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WRIGHT AMENDMENT REFORM ACT

JULY 26, 2006.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Transportation and Infrastructure, submitted the following

REPORT

[To accompany H.R. 5830]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 5830) to amend section 29 of the International Air Transportation Competition Act of 1979 relating to air transportation to and from Love Field, Texas, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

The Wright Amendment Reform Act (H.R. 5830) would implement a compromise agreement reached by the City of Dallas, Texas; the City of Fort Worth, Texas; American Airlines; Southwest Airlines; and Dallas-Fort Worth International Airport (DFW) on July 11, 2006, regarding air service at Dallas Love Field.

BACKGROUND AND NEED FOR THE LEGISLATION

THE WRIGHT AMENDMENT

After decades of deliberation and at the strong urging of the U.S. Civil Aeronautics Board (CAB) and the Federal Aviation Administration (FAA), the City of Dallas and the City of Fort Worth agreed to construct a new regional airport, DFW, in the early 1960s. Shortly thereafter, in 1965, the cities formed a regional airport board and adopted a Bond Ordinance to finance the construction of DFW.

The central component of the Bond Ordinance was that Dallas and Fort Worth agreed to phase out passenger air service at their existing airports, including Dallas Love Field. With the exception

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of Southwest Airlines, which began operating solely intrastate service from Love Field in 1971, the interstate carriers using the Dallas- and Fort Worth-area airports agreed to move their operations to DFW, which opened in 1973.

Southwest Airlines' decision to stay at Love Field led to a decade of protracted litigation between the airline and cities. In several related decisions, the courts held that the Bond Ordinance provisions did not apply to Southwest because the air carrier only served intrastate markets. As a result, Dallas, Fort Worth, and DFW were unable to fulfill the Bond Ordinance objective of consolidating passenger service at DFW, and Southwest continued to offer intrastate service from Love Field.

Shortly after Congress deregulated the airline industry in 1978, Southwest applied for the necessary regulatory approvals to provide interstate service between Love Field and New Orleans, Louisiana, in contravention of the intention of the Cities as expressed in the Bond Ordinance. This action threatened yet another round of litigation regarding air service at Love Field.

In order to put an end to the dispute and resolve all legal challenges, Texas Congressman Jim Wright negotiated a settlement agreement among the interested parties. To make this unique and unprecedented locally-crafted agreement binding, Congressman Wright included language codifying this agreement in section 29 of the International Air Transportation Competition Act of 1979 (Pub. L. 96–192), which became commonly known as the "Wright Amendment". The Wright Amendment allowed Love Field to stay open instead of being closed down to commercial aviation as originally intended, but limited direct commercial air service out of Love Field to points in Texas and the four adjacent states—New Mexico, Louisiana, Arkansas, and Oklahoma.

In addition, the Wright Amendment permitted 10 interstate charter flights each month to and from Love Field and allowed flights by "commuter airlines operating aircraft with a passenger capacity of 56 passengers or less".

Legislative history indicates that the provision was intended to provide "a fair and equitable settlement" and was agreed to by representatives of "Southwest Airlines, the City of Dallas, the City of Fort Worth, DFW Airport Authority, and related constituent groups."

The conferees, at that time, also attempted to make clear that the Wright Amendment was to supersede any Federal Aviation Act provision that might have, or could in the future, be construed to permit interstate commercial service from Love Field.

In addition, those same conferees indicated that the Love Field situation was unique and that the compromise offered by the Wright Amendment was not to be construed "as a harbinger of any similar proposals for any other airport or area."

Since 1979, Congress has made two legislative changes to the Wright Amendment. The first change was an amendment to the Fiscal Year 1998 transportation appropriations act (Pub. L. 105–66) offered by Senator Richard Shelby. The Shelby amendment allowed direct commercial air service from Love Field to an additional three states—Alabama, Kansas and Mississippi—and unrestricted flights on aircraft with less than 56 seats. The second change was an amendment to the Fiscal Year 2006 transportation

appropriations act (Pub. L. 109–115) offered by Senator Christopher Bond. The Bond amendment allowed direct commercial air service from Love Field to Missouri.

