

Note: This listing and attachments were supplied by the RDU Airport Staff (we have scanned into 3 documents) ^{September 16, 2016}

Information about Lake Crabtree and Surrounding Areas

* In this PDF document

Documents:

- * 1. Enabling Legislation
 - ** 2. Property Purchase Deeds of Lake Crabtree Park and surrounding area into 4 governing bodies (1761/25, 1171/404, 2054/313, 2070/69, 2138/643, 2416/433, 2489/689, 3295/80)
 - *** 3. Memorandum of Agreement (B2738, P859)
 - *** 4. Deed of Easement (B2767, P430)
 - *** 5. Lake Crabtree Lease with FATS/TORC Parcel Lease Amendments
 - * 6. Grant Assurances
 - * 7. 1999 Federal Register Policy and Procedures Concerning the Use of Airport Revenue (as highlighted by Dr. Spooner on 9/1/16)
 - * 8. 2009 Airport Compliance Manual, Chapter 17 Self-Sustainability
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- * 1. Enabling Legislation
 - * a. First passed in 1939, amended multiple times, most recently in 1998
 - * b. Formed the Raleigh-Durham Airport Authority Board as a group with equal representation of Durham and Wake Counties and the Cities of Raleigh and Durham
 - * c. Authorizes the Authority Board "to control, lease, maintain, improve, operate, and regulate the joint airport or landing field. It shall have complete authority over any airport or landing field jointly acquired by the several governmental bodies represented on said board"
 - * d. No taxing authority
 - 2. Property Purchase Deeds
 - ** a. Parcels in and surrounding Lake Crabtree Park purchased in the 1960s and 1970s from various parties
 - ** b. Purchased with Authority funds
 - ** c. Titled to the 4 governing bodies (Wake County, Durham County, City of Raleigh, City of Durham)
 - *** 3. Memorandum of Agreement
 - a. Signed in 1979 in preparation (a condition precedent) to the Lake Crabtree Project
 - b. Addresses FAA compatibility concerns
 - c. Among other things, an acknowledgment that Lake Crabtree's recreational uses won't interfere and will be compatible with the "development and operation of Raleigh-Durham Airport at all times" and that "Wake County shall limit recreational development of the watershed properties to only those uses which do not have the potential for restricting future development, operation and maintenance of the airport" by following specific guidelines
 - d. Has a "Statement of Compatibility" and a promise that Wake County will provide certifications of the agreement if required for federal or state approval of proposed airport development, operation and/or maintenance plans
 - *** 4. Deed of Easement
 - a. Signed in 1979 by the Authority and the 4 governing bodies
 - b. Grantee is Wake County
 - c. A perpetual easement for the purposes of construction, operation and maintenance of a watershed improvement project

Dr. Spooner

d. References the requirement that any recreational facility will comply with the MOU

*** 5. Lake Crabtree Lease

- a. Signed in 1985 for a 40 year term for 33 acres (expires June 30, 2025 if not renewed) to be used for Lake Crabtree Park
- b. Included Wake County's construction of a water line, the Authority's use of the water line to serve the Airport, and a perpetual easement for the water line
- c. References MOU
- d. Amended in 1994 (and consecutively 4 additional times) to add an additional parcel (148 acres) for use by the FATS Mountain Bike Club (now TORC) for mountain biking and hiking trails; additional portion renews for 1 year terms; Amendment references MOU
- e. Terminable by either party with 45 days notice

* 6. Grant Assurances

- a. 39 promises made to the federal government in order to receive federal grants
- b. As an airport sponsor, each of the 4 governing bodies signs these grant assurances for each airport grant
- c. Grant Assurance 24 requires that the Authority charge fees and rentals that will make the airport as self-sustaining as possible
- d. Grant Assurance 25 requires that all airport revenue be spent on capital or operating costs of the airport that are directly and substantially related to the actual air transportation of passengers or property or for off-airport noise mitigation purposes

* 7. 1999 Federal Register Policy and Procedures Concerning the Use of Airport Revenue

a. Highlighted Section on pages 7710-7711

i. Summarizes comments made by airports and airlines regarding the ability to use property for community purposes at less than FMV

