

104TH CONGRESS
2D SESSION

S. 1774

To enhance the enforceability of airport revenue diversion provisions under chapter 471 of title 49, United States Code, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 17, 1996

Mr. McCAIN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To enhance the enforceability of airport revenue diversion provisions under chapter 471 of title 49, United States Code, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Airport Revenue Pro-
5 tection Act of 1996”.

6 **SEC. 2. FINDINGS; PURPOSE.**

7 (a) IN GENERAL.—The Congress finds that—

8 (1) section 47107 of title 49, United States
9 Code, prohibits the diversion of certain revenue gen-

1 erated by a public airport as a condition of receiving
2 a project grant;

3 (2) a grant recipient that uses airport revenue
4 for purposes that are not airport related in a man-
5 ner inconsistent with chapter 471 of title 49, United
6 States Code, illegally diverts airport revenues;

7 (3) any diversion of airport revenues in viola-
8 tion of the condition referred to in paragraph (1)
9 undermines the interest of the United States in pro-
10 moting a strong national air transportation system
11 that is responsive to the needs of airport users;

12 (4) the Secretary and the Administrator have
13 not enforced airport revenue diversion rules ade-
14 quately;

15 (5) despite attempts by the Congress to halt the
16 illegal diversion of revenues referred to in paragraph
17 (1), including the enactment of laws to strengthen
18 the enforcement authority of the Department of
19 Transportation (including the Federal Aviation Ad-
20 ministration), such illegal airport revenue diversion
21 continues to occur;

22 (6) sponsors who have been found to have ille-
23 gally diverted airport revenues have not reimbursed
24 airports in a timely manner;

1 (7) sponsors are openly and publicly seeking
2 ways to divert additional airport revenues; and

3 (8) to the detriment of the United States
4 Treasury, the Secretary and the Administrator have
5 failed to seek adequately the return of illegally di-
6 verted airport revenues referred to in paragraph (1).

7 (b) PURPOSE.—The purpose of this Act is to ensure
8 that airport users are not burdened with hidden taxation
9 for unrelated municipal services and activities by—

10 (1) eliminating the ability of any State or politi-
11 cal subdivision thereof that is a recipient of a project
12 grant to divert airport revenues for purposes that
13 are not related to an airport, in violation of section
14 47107 of title 49, United States Code;

15 (2) imposing financial reporting requirements
16 that are designed to identify instances of illegal di-
17 versions referred to in paragraph (1);

18 (3) establishing a statute of limitations for air-
19 port revenue diversion actions;

20 (4) clarifying limitations on revenue diversion
21 that is permitted under chapter 471 of title 49,
22 United States Code; and

23 (5) establishing clear penalties and enforcement
24 mechanisms for identifying and prosecuting airport
25 revenue diversion.

1 **SEC. 3. DEFINITIONS.**

2 For purposes of this Act, the following definitions
3 shall apply:

4 (1) ADMINISTRATOR.—The term “Adminis-
5 trator” means the Administrator of the Federal
6 Aviation Administration.

7 (2) AIRPORT.—The term “airport” has the
8 meaning provided that term in section 47102(2) of
9 title 49, United States Code.

10 (3) PROJECT GRANT.—The term “project
11 grant” has the meaning provided that term in sec-
12 tion 47102(14) of title 49, United States Code.

13 (4) SECRETARY.—The term “Secretary” means
14 the Secretary of Transportation.

15 (5) SPONSOR.—The term “sponsor” has the
16 meaning provided that term in section 47102(19) of
17 title 49, United States Code.

18 **SEC. 4. RESTRICTION ON USE OF AIRPORT REVENUES.**

19 (a) IN GENERAL.—Chapter 471 of title 49, United
20 States Code, is amended by adding at the end of sub-
21 chapter I the following new section:

22 **“§ 47132. Restriction on use of revenues**

23 “(a) PROHIBITION.—Local taxes on aviation fuel (ex-
24 cept taxes in effect on December 30, 1987) or the revenues
25 generated by an airport that is the subject of Federal as-
26 sistance or that operates pursuant to an airport operating

1 certificate issued under section 44706 may not be ex-
2 pended for any purpose other than the capital or operating
3 costs of—

4 “(1) the airport;

5 “(2) the local airport system; or

6 “(3) any other local facility that is owned or op-
7 erated by the person or entity that owns or operates
8 the airport that is directly and substantially related
9 to the air transportation of passengers or property.