DALLAS-FORT WORTH AVIATION MARKET

The two largest airports in the Dallas-Fort Worth region, DFW and Love Field, rank 3rd and 56th, respectively, among U.S. airports in total passenger enplanements. Each airport can claim to be the home of one of the nation's 10 largest airlines, with American based at DFW and Southwest based at Love Field.

Between April 2005 and March 2006, the most recent period for which data is available from the Bureau of Transportation Statistics (BTS), DFW enplaned 51.5 million passengers, while Love Field enplaned about 6 million passengers.

According to the BTS, American is the nation's largest airline, controlling a 15-percent-share of the U.S. market. Southwest, which controls about 10.9 percent of the U.S. market, is the nation's most profitable airline and one of a very small number of airlines that has remained profitable since the terrorist attacks of September 11, 2001.

American is the dominant air carrier at DFW. According to the BTS, between April 2005 and March 2006, approximately 85 percent of all passengers at DFW boarded American flights. Delta Airlines accounts for about 2.78 percent and the next largest air carrier share is United Airlines at about 2 percent.

Southwest is the dominant air carrier at Love Field. According to the BTS, between April 2005 and March 2006, Southwest had a 95 percent market share at Love Field. Continental Express accounted for roughly 4.5 percent of the passengers. American, which leases three gates at the main terminal, accounted for 0.5 percent of the passengers. Most of the airline traffic in the Dallas-Fort Worth market is controlled by these three air carriers.

LOCAL COMMUNITIES BROKER WRIGHT AMENDMENT COMPROMISE AGREEMENT

In light of decades of litigation and contentious debate among local communities, airports and airlines over the establishment and development of DFW, the subsequent use of Love Field, and proposed legislative changes to the Wright Amendment, earlier this year, a group of Congressional leaders urged the local communities to work toward a consensus on a proposal that would eliminate Wright Amendment restrictions on air service at Love Field.

In order to reach a consensus, the local communities sought diligently to gain the support of the dominant carriers at Love Field and DFW, Southwest Airlines and American Airlines, respectively. The local communities approached each carrier separately and proposed a number of potential concessions designed to facilitate a compromise proposal that would be agreeable to the other carrier and the local communities.

After months of deliberations between the local communities and each air carrier, the local communities successfully persuaded Southwest and American to agree to concessions that ultimately proved to be agreeable to the other carrier and the local communities. Consequently, a consensus proposal was developed to effec-

tively repeal the Wright Amendment. This consensus is reflected in an agreement dated July 11, 2006 ("July 11 agreement").

NEED FOR H.R. 5830

Given the unique history of the development of DFW and the unprecedented, locally-initiated agreement that was codified by Congress in the Wright Amendment over a quarter-century ago, the Committee believes that H.R. 5830 is necessary and appropriate to implement the July 11 agreement and permanently end decades of litigation, uncertainty, and acrimony by the parties. In the spirit of the Wright Amendment, H.R. 5830 is crafted narrowly to codify only those aspects of the July 11 agreement that require changes to federal law.

In addition to assuring the end of litigation and uncertainty over the scope of commercial air service in the Dallas-Fort Worth market, the Committee believes that the July 11 agreement will benefit the traveling public by allowing additional markets to be served from the Dallas-Fort Worth area. On July 11, the FAA testified before the Aviation Subcommittee on the impact of repealing the Wright Amendment on aviation safety and the flow of air traffic in the Dallas-Fort Worth area. In its testimony, the FAA stated that it: (1) will never compromise its safety standards to accommodate increased demand at Love Field or any other U.S. airport; and (2) does not expect that the efficient use of airspace in the Dallas-Forth Worth region will be compromised if the Wright Amendment is repealed.

