 3958 was modified by an amendment offered by Senator Rick Scott, which gives the Secretary of Transportation an option to decide whether or not to allow an incentive payment subject to a cost-benefit analysis.

A companion bill to S. 3958, H.R. 5912, the Expedited Delivery of Airport Infrastructure Act of 2020, was introduced on February 14, 2020, by Representative Sam Graves (for himself and Representative Garret Graves) and was referred to the Committee on Transportation and Infrastructure of the House of Representatives. On October 1, 2020, H.R. 5912 passed and was agreed to, on a motion to suspend the rules and pass that bill as amended, in the House of Representatives.

#### ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

<b>S. 3958, Expedited Delivery of Airport Infrastructure Act of 2020</b>			
As ordered reported by the Senate Committee on Commerce, Science, and Transportation on July 22, 2020			
By Fiscal Year, Millions of Dollars	2021	2021-2025	2021-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Statutory pay-as-you-go procedures apply?	No	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000			

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

The Airport Improvement Program (AIP) provides grants to airport sponsors for capital improvement projects related to airport safety, capacity, and security. S. 3958 would expand the definition of eligible AIP project costs for future grants to include contractor incentive payments. The payments would be capped at the lesser of \$1 million or 5 percent of the project's contract value.

S. 3958 would not provide additional contract authority (a mandatory form of budget authority) for the AIP or increase the program's existing obligation limitations. Under current law, however, airport sponsors are authorized to use funds from other Federal Aviation Administration (FAA) grants for contractor incentive payments, including those newly provided under the CARES Act (Public Law 116-136).

In addition, based on information from the agency, CBO expects that the FAA would need to develop guidelines and amend grant language in order to implement the bill's provisions. CBO estimates that the cost to do so would not be significant. Accordingly, CBO estimates that implementing the bill would have no significant effect on discretionary spending.

On June 23, 2020, CBO transmitted a cost estimate for H.R. 5912, the Expedited Delivery of Airport Infrastructure Act of 2020, as ordered reported by the House Committee on Transportation and Infrastructure on February 26, 2020. The two pieces of legislation are similar, and CBO's estimate of their budgetary effects are the same.

The CBO staff contact for this estimate is Aaron Krupkin. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

#### REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

##### NUMBER OF PERSONS COVERED

S. 3958, as amended, would affect only airport sponsors and the contractors who perform work at airports. These entities are already subject to various Federal laws and regulations, so no new persons would be impacted.

##### ECONOMIC IMPACT

S. 3958, as amended, would not have an adverse impact on the Nation's economy, as it allows airports to offer contractors an incentive payment for finishing up a project early if it is beneficial for safety, capacity, or efficiency.

##### PRIVACY

S. 3958, as amended, would not have a negative impact on the privacy rights of individuals.

##### PAPERWORK

The Committee anticipates the passage of S. 3958 would not have a significant impact on paperwork requirements. Airport de-

velopment projects are already subject to extensive amounts of paperwork, and the addition of provisions to provide incentives to complete work early would be relatively minimal.

#### CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

#### SECTION-BY-SECTION ANALYSIS

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

This section would provide that the bill may be cited as the “Expedited Delivery of Airport Infrastructure Act of 2020”.

##### *Section 2. Allowable cost standards for airport development projects.*

This section would allow airports to use AIP grants to provide incentive payments for a project should the incentive payment be no more than 5 percent of the total project cost of \$1 million. The Secretary of Transportation would determine whether or not the incentive payment would benefit the efficiency or capacity of the airport, or result in cost savings, as a result of shortening the project’s duration.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, 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 material is printed in italic, existing law in which no change is proposed is shown in roman):

## **UNITED STATES CODE**

\* \* \* \* \*

### **TITLE 49—TRANSPORTATION**

\* \* \* \* \*

#### **Subtitle VII—Aviation Programs**

\* \* \* \* \*

#### **PART B—AIRPORT DEVELOPMENT AND NOISE**

\* \* \* \* \*

#### **CHAPTER 471—AIRPORT DEVELOPMENT**

\* \* \* \* \*

**Subchapter I—Airport Improvement**

\* \* \* \* \*

**§ 47110. Allowable project costs**

(a) \* \* \*

(b) ALLOWABLE COST STANDARDS.—A project cost is allowable—

**[(1) if the cost necessarily]** *(1)(A) if the cost necessarily* is incurred in carrying out the project in compliance with the grant agreement made for the project under this subchapter, including any cost a sponsor incurs related to an audit the Secretary requires under section 47121(b) or (d) of this title and any cost of moving a Federal facility impeding the project if the rebuilt facility is of an equivalent size and type**];** or

*(B) if the cost is an incentive payment incurred in carrying out the project described in subparagraph (A) that is to be provided to a contractor upon early completion of a project, if—*

*(i) such payment does not exceed the lesser of 5 percent of the initial construction contract amount or \$1,000,000;*

*(ii) the level of contractor’s control of, or access to, the worksite necessary to shorten the duration of the project does not negatively impact the operation of the airport;*

*(iii) the contract specifies application of the incentive structure in the event of unforeseeable, non-weather delays beyond the control of the contractor;*

*(iv) nothing in any agreement with the contractor prevents the airport operator from retaining responsibility for the safety, efficiency, and capacity of the airport during the execution of the grant agreement; and*

*(v) the Secretary determines that the use of an incentive payment is likely to increase airport capacity or efficiency or result in cost savings as a result of shortening the project’s duration;*

(2)(A) \* \* \*

\* \* \* \* \*

(7) \* \* \*

(c) \* \* \*

\* \* \* \* \*

(e) LETTERS OF INTENT.—(1) The Secretary may issue a letter of intent to the sponsor stating an intention to obligate from future budget authority an amount, not more than the Government’s share of allowable project costs, for an airport development project (including costs of formulating the project) at a primary or reliever airport. The letter shall establish a schedule under which the Secretary will reimburse the sponsor for the Government’s share of allowable project costs, as amounts become available, if the sponsor, after the Secretary issues the letter, carries out the project without receiving amounts under this subchapter.

(2) \* \* \*

\* \* \* \* \*

**[(7) PARTNERSHIP PROGRAM AIRPORTS.—]**

*(7) PARTNERSHIP PROGRAM AIRPORTS.—*The Secretary may issue a letter of intent under this section to an airport sponsor with an approved application under section 47134(b) if—

(A) the application was approved in fiscal year 2019; and  
(B) the project meets all other requirements set forth in  
this chapter.

(f) \* \* \*

\* \* \* \* \*

(i) \* \* \*

\* \* \* \* \*