10 “(b) EXCEPTIONS.—

11 “(1) IN GENERAL.—Subsection (a) shall not
12 apply with respect to any provision of law enacted
13 before September 3, 1982, that—

14 “(A) controls financing by the owner or
15 operator, or a covenant or assurance in a debt
16 obligation issued not later than September 2,
17 1982, by the owner or operator; and

18 “(B) provides that the revenues, including
19 local taxes on aviation fuel at public airports,
20 from any of the facilities of the owner or opera-
21 tor involved (including the airport of the owner
22 or operator) be used to support both the airport
23 and general debt obligations of other facilities
24 of the owner or operator.

1 “(2) SUNSET.—This subsection shall have no
2 force and effect beginning on the earlier of—

3 “(A) the date on which all debt obligations
4 covered under this subsection are either retired
5 or refinanced; or

6 “(B) the date that is 10 years after the
7 date of enactment of the Airport Revenue Pro-
8 tection Act of 1996.

9 “(c) RULE OF CONSTRUCTION.—Nothing in this sec-
10 tion may be construed to prevent the use of a State tax
11 on aviation fuel to support a State aviation program or
12 the use of airport revenue on or off the airport for a noise
13 mitigation purpose.”.

14 (b) CONFORMING AMENDMENT.—The chapter analy-
15 sis for subchapter I of chapter 471 of title 49, United
16 States Code, is amended by adding at the end the follow-
17 ing new item:

 “47132. Restriction on use of revenues.”.

18 **SEC. 5. REGULATIONS; AUDITS AND ACCOUNTABILITY.**

19 (a) IN GENERAL.—Section 47107 of title 49, United
20 States Code, is amended by adding at the end the follow-
21 ing new subsections:

22 “(m) AUDIT CERTIFICATION.—

23 “(1) IN GENERAL.—The Secretary of Transpor-
24 tation (hereafter in this section referred to as the
25 ‘Secretary’), acting through the Administrator of the

1 Federal Aviation Administration (hereafter in this
2 section referred to as the ‘Administrator’), shall pro-
3 mulgate regulations that require a recipient of a
4 project grant (or any other recipient of Federal fi-
5 nancial assistance that is provided for an airport)
6 to include as part of an annual audit conducted
7 under sections 7501 through 7505 of title 31, a re-
8 view and opinion of the review concerning the fund-
9 ing activities with respect to an airport that is the
10 subject of the project grant (or other Federal finan-
11 cial assistance) and the sponsors (or other recipi-
12 ents) involved.

13 “(2) CONTENT OF REVIEW.—A review con-
14 ducted under paragraph (1) shall provide reasonable
15 assurances that funds paid or transferred to spon-
16 sors are paid or transferred in a manner consistent
17 with the applicable requirements of this chapter and
18 any other applicable provision of law (including reg-
19 ulations promulgated by the Secretary or the Admin-
20 istrator).

21 “(3) REQUIREMENTS FOR AUDIT REPORT.—
22 The report submitted to the Secretary under this
23 subsection shall include a specific determination and
24 opinion regarding the appropriateness of the disposi-

1 tion of airport funds paid or transferred to a spon-
2 sor.

3 “(4) CERTIFICATION BY INSPECTOR GEN-
4 ERAL.—Upon completion of each audit and review
5 conducted under this subsection, the Inspector Gen-
6 eral of the Department of Transportation shall,
7 upon making a determination that the audit and re-
8 view meet the requirements of this section, certify
9 that the audit and review meet those requirements.

10 “(n) RECOVERY OF ILLEGALLY DIVERTED FUNDS.—

11 “(1) IN GENERAL.—Not later than 180 days
12 after the issuance of an audit or any other report
13 that identifies an illegal diversion of airport revenues
14 (as determined under subsections (b) and (l) and
15 section 47132), the Secretary, acting through the
16 Administrator, shall—

17 “(A) review the audit or report;

18 “(B) perform appropriate factfinding; and

19 “(C) render a final determination concern-
20 ing whether the illegal diversion of airport reve-
21 nues asserted in the audit or report occurred.

22 “(2) NOTIFICATION.—Upon making such a
23 finding, the Secretary, acting through the Adminis-
24 trator, shall provide written notification to the spon-
25 sor and the airport of—

1 “(A) the finding; and

2 “(B) the obligations of the sponsor to re-
3 reimburse the airport involved under this para-
4 graph.