To ensure that H.R. 5830 will not compromise air safety or impede the flow of air traffic, Section 8 states that the legislation will not take effect until the FAA notifies Congress that increased aviation operations in Dallas-Fort Worth airspace resulting from repeal of the Wright Amendment will not have an adverse impact on safety and airspace usage in the Dallas-Fort Worth airspace. The Committee expects that FAA will comply with this one-time notification requirement as soon as practicable.

Section 2 would expand service opportunities from Love Field by repealing permanently all existing Wright Amendment restrictions eight years after the date of enactment, and allowing immediately "through-ticketing" from Love Field, under which incumbent carriers could market and provide connecting commercial air service from Love Field to cities outside the Wright Amendment's geographic area. In addition, section 5 of H.R. 5830 sets forth procedures to ensure that non-incumbent air carriers seeking to provide service out of Love Field are accommodated, and ensures that existing Federal Aviation Administration oversight of such procedures is continued.

At the same time, section 5 ensures that implementation of the July 11 agreement will not adversely affect communities: (1) that are currently receiving air service from Love Field or DFW; (2) that wish to secure access to Love Field or DFW in the future; or (3) within an 80-mile radius of Love Field in seeking to develop their airport infrastructure, obtain Federal grants or other Federal funding, obtain Part 139 certification or meet other Federal requirements to obtain commercial air service. Moreover, it is the intent of the Committee that H.R. 5830 would not apply to any amend-

ment or modification of the July 11 agreement executed by the parties after July 11, 2006.

Section 5 also expresses the understanding of the Committee that costs associated with the reduction of the number of gates available for service at Love Field to 20 gates are permissible airport costs, and such costs will not be considered as revenue diversion under title 49 of the United States Code. It is the intent of the Committee that no Federal funds or passenger facility charges may be used to remove gates at the Lemmon Avenue facility at Love Field.

While the Committee has decided to codify the key components of the locally-initiated and locally-approved July 11 agreement in H.R. 5830, it recognizes that Love Field is part of the National Airspace System (NAS).

Consequently, the Committee believes that DFW and the rest of the parties to the July 11 agreement should be subject to all other federal laws and regulations. Accordingly, section 5 of the bill ensures that the parties continue to be obligated under the programs of the U.S. Department of Transportation (DOT), FAA, Department of Homeland Security (DHS) and Transportation Security Administration (TSA) relating to aviation safety and security, labor, environment, national historic preservation, civil rights, small business concerns (including disadvantaged business enterprise), veteran's preference, disability access, and revenue diversion. The Committee expects that non-incumbent carriers will be given the same opportunities to start air service at Love Field as such carriers would be afforded at other U.S. airports, and that FAA oversight of such matters at Love Field would continue under H.R. 5830.

SUMMARY OF THE LEGISLATION

Sec. 1.—Short title

This Act may be cited as the "Wright Amendment Reform Act."

Sec. 2.—Modification of provisions regarding flights to and from Love Field, Texas

Subsection (a) amends section 29 of the International Air Transportation Competition Act of 1979 (the "Wright Amendment") to allow air carriers serving Love Field to offer for sale and provide through service and ticketing to or from Love Field and any United States or foreign destination, through any point within Texas, New Mexico, Oklahoma, Kansas, Arkansas, Louisiana, Mississippi, Missouri and Alabama.

Subsection (b) repeals section 29 of the International Air Transportation Competition Act of 1979 on the date that is eight years after the date of enactment of this Act.

Sec. 3.—Treatment of international nonstop flights to and from Love Field, Texas

This section prohibits nonstop commercial air service between Love Field and foreign destination, and prohibits the Federal Government from designating Love Field as an initial point of entry into the United States or a last point of departure from the United States.

Sec. 4.—Charter flights at Love Field, Texas

Subsection (a) limits charter flights at Love Field to destinations within the United States.

Subsection (b) limits charter flights at Love Field beyond the States of Texas, New Mexico, Oklahoma, Kansas, Arkansas, Louisiana, Mississippi, Missouri and Alabama to no more than 10 per month per air carrier.

