

106TH CONGRESS  
1ST SESSION

# S. 379

To amend title 49, United States Code, to authorize the Secretary of Transportation to implement a pilot program to improve access to the national transportation system to small communities, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 1999

Mr. ROCKEFELLER (for himself, Mr. DORGAN, Mr. WYDEN, Mr. HARKIN, and Mr. BINGAMAN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend title 49, United States Code, to authorize the Secretary of Transportation to implement a pilot program to improve access to the national transportation system to small communities, 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 “Air Service Restoration  
5       Act”.

6       **SEC. 2. FINDINGS.**

7       The Congress finds that—

1           (1) a national transportation system providing  
2 safe, high quality service to all areas of the United  
3 States is essential to interstate commerce and the  
4 economic well-being of cities and towns throughout  
5 the United States;

6           (2) taxpayers throughout the United States  
7 have supported and helped to fund the United  
8 States aviation infrastructure and have a right to  
9 expect that aviation services will be provided in an  
10 equitable and fair manner to every region of the  
11 country;

12           (3) some communities have not benefited from  
13 airline deregulation and access to essential airports  
14 and air services have been limited;

15           (4) air service to a number of small commu-  
16 nities have suffered since deregulation;

17           (5) studies by the Department of Transpor-  
18 tation have documented that, since the airline indus-  
19 try was deregulated in 1978—

20                 (A) 34 small communities have lost service  
21 and many small communities have had jet air-  
22 craft service replaced by turboprop aircraft  
23 service;

24                 (B) out of a total of 320 small commu-  
25 nities, the number of small communities being

1 served by major air carriers declined from 213  
2 in 1978 to 33 in 1995;

3 (C) the number of small communities re-  
4 ceiving service to only one major hub airport in-  
5 creased from 79 in 1978 to 134 in 1995; and

6 (D) the number of small communities re-  
7 ceiving multiple-carrier service decreased from  
8 136 in 1978 to 122 in 1995; and

9 (6) improving air service to small and medium-  
10 sized communities that have not benefited from fare  
11 reductions and improved service since deregulation  
12 will likely entail a range of Federal, State, regional,  
13 local, and private sector initiatives.

14 **SEC. 3. PURPOSE.**

15 The purpose of this Act is to facilitate, through a  
16 pilot program, incentives and projects that will help com-  
17 munities to improve their access to the essential airport  
18 facilities of the national air transportation system through  
19 public-private partnerships and to identify and establish  
20 ways to overcome the unique policy, economic, geographic,  
21 and marketplace factors that may inhibit the availability  
22 of quality, affordable air service to small communities.

1 **SEC. 4. ESTABLISHMENT OF SMALL COMMUNITY AVIATION**  
2 **DEVELOPMENT PROGRAM.**

3 Section 102 is amended by adding at the end thereof  
4 the following:

5 “(g) **SMALL COMMUNITY AIR SERVICE DEVELOP-**  
6 **MENT PROGRAM.**—

7 “(1) **ESTABLISHMENT.**—The Secretary shall es-  
8 tablish a 5-year pilot aviation development program  
9 to be administered by a program director designated  
10 by the Secretary.

11 “(2) **FUNCTIONS.**—The program director  
12 shall—

13 “(A) function as a facilitator between  
14 small communities and air carriers;

15 “(B) carry out section 41743 of this title;

16 “(C) carry out the airline service restora-  
17 tion program under sections 41744, 41745, and  
18 41746 of this title;

19 “(D) ensure that the Bureau of Transpor-  
20 tation Statistics collects data on passenger in-  
21 formation to assess the service needs of small  
22 communities;

23 “(E) work with and coordinate efforts with  
24 other Federal, State, and local agencies to in-  
25 crease the viability of service to small commu-

1 nities and the creation of aviation development  
2 zones; and

3 “(F) provide policy recommendations to  
4 the Secretary and the Congress that will ensure  
5 that small communities have access to quality,  
6 affordable air transportation services.