5 “(3) ADMINISTRATIVE ACTION.—If a sponsor
6 receives notification that the sponsor is required to
7 reimburse an airport, the Secretary, acting through
8 the Administrator, shall—

9 “(A) assess an administrative penalty
10 against the sponsor in an amount equal to—

11 “(i) the amount of the illegal diversion
12 in question;

13 “(ii) interest (as determined under
14 subsection (o)); and

15 “(iii) at the discretion of the Sec-
16 retary, acting through the Administrator,
17 in accordance with procedures established
18 under subsection (q), an amount to make
19 a payment to a petitioner under subsection
20 (q)(4); or

21 “(B) notwithstanding any other provision
22 of law, withhold an amount calculated in the
23 same manner as provided under subparagraph
24 (A) from funds that would otherwise be made
25 available to the sponsor as part of an appor-

1 tionment under sections 47114 or a grant made
2 from amounts apportioned under section 47114
3 pursuant to section 47117.

4 Any withholding made under subparagraph (B) shall
5 not be subject to section 47106(d) or 47111(d), or
6 the hearing requirement under section 47111(e).

7 “(4) CIVIL ACTION.—

8 “(A) IN GENERAL.—If a sponsor fails to
9 pay the amount specified in paragraph (3) dur-
10 ing the 180-day period beginning on the date of
11 notification and the Secretary or the Adminis-
12 trator is unable to withhold a sufficient amount
13 under paragraph (3)(B), the Secretary, acting
14 through the Administrator, shall initiate a civil
15 action under which the sponsor shall be liable
16 for civil penalty in an amount equal to the ille-
17 gal diversion in question plus interest (as deter-
18 mined under subsection (o)).

19 “(B) ADDITIONAL AMOUNT.—In addition
20 to the amount determined under subparagraph
21 (A), if applicable, the civil penalty may include
22 an amount that the court shall cause to be
23 transferred to a petitioner under subsection
24 (q)(4).

25 “(5) DISPOSITION OF PENALTIES.—

1 “(A) ADMINISTRATIVE PENALTIES.—The
2 Secretary or the Administrator shall transfer
3 any amounts collected as an administrative pen-
4 alty under paragraph (3)(A) to the Airport and
5 Airway Trust Fund established under section
6 9502(d) of the Internal Revenue Code of 1986.

7 “(B) AMOUNTS WITHHELD.—The Sec-
8 retary or the Administrator shall transfer any
9 amounts withheld under paragraph (3)(B) to
10 the Airport and Airway Trust Fund.

11 “(C) CIVIL PENALTIES.—With respect to
12 any amount collected by a court in a civil action
13 under paragraph (4), the court shall cause to be
14 transferred to the Airport and Airway Trust
15 Fund any amount collected as a civil penalty
16 under paragraph (4).

17 “(6) REIMBURSEMENT.—The Secretary, acting
18 through the Administrator, shall, as soon as prac-
19 ticable after any amount is collected from a sponsor
20 under paragraph (3) or (4), cause to be transferred
21 from the Airport and Airway Trust Fund to an air-
22 port affected by a diversion that is the subject of an
23 administrative action under paragraph (3) or a civil
24 action under paragraph (4), reimbursement in an
25 amount equal to the amount that has been collected

1 from the sponsor under paragraph (3) or (4) (in-
2 cluding any amount of interest calculated under sub-
3 section (o)), other than any amount that has been
4 collected under paragraph (3) or (4) for a payment
5 to a petitioner under subsection (q)(4).

6 “(7) STATUTE OF LIMITATIONS.—No person
7 may bring an action for the recovery of funds ille-
8 gally diverted in violation of this section (as deter-
9 mined under subsections (b) and (l)) or section
10 47132 after the date that is 6 years after the date
11 on which the diversion occurred.

12 “(o) INTEREST.—

13 “(1) IN GENERAL.—Except as provided in para-
14 graph (2), the Secretary, acting through the Admin-
15 istrator, shall charge a minimum annual rate of in-
16 terest on the amount of any illegal diversion of reve-
17 nues referred to in subsection (n) in an amount
18 equal to the average investment interest rate for tax
19 and loan accounts of the Department of the Treas-
20 ury (as determined by the Secretary of the Treas-
21 ury) for the applicable calendar year, rounded to the
22 nearest whole percentage point.