Subsection (c) requires that charter flights operated by air carriers leasing gates at Love Field depart from and arrive at a leased gate.

Sec. 5.—Agreement of the parties

Subsection (a) provides that any action taken by the parties that is reasonably necessary to implement the provisions of the July 11 agreement, and the agreement itself, is deemed to comply in all respects with the parties obligations under title 49, United States Code, and any competition laws.

Subsection (b) requires the City of Dallas to reduce, as soon as practicable, the number of gates available for passenger air service at Love Field to no more than 20 gates. Provides that costs associated with reduction of gates are permissible airport costs and not to be considered revenue diversion.

Subsection (c) assures that nothing in the July 11 agreement or the legislation affects general aviation service at Love Field.

Subsection (d) provides that no action is to be taken by DOT or FAA that is inconsistent with the local agreement or that challenges its legality.

Subsection (e) clarifies the scope of legal protection afforded under Section 5(a). The legislation is not to be construed: (1) as limiting the obligation of the parties under DOT and FAA programs relating to aviation safety, labor, environmental, national historic preservation, civil rights, small business concerns (including disadvantaged business enterprise), veteran's preference, disability access, and revenue diversion, or as limiting the authority of DOT and FAA to enforce the obligation of the parties under such programs; (2) as limiting the obligations of the parties under security programs of the Department of Homeland Security and Transportation Security Administration at Love Field; and (3) as authorizing the parties to offer marketing incentives that are in violation of federal law; and (4) with respect to the 20 gates remaining at Love Field, as limiting the authority of the FAA or any other federal agency to enforce legal obligations to make facilities at the airport available on a reasonable and nondiscriminatory basis to air carriers seeking to use such facilities.

Sec. 6.—Department of transportation review

This section provides DOT with exclusive authority to review actions taken under the legislation and the local agreement, and actions taken to implement the agreement, with respect to all provisions of title 49, United States Code, and with respect to any Federal competition laws not included in title 49, United States Code.

Sec. 7.—Applicability

This section limits applicability of the legislation to actions taken by the parties to the July 11 agreement at Love Field and any air-

port owned or operated by the City of Dallas or the City of Fort Worth.

Sec. 8.—Effective date

This section provides that the legislation takes effect on the date FAA notifies Congress that aviation operations in the airspace serving Love Field and the Dallas-Fort Worth area can be accommodated in full compliance with FAA safety standards and without adverse effect on use of airspace in the area. The Committee expects that FAA will complete the evaluations required for this one-time notification as soon as practicable.

LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

H.R. 5830 was introduced by Chairman Don Young, Ranking Member James Oberstar, Aviation Subcommittee Chairman John Mica, Rep. Eddie Bernice Johnson, Rep. Kenny Marchant, Rep. Kay Granger, Rep. Joe Barton, Rep. Michael Burgess, Rep. Chet Edwards, Rep. Louie Gohmert, Rep. Ralph Hall, Rep. Sam Johnson, and Rep. Pete Sessions on July 18, 2006. It was referred to the Committee on Transportation and Infrastructure. A full committee mark-up was held on July 19, 2006, where the legislation was ordered reported to the House by voice vote.

ROLLCALL VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each rollcall vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no rollcall votes during consideration of the bill.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

COST OF LEGISLATION

Clause 3(c)2 of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objective of this legislation are to improve air service in the Dallas-Fort Worth region.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 5830 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 24, 2006.

Hon. DON YOUNG,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5830, the Wright Amendment Reform Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

ROBERT A. SUNSHINE
(For Donald B. Marron, Acting Director).

Enclosure.

H.R. 5830—Wright Amendment Reform Act

H.R. 5830 would amend provisions of federal law that set certain restrictions on commercial air transportation to and from Love Field, an airport located near the cities of Dallas and Forth Worth, Texas. Based on information from the Department of Transportation, CBO estimates that enacting H.R. 5830 would have no significant impact on the federal budget. The bill would not affect direct spending or revenues.