7 “(3) REPORTS.—The program director shall  
8 provide an annual report to the Secretary and the  
9 Congress beginning in 2000 that—

10 “(A) analyzes the availability of air trans-  
11 portation services in small communities, includ-  
12 ing, but not limited to, an assessment of the air  
13 fares charged for air transportation services in  
14 small communities compared to air fares  
15 charged for air transportation services in larger  
16 metropolitan areas and an assessment of the  
17 levels of service, measured by types of aircraft  
18 used, the availability of seats, and scheduling of  
19 flights, provided to small communities;

20 “(B) identifies the policy, economic, geo-  
21 graphic and marketplace factors that inhibit the  
22 availability of quality, affordable air transpor-  
23 tation services to small communities; and

24 “(C) provides policy recommendations to  
25 address the policy, economic, geographic and

1 marketplace factors inhibiting the availability of  
2 quality, affordable air transportation services to  
3 small communities.”.

4 **SEC. 5. COMMUNITY-CARRIER AIR SERVICE PROGRAM.**

5 (a) IN GENERAL.—Subchapter II of chapter 417 is  
6 amended by adding at the end thereof the following:

7 **“§ 41743. Air service program for small communities**

8 “(a) COMMUNITIES PROGRAM.—Under advisory  
9 guidelines prescribed by the Secretary of Transportation,  
10 a small community or a consortia of small communities  
11 or a State may develop an assessment of its air service  
12 requirements, in such form as the program director des-  
13 ignated by the Secretary under section 102(g) may re-  
14 quire, and submit the assessment and service proposal to  
15 the program director.

16 “(b) SELECTION OF PARTICIPANTS.—In selecting  
17 community programs for participation in the communities  
18 program under section (a), the program director shall  
19 apply criteria, including geographical diversity and the  
20 presentation of unique circumstances, that will dem-  
21 onstrate the feasibility of the program. For purposes of  
22 this subsection, the application of geographical diversity  
23 criteria means criteria that—

24 “(1) will provide the development of a national  
25 air transportation system; and

1           “(2) will involve the participation of commu-  
2           nities in all regions of the country.

3           “(c) CARRIERS PROGRAM.—The program director  
4 shall invite part 121 air carriers and regional/commuter  
5 carriers (as such terms are defined in section 41715(d)  
6 of this title) to offer service proposals in response to, or  
7 in conjunction with, community aircraft service assess-  
8 ments submitted to the office under subsection (a). A serv-  
9 ice proposal under this paragraph shall include—

10           “(1) an assessment of potential daily passenger  
11           traffic, revenues, and costs necessary for the carrier  
12           to offer the service;

13           “(2) a forecast of the minimum percentage of  
14           that traffic the carrier would require the community  
15           to garner in order for the carrier to start up and  
16           maintain the service; and

17           “(3) the costs and benefits of providing jet serv-  
18           ice by regional or other jet aircraft.

19           “(d) PROGRAM SUPPORT FUNCTION.—The program  
20 director shall work with small communities and air car-  
21 riers, taking into account their proposals and needs, to  
22 facilitate the initiation of service. The program director—

23           “(1) may work with communities to develop in-  
24           novative means and incentives for the initiation of  
25           service;

1           “(2) may obligate funds authorized under sec-  
2           tion 6 of the Air Service Restoration Act to carry  
3           out this section;

4           “(3) shall continue to work with both the car-  
5           riers and the communities to develop a combination  
6           of community incentives and carrier service levels  
7           that—

8                   “(A) are acceptable to communities and  
9                   carriers; and

10                   “(B) do not conflict with other Federal or  
11                   State programs to facilitate air transportation  
12                   to the communities;

13           “(4) designate an airport in the program as an  
14           Air Service Development Zone and work with the  
15           community on means to attract business to the area  
16           surrounding the airport, to develop land use options  
17           for the area, and provide data, working with the De-  
18           partment of Commerce and other agencies;

19           “(5) take such other action under this chapter  
20           as may be appropriate.

21           “(e) LIMITATIONS.—

22                   “(1) COMMUNITY SUPPORT.—The program di-  
23                   rector may not provide financial assistance under  
24                   subsection (c)(2) to any community unless the pro-  
25                   gram director determines that—

1           “(A) a public-private partnership exists at  
2           the community level to carry out the commu-  
3           nity’s proposal;

4           “(B) the community will make a substan-  
5           tial financial contribution that is appropriate  
6           for that community’s resources, but of not less  
7           than 25 percent of the cost of the project in  
8           any event;

9           “(C) the community has established an  
10          open process for soliciting air service proposals;  
11          and

12          “(D) the community will accord similar  
13          benefits to air carriers that are similarly situ-  
14          ated.