23 “(2) ADJUSTMENT OF INTEREST RATES.—If,
24 with respect to a calendar quarter, the average in-
25 vestment interest rate for tax and loan accounts of

1 the Department of the Treasury exceeds the average
2 investment interest rate for the immediately preced-
3 ing calendar quarter, rounded to the nearest whole
4 percentage point, the Secretary of the Treasury may
5 adjust the interest rate charged under this sub-
6 section in a manner that reflects that change.

7 “(3) ACCRUAL.—Interest assessed under sub-
8 section (n) shall accrue from the date of the actual
9 illegal diversion of revenues referred to in subsection
10 (n).

11 “(4) DETERMINATION OF APPLICABLE RATE.—
12 The applicable rate of interest charged under para-
13 graph (1) shall—

14 “(A) be the rate in effect on the date on
15 which interest begins to accrue under para-
16 graph (3); and

17 “(B) remain at a rate fixed under subpara-
18 graph (A) during the duration of the indebted-
19 ness.

20 “(p) PAYMENT BY AIRPORT TO SPONSOR.—If, in the
21 course of an audit or other review conducted under this
22 section, the Secretary determines that an airport owes a
23 sponsor funds as a result of activities conducted by the
24 sponsor or expenditures by the sponsor for the benefit of
25 the airport, interest on that amount shall be determined

1 in the same manner as provided in paragraphs (1) through
2 (4) of subsection (o), except that the amount of any inter-
3 est assessed under this subsection shall be determined
4 from the date on which the Secretary or the Administrator
5 makes that determination.”.

6 (b) REVISION OF POLICIES AND PROCEDURES;
7 DEADLINES.—

8 (1) IN GENERAL.—Not later than 90 days after
9 the date of enactment of this Act, the Secretary, act-
10 ing through the Administrator, shall revise the poli-
11 cies and procedures established under section 47107
12 (l) of title 49, United States Code, to take into ac-
13 count the amendments made to that section by this
14 Act.

15 (2) DEADLINES.—Section 47107(l) of title 49,
16 United States Code, is amended by adding at the
17 end the following new paragraph:

18 “(5) DEADLINES.—In addition to the statute of
19 limitations specified in subsection (n)(7), the follow-
20 ing statutes of limitations and deadlines shall apply
21 with respect to project grants made under this chap-
22 ter:

23 “(A) Any request to any airport for addi-
24 tional payments for services conducted off of

1 the airport shall be filed not later than 6 years
2 after the date on which the expense is incurred.

3 “(B) Any amount of airport funds that are
4 used to make a payment as described in sub-
5 paragraph (A) after the date specified in that
6 subparagraph shall be considered to be an ille-
7 gal diversion of airport revenues that is subject
8 to subsection (n).”.

9 **SEC. 6. ELIMINATION OF CERTAIN EXCEPTIONS.**

10 (a) IN GENERAL.—Section 47107(b)(2) of title 49,
11 United States Code, is amended—

12 (1) by inserting “(A)” before “Notwithstanding
13 subsection (b)(1)”; and

14 (2) by adding at the end the following new sub-
15 paragraph:

16 “(B) This paragraph shall have no force and effect
17 beginning on the earlier of—

18 “(i) the date on which all debt obligations cov-
19 ered under this paragraph on the day before the
20 date of enactment of the Airport Revenue Protection
21 Act of 1996 are either retired or refinanced; or

22 “(ii) the date that is 10 years after the date of
23 enactment of the Airport Revenue Protection Act of
24 1996.”.

1 (b) HAWAII.—Section 47107(j) of title 49, United
 2 States Code, is amended by adding at the end the follow-
 3 ing new paragraph:

4 “(8) This subsection shall have no force and effect
 5 beginning on the earlier of—

6 “(A) the date on which all debt obligations re-
 7 ferred to in paragraph (2) that are covered under
 8 this subsection are either retired or refinanced; or

9 “(B) the date that is 10 years after the date of
 10 enactment of the Airport Revenue Protection Act of
 11 1996.”.