- 1. Airport trade organizations asked for more flexibility to be able to use airport property for community and charitable purposes
- 2. Airline trade organizations asked that airports have less flexibility in using airport property or community and charitable purposes

ii. Announced the Final Policy

- 1. Only property that is not potentially capable of producing substantial income and not needed for aeronautical use can be considered for community or charitable purposes
- 2. If community use is permitted, it should not preclude reuse of the property for airport purposes

iii. Says that the lease of property to an airport sponsor for community use must meet the requirement that it does not have revenue-producing potential

b. Highlighted section on pages 7720 and 7721

i. Restates the self-sustaining statutory requirement

ii. Airports can make property available for community purposes at less than FMV if:

- 1. It enhances public acceptance of the airport
- 2. Property is put to general a public use desired by the community
- 3. The public use doesn't adversely affect the airport

Query



- c. Remainder of section on page 7721
 - i. Continues the requirements for making property available for community purposes at less than FMV:
 - 1. Property involved must not be expected to produce more than *de minimus* revenue
 - 2. Property is not expected to be need for airport use in the foreseeable future
 - 3. Community use does not preclude its reuse for airport purposes
 - 4. Airport revenue cannot be used to support operating costs associated with the community use

- * 8. 2009 Airport Compliance Manual, Chapter 17
 - a. Page 17-5, Item 17.15
 - i. Restates the 1999 requirements, including the requirement that property used for community purposes at less than FMV must have minimal revenue potential

* The documents in this PDF file (not in the order of the listing above)

Note:

The material has been scanned and placed into 3 separate PDF documents. The *, **, and *** indicate these pdf.

* Federal Regulations and NC Legislation related to the RDU Airport Authority and RDU Airport

** Deeds for lands near Old Reedy Creek Road that were transferred to the RDU Airport (some are re: Lake Crabtree)

*** Agreements and easements related to Wake County's Lake Crabtree County Park

Federal Register

Tuesday
February 16, 1999

Part II

Department of Transportation

Federal Aviation Administration

Policy and Procedures Concerning the
Use of Airport Revenue; Notice

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

[Docket No. 28472]

Policy and Procedures Concerning the Use of Airport Revenue**AGENCY:** Federal Aviation Administration (FAA) DoT**ACTION:** Policy statement.

SUMMARY: This document announces the final publication of the Federal Aviation Administration policy on the use of airport revenue and maintenance of a self-sustaining rate structure by Federally-assisted airports. This statement of policy ("Final Policy") was required by the Federal Aviation Administration Authorization Act of 1994, and incorporates provisions of the Federal Aviation Administration Reauthorization Act of 1996. The Final Policy is also based on consideration of comments received on two notices of proposed policy issued by the FAA in February 1996, and December 1996, which were published in the **Federal Register** for public comment. The Final Policy describes the scope of airport revenue that is subject to the Federal requirements on airport revenue use and lists those requirements. The Final Policy also describes prohibited and permitted uses of airport revenue and outlines the FAA's enforcement policies and procedures. The Final Policy includes an outline of applicable record-keeping and reporting requirements for the use of airport revenue. Finally, the Final Policy includes the FAA's interpretation of the obligation of an airport sponsor to maintain a self-sustaining rate structure to the extent possible under the circumstances existing at each airport.

DATES: This Final Policy is effective February 16, 1999.

FOR FURTHER INFORMATION CONTACT: J. Kevin Kennedy, Airport Compliance Specialist, Airport Compliance Division, AAS-400, Office of Airport Safety and Standards, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8725; Barry L. Molar, Manager, Airport Compliance Division, AAS-400, Office of Airport Safety and Standards, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3446.

SUPPLEMENTARY INFORMATION:**Outline of Final Policy**

The Final Policy implements the statutory requirements that pertain to the use of airport revenue and the maintenance of an airport rate structure

that makes the airport as self-sustaining as possible. The Final Policy generally represents a continuation of basic FAA policy on airport revenue use that has been in effect since enactment of the Airport and Airway Improvement Act of 1982 (AAIA), currently codified at 49 U.S.C. § 47107(b). The FAA issued a comprehensive statement of this policy in the Notice of Proposed Policy dated February 26, 1996 (Proposed Policy), and addressed four particular issues in more detail in the Supplemental Notice of Proposed Policy dated December 18, 1996 (Supplemental Notice). The Final Policy includes provisions required by the Federal Aviation Administration Authorization Act of 1994, Public Law 103-305 (August 23, 1994) (FAA Authorization Act of 1994), and the Airport Revenue Protection Act of 1996, Title VIII of the Federal Aviation Administration Reauthorization Act of 1996, Public Law 104-264 (October 9, 1996), 110 Stat. 3269 (FAA Reauthorization Act of 1996). The Final Policy also includes changes adopted in response to comments on the Proposed Policy and Supplemental Notice.