15          “(2) AMOUNT.—The program director may not  
16          obligate more than \$100,000,000 of the amounts au-  
17          thorized under section 6 of the Air Service Restora-  
18          tion Act over the 5 years of the program.

19          “(3) NUMBER OF PARTICIPANTS.—The pro-  
20          gram established under subsection (a) shall not in-  
21          volve more than 40 communities or consortia of  
22          communities.

23          “(f) REPORT.—The program director shall report  
24          through the Secretary to the Congress annually on the  
25          program made under this section during the preceding

1 year in expanding commercial aviation service to smaller  
2 communities.

3 **“§ 41744. Pilot program project authority**

4 “(a) IN GENERAL.—The program director designated  
5 by the Secretary of Transportation under section  
6 102(g)(1) shall establish a 5-year pilot program—

7 “(1) to assist communities and States with in-  
8 adequate access to the national transportation sys-  
9 tem to improve their access to that system; and

10 “(2) to facilitate better air service link-ups to  
11 support the improved access.

12 “(b) PROJECT AUTHORITY.—Under the pilot pro-  
13 gram established pursuant to subsection (a), the program  
14 director may—

15 “(1) out of amounts authorized under section 6  
16 of the Air Service Restoration Act, provide financial  
17 assistance by way of grants to small communities or  
18 consortia of small communities under section 41743  
19 of up to \$500,000 per year; and

20 “(2) take such other action as may be appro-  
21 priate.

22 “(c) OTHER ACTION.—Under the pilot program es-  
23 tablished pursuant to subsection (a), the program director  
24 may facilitate service by—

1           “(1) working with airports and air carriers to  
2           ensure that appropriate facilities are made available  
3           at essential airports;

4           “(2) collecting data on air carrier service to  
5           small communities; and

6           “(3) providing policy recommendations to the  
7           Secretary to stimulate air service and competition to  
8           small communities.

9           “(d) **ADDITIONAL ACTION.**—Under the pilot program  
10          established pursuant to subsection (a), the Secretary shall  
11          work with air carriers providing service to participating  
12          communities and major air carriers serving large hub air-  
13          ports (as defined in section 41731(a)(3)) to facilitate joint  
14          fare arrangements consistent with normal industry prac-  
15          tice.

16          **“§ 41745. Assistance to communities for service**

17          “(a) **IN GENERAL.**—Financial assistance provided  
18          under section 41743 during any fiscal year as part of the  
19          pilot program established under section 41744(a) shall be  
20          implemented for not more than—

21                 “(1) 4 communities within any State at any  
22                 given time; and

23                 “(2) 40 communities in the entire program at  
24                 any time.

1 For purposes of this subsection, a consortium of commu-  
2 nities shall be related as a single community.

3 “(b) ELIGIBILITY.—In order to participate in a pilot  
4 project under this subchapter, a State community, or  
5 group of communities shall apply to the Secretary in such  
6 form and at such time, and shall supply such information,  
7 as the Secretary may require, and shall demonstrate to  
8 the satisfaction of the Secretary that—

9 “(1) the applicant has an identifiable need for  
10 access, or improved access, to the national air trans-  
11 portation system that would benefit the public;

12 “(2) the pilot project will provide material bene-  
13 fits to a broad section of the travelling public, busi-  
14 nesses, educational institutions, and other enter-  
15 prises whose access to the national air transpor-  
16 tation system is limited;

17 “(3) the pilot project will not impede competi-  
18 tion; and

19 “(4) the applicant has established, or will estab-  
20 lish, public-private partnerships in connection with  
21 the pilot project to facilitate service to the public.

22 “(c) COORDINATION WITH OTHER PROVISIONS OF  
23 SUBCHAPTER.—The Secretary shall carry out the 5-year  
24 pilot program authorized by this subchapter in such a  
25 manner as to complement action taken under the other

1 provisions of this subchapter. To the extent the Secretary  
2 determines to be appropriate, the Secretary may adopt cri-  
3 teria for implementation of the 5-year pilot program that  
4 are the same as, or similar to, the criteria developed under  
5 the preceding sections of this subchapter for determining  
6 which airports are eligible under those sections. The Sec-  
7 retary shall also, to the extent possible, provide incentives  
8 where no direct, viable, and feasible alternative service ex-  
9 ists, taking into account geographical diversity and appro-  
10 priate market definitions.