12 **SEC. 7. WHISTLEBLOWER PROTECTION AND PAYMENTS.**

13 Section 47107 of title 49, United States Code, as
 14 amended by section 5 of this Act, is further amended by
 15 adding at the end the following new subsection:

16 “(q) WHISTLEBLOWER PROTECTION AND PAY-
 17 MENTS.—

18 “(1) IN GENERAL.—Not later than 180 days
 19 after the date of enactment of the Airport Revenue
 20 Protection Act of 1996, the Secretary, acting
 21 through the Administrator, shall establish a process
 22 under which a private citizen or other party (other
 23 than an employee of the Department of Transpor-
 24 tation and the organization or entity that conducts
 25 an audit under subsection (m)) may petition the

1 Secretary or the Administrator for review of an alle-
2 gation of illegal diversion of airport revenues.

3 “(2) EVALUATION.—Not later than 30 days
4 after the date on which a petition is made under
5 paragraph (1), the Secretary, acting through the Ad-
6 ministrator—

7 “(A) shall evaluate the petition if it asserts
8 that an illegal diversion of airport revenues (as
9 determined under subsections (b) and (l) and
10 section 47132) has occurred in an amount
11 greater than or equal to \$10,000 for a calendar
12 year period; and

13 “(B) may evaluate the petition if it asserts
14 an illegal diversion of airport revenues in an
15 amount less than the amount specified in sub-
16 paragraph (A).

17 “(3) ACTION BY THE SECRETARY OF TRANS-
18 PORTATION.—If the Secretary, acting through the
19 Administrator, reviews a petition described under
20 paragraph (1) and determines that an illegal diver-
21 sion of revenues (as determined under subsections
22 (b) and (l) and section 47132) has occurred, the
23 Secretary, acting through the Administrator, shall
24 take such action, in accordance with this section, as
25 is necessary to—

1 “(A) recover the illegally diverted revenues;
2 and

3 “(B) provide for reimbursement to the air-
4 port of the amount illegally diverted.

5 “(4) PAYMENT TO PETITIONER.—Notwith-
6 standing any other provision of law, in any case in
7 which the Secretary or the Administrator recovers
8 funds under paragraph (3), the Secretary or the Ad-
9 ministrator shall take such action as may be nec-
10 essary (including requiring the sponsor to make a
11 payment for the petitioner and transferring funds
12 from the Airport and Airway Trust Fund established
13 under section 9502(d) of the Internal Revenue Code
14 of 1986), to make a payment to the petitioner, in ac-
15 cordance with procedures that the Secretary, acting
16 through the Administrator, shall establish by regula-
17 tion (after providing opportunity for notice and pub-
18 lic comment).

19 “(5) PROHIBITION ON DISCLOSURE.—Neither
20 the Secretary nor the Administrator may disclose to
21 an airport, a sponsor, or the general public the iden-
22 tity of a petitioner under this subsection without the
23 consent of the petitioner.”.

1 **SEC. 8. QUI TAM ACTIONS.**

2 Section 47107 of title 49, United States Code, as
3 amended by section 6 of this Act, is further amended by
4 adding at the end the following new subsection:

5 “(r) QUI TAM ACTIONS.—Notwithstanding any other
6 provision of law, a private citizen may bring a civil action
7 for a violation of this section in the same manner as is
8 provided for a civil action for a violation of section 3729
9 of title 31 under section 3730 of that title.”.

10 **SEC. 9. CONFORMING AMENDMENTS TO THE INTERNAL**
11 **REVENUE CODE OF 1986.**

12 Section 9502(d) of the Internal Revenue Code of
13 1986 is amended—

14 (1) in subsection (b)—

15 (A) by striking “and” at the end of para-
16 graph (3);

17 (B) by striking the period at the end of
18 paragraph (4) and inserting “, and”; and

19 (C) by adding at the end the following:

20 “(5) amounts determined by the Secretary of
21 the Treasury to be equivalent to the amounts of ad-
22 ministrative and civil penalties collected under sec-
23 tion 47107(n) of title 49, United States Code.”; and

24 (2) in subsection (d), by adding at the end the
25 following new paragraph:

1 “(4) TRANSFERS FROM THE AIRPORT AND AIR-
2 WAY TRUST FUND ON ACCOUNT OF CERTAIN AIR-
3 PORTS.—The Secretary of the Treasury may trans-
4 fer from the Airport and Airway Trust Fund to the
5 Secretary of Transportation or the Administrator of
6 the Federal Aviation Administration an amount to
7 make a payment—

8 “(A) to an airport affected by a diversion
9 that is the subject of an administrative action
10 under paragraph (3) or a civil action under
11 paragraph (4) of section 47107(n) of title 49,
12 United States Code; or

13 “(B) pursuant to section 47107(q)(4) of
14 title 49, United States Code.”.

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