H.R. 5830 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. The bill would make the necessary changes in federal law to implement an agreement among the cities of Dallas and Forth Worth and American and Southwest Airlines. Any costs to those cities or the state of Texas would be incurred voluntarily.

On July 21, 2006, CBO transmitted a cost estimate for S. 3661, a bill to amend section 29 of the International Air Transportation Competition Act of 1979 relating to air transportation to and from Love Field, Texas, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on July 19, 2006. The two bills are similar, and our cost estimates are the same.

The CBO staff contact for this estimate is Megan Carroll. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursu-

ant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Pub. L. 104–4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local or tribal law. The Committee states that H.R. 5830 does not preempt any State, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Pub. L. 104–1).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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 matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNATIONAL AIR TRANSPORTATION COMPETITION ACT OF 1979

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SEC. 29. (a) * * *

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(c) Subsections (a) and (b) shall not apply with respect to, and it is found consistent with the public convenience and necessity to authorize, transportation of individuals, by air, on a flight between Love Field, Texas, and one or more points within the States of Louisiana, Arkansas, Oklahoma, New Mexico, Kansas, Alabama, Mississippi, Missouri, and Texas by an air [carrier, if (1) such air carrier does not offer or provide any through service or ticketing with another air carrier or foreign air carrier, and (2) such air carrier does not offer for sale transportation to or from, and the flight or aircraft does not serve, any point which is outside any such State. Nothing in this subsection shall be construed to give authority not otherwise provided by law to the Secretary of Transportation, the Civil Aeronautics Board, any other officer or employee of the United States, or any other person.] *carrier. Air carriers and, with*

regard to foreign air transportation, foreign air carriers, may offer for sale and provide through service and ticketing to or from Love Field, Texas, and any United States or foreign destination through any point within Texas, New Mexico, Oklahoma, Kansas, Arkansas, Louisiana, Mississippi, Missouri, and Alabama.

* * * * * * *

[Effective on the last day of the 8 year period beginning on the date of the enactment of this Act (Wright Amendment Reform Act), section 29 of the International Air Transportation Competition Act of 1979, as amended by section 2(a) of such Act, is repealed, shown below.]

[SEC. 29. (a) Except as provided in subsection (c), notwithstanding any other provision of law, neither the Secretary of Transportation, the Civil Aeronautics Board, nor any other officer or employee of the United States shall issue, reissue, amend, revise, or otherwise modify (either by action or inaction) any certificate or other authority to permit or otherwise authorize any person to provide the transportation of individuals, by air, as a common carrier for compensation or hire between Love Field, Texas, and one or more points outside the State of Texas, except (1) charter air transportation not to exceed ten flights per month, and (2) air transportation provided by commuter airlines operating aircraft with a passenger capacity of 56 passengers or less.

[(b) Except as provided in subsections (a) and (c), notwithstanding any other provision of law, or any certificate or other authority heretofore or hereafter issued thereunder, no person shall provide or offer to provide the transportation of individuals, by air, for compensation or hire as a common carrier between Love Field, Texas, and one or more points outside the State of Texas, except that a person providing service to a point outside of Texas from Love Field on November 1, 1979, may continue to provide service to such a point.

[(c) Subsections (a) and (b) shall not apply with respect to, and it is found consistent with the public convenience and necessity to authorize, transportation of individuals, by air, on a flight between Love Field, Texas, and one or more points within the States of Louisiana, Arkansas, Oklahoma, New Mexico, Kansas, Alabama, Mississippi, Missouri, and Texas by an air carrier. Air carriers and, with regard to foreign air transportation, foreign air carriers, may offer for sale and provide through service and ticketing to or from Love Field, Texas, and any United States or foreign destination through any point within Texas, New Mexico, Oklahoma, Kansas, Arkansas, Louisiana, Mississippi, Missouri, and Alabama.

[(d) This section shall not take effect if enacted after the enactment of the Aviation Safety and Noise Abatement Act of 1979.]

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