11 “(d) MAXIMIZATION OF PARTICIPATION.—The Sec-  
12 retary shall structure the program established pursuant  
13 to section 41744(a) in a way designed to—

14 “(1) permit the participation of the maximum  
15 feasible number of communities and States over a 5-  
16 year period by limiting the number of years of par-  
17 ticipation or otherwise; and

18 “(2) obtain the greatest possible leverage from  
19 the financial resources available to the Secretary and  
20 the applicant by—

21 “(A) progressively decreasing, on a project-  
22 by-project basis, any Federal financial incen-  
23 tives provided under this chapter over the 5-  
24 year period; and

1           “(B) terminating as early as feasible Fed-  
 2           eral financial incentives for any project deter-  
 3           mined by the Secretary after its implementation  
 4           to be—

5                   “(i) viable without further support  
 6                   under this subchapter; or

7                   “(ii) failing to meet the purposes of  
 8                   this chapter or criteria established by the  
 9                   Secretary under the pilot program.

10          “(e) SUCCESS BONUS.—If Federal financial incen-  
 11          tives to a community are terminated under subsection  
 12          (d)(2)(B) because of the success of the program in that  
 13          community, then that community may receive a one-time  
 14          incentive grant to ensure that continued success of that  
 15          program.

16          “(f) PROGRAM TO TERMINATE IN 5 YEARS.—No new  
 17          financial assistance may be provided under this subsection  
 18          chapter for any fiscal year beginning more than 5 years  
 19          after the date of enactment of the Air Service Restoration  
 20          Act.

21          “§ 41746 **Additional authority**

22          ““In carrying out this chapter, the Secretary—

23                   “(1) may provide assistance to State and com-  
 24                   munities in the design and application phase of any

1 project under this chapter, and oversee the imple-  
2 mentation of any such project;

3 “(2) may assist States and communities in put-  
4 ting together projects under this chapter to utilize  
5 private sector resources, other Federal resources, or  
6 a combination of public and private resources;

7 “(3) may accord priority to service by jet air-  
8 craft;

9 “(4) take such action as may be necessary to  
10 ensure that financial resources, facilities, and admin-  
11 istrative arrangements made under this chapter are  
12 used to carry out the purposes of the Air Service  
13 Restoration Act; and

14 “(5) shall work with the Federal Aviation Ad-  
15 ministration on airport and air traffic control needs  
16 of communities in the program.

17 **“§ 41747. Air traffic control services pilot program**

18 “(a) IN GENERAL.—To further facilitate the use of,  
19 and improve the safety at, small airports, the Adminis-  
20 trator of the Federal Aviation Administration shall estab-  
21 lish a pilot program to contract for Level I air traffic con-  
22 trol services at 20 facilities not eligible for participation  
23 in the Federal Contract Tower Program.

1       “(b) PROGRAM COMPONENTS.—In carrying out the  
2 pilot program established under subsection (a), the Ad-  
3 ministrator may—

4           “(1) utilize current, actual, site-specific data,  
5 forecast estimates, or airport system plan data pro-  
6 vided by a facility owner or operator;

7           “(2) take into consideration unique aviation  
8 safety, weather, strategic national interest, disaster  
9 relief, medical and other emergency management re-  
10 lief services, status of regional airline service, and  
11 related factors at the facility;

12           “(3) approve for participation any facility will-  
13 ing to fund a pro rata share of the operating costs  
14 used by the Federal Aviation Administration to cal-  
15 culate, and, as necessary, a 1:1 benefit-to-cost ratio,  
16 as required for eligibility under the Federal Contract  
17 Tower Program; and

18           “(4) approve for participation no more than 3  
19 facilities willing to fund a pro rata share of con-  
20 struction costs for an air traffic control tower so as  
21 to achieve, at a minimum, a 1:1 benefit-to-cost ratio,  
22 as required for eligibility under the Federal Contract  
23 Tower Program, and for each of such facilities the  
24 Federal share of construction costs does not exceed  
25 \$1,000,000.

1       “(c) REPORT.—One year before the pilot program es-  
 2       tablished under subsection (a) terminates, the Adminis-  
 3       trator shall report to the Congress on the effectiveness of  
 4       the program, with particular emphasis on the safety and  
 5       economic benefits provided to program participants and  
 6       the national air transportation system.”.

7       (b) CONFORMING AMENDMENT.—The chapter analy-  
 8       sis for subchapter II of chapter 417 is amended by insert-  
 9       ing after the item relating to section 41742 the following:

“41743. Air service program for small communities.

“41744. Pilot program project authority.

“41745. Assistance to communities for service.

“41746. Additional authority.

“41747. Air traffic control services pilot program.”.

10       (c) WAIVER OF LOCAL CONTRIBUTION.—Section  
 11       41736(b) is amended by inserting after paragraph (4) the  
 12       following:

13       “Paragraph (4) does not apply to any community ap-  
 14       proved for service under this section during the period be-  
 15       ginning October 1, 1991, and ending December 31,  
 16       1997.”.

17       (d) AUTHORIZATION OF APPROPRIATIONS.—There  
 18       are authorized to be appropriated to the Secretary of  
 19       Transportation such sums as may be necessary to carry  
 20       out section 41747 of title 49, United States Code.

21       **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

22       To carry out sections 41743 through 41746 of title  
 23       49, United States Code, for the 4 fiscal-year period begin-

1 ning with fiscal year 2000 there are authorized to be ap-  
2 propriated to the Secretary of Transportation not more  
3 than \$100,000,000.

4 **SEC. 7. MARKETING PRACTICES.**

5 Section 41712 is amended by—

6 (1) inserting “(a) IN GENERAL.—” before  
7 “On”; and

8 (2) adding at the end thereof the following:

9 “(b) MARKETING PRACTICES THAT ADVERSELY AF-  
10 FECT SERVICE TO SMALL OR MEDIUM COMMUNITIES.—

11 Within 180 days after the date of enactment of the Air  
12 Service Restoration Act, the Secretary shall review the  
13 marketing practices of air carriers that may inhibit the  
14 availability to quality, affordable air transportation serv-  
15 ices to small and medium-sized communities, including—

16 “(1) marketing arrangements between airlines  
17 and travel agents;

18 “(2) code-sharing partnerships;

19 “(3) computer reservation system displays;

20 “(4) gate arrangements at airports;

21 “(5) exclusive dealings arrangements; and

22 “(6) any other marketing practice that may  
23 have the same effect.

24 “(c) REGULATIONS.—If the Secretary finds, after  
25 conducting the review required by subsection (b), that

1 marketing practices inhibit the availability of such services  
 2 to such communities, then, after public notice and an op-  
 3 portunity for comment, the Secretary shall promulgate  
 4 regulations that address the problem.”.

5 **SEC. 8. NONDISCRIMINATORY INTERLINE INTERCONNEC-**  
 6 **TION REQUIREMENTS.**

7 (a) IN GENERAL.—Subchapter I of chapter 417 is  
 8 amended by adding at the end thereof the following:

9 **“§ 41717. Interline agreements for domestic transpor-**  
 10 **tation**

11 “(a) NONDISCRIMINATORY REQUIREMENTS.—If a  
 12 major air carrier that provides air service to an essential  
 13 airport facility has any agreement involving ticketing, bag-  
 14 gage and ground handling, and terminal and gate access  
 15 with another carrier, it shall provide the same services to  
 16 any requesting air carrier that offers service to a commu-  
 17 nity selected for participation in the program under sec-  
 18 tion 41743 under similar terms and conditions and on a  
 19 nondiscriminatory basis within 30 days after receiving the  
 20 request, as long as the requesting air carrier meets such  
 21 safety, service, financial, and maintenance requirements,  
 22 if any, as the Secretary may by regulation establish con-  
 23 sistent with public convenience and necessity. The Sec-  
 24 retary must review any proposed agreement to determine  
 25 if the requesting carrier meets operational requirements

1 consistent with the rules, procedures, and policies of the  
2 major carrier. This agreement may be terminated by ei-  
3 ther party in the event of failure to meet the standards  
4 and conditions outlined in the agreement.”.

5 “(b) DEFINITIONS.—In this section the term ‘essen-  
6 tial airport facility’ means a large hub airport (as defined  
7 in section 41731(a)(3)) in the contiguous 48 States in  
8 which one carrier has more than 50 percent of such air-  
9 port’s total annual enplanements.”.

10 (b) CLERICAL AMENDMENTS.—The chapter analysis  
11 for subchapter I of chapter 417 is amended by adding at  
12 the end thereof the following:

“41717. Interline agreements for domestic transportation.”.

○