The Final Policy contains nine sections. Section I is the Introduction, which explains the purpose for issuing the Final Policy and lists the statutory authorities under which the FAA is acting.

Section II, "Definitions," defines federal financial assistance, airport revenue and unlawful revenue diversion.

Section III, "Applicability of the Policy," describes the circumstances that make an airport owner or operator subject to this Final Policy.

Section IV, "Statutory Requirements for the Use of Airport Revenue," discusses the statutes that govern the use of airport revenue.

Section V, "Permitted Uses of Airport Revenue," describes categories and examples of uses of airport revenue that are considered to be permitted under 49 U.S.C. 47107(b). The discussion is not intended to be a complete list of all permitted uses but is intended to provide examples for practical guidance.

Section VI, "Prohibited Uses of Airport Revenue," describes categories and examples of uses of airport revenue not considered to be permitted under 49 U.S.C. 47107(b). The discussion is not intended to be a complete list of all prohibited uses but is intended to provide examples for practical guidance.

Section VII, "Policies Regarding Requirement for a Self-Sustaining Airport Rate Structure," describes policies regarding the requirement that

an airport maintain a self-sustaining airport rate structure. This is a new section of the policy, which provides more complete guidance on the subject than appeared in either the Proposed Policy or Supplemental Notice.

Section VIII, "Reporting and Audit Requirements," addresses the requirement for the filing of annual airport financial reports and the requirement for a review and opinion on airport revenue use in a single audit conducted under the Single Audit Act, 31 U.S.C. §§ 7501-7505.

Section IX, "Monitoring and Compliance," describes the FAA's activities for monitoring airport sponsor compliance with the revenue-use requirements and the requirement for a self-sustaining airport rate structure and the range of actions that the FAA may take to assure compliance with those requirements. Section IX also describes the sanctions available to FAA when a sponsor has failed to take corrective action to cure a violation of the revenue-use requirement.

Background*Governing Statutes*

Four statutes govern the use of airport revenue: the AAIA; the Airport and Airway Safety and Capacity Expansion Act of 1987; the FAA Authorization Act of 1994; and the FAA Reauthorization Act of 1996. These statutes are codified at 49 USC 47101, *et seq.*

Section 511(a)(12) of the AAIA, part of title V of the Tax Equity and Fiscal Responsibility Act, Public Law 97-248, (now codified at 49 USC 47107(b)) established the general requirement for use of airport revenue. As originally enacted, the revenue-use requirement directed public airport owners and operators to "use all revenues generated by the airport * * * for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly related to the actual transportation of passengers or property."

The original revenue-use requirement also contained an exception, or "grandfather" provision, permitting certain uses of airport revenue for non-airport purposes that predate the AAIA.

The Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100-223 (December 30, 1987), narrowed the permitted uses of airport revenues to nonairport facilities that are "substantially" as well as directly related to actual air transportation; required local taxes on aviation fuel enacted after December 30, 1987, to be

spent on the airport or, in the case of state taxes on aviation fuel, state aviation programs or noise mitigation on or off the airport; and slightly modified the grandfather provision.

The FAA Authorization Act of 1994 Act included three sections regarding airport revenue.

Section 110 added a policy statement to Title 49, Chapter 471, "Airport Development," concerning the preexisting requirement that airports be as self-sustaining as possible, 49 USC § 47101(a)(13).

Section 111 added a new sponsor assurance requiring airport owners or operators to submit to the Secretary and to make available to the public an annual report listing all amounts paid by the airport to other units of government, and the purposes for the payments, and a listing of all services and property provided to other units of government and the amount of compensation received. Section 111 also requires an annual report to the Secretary containing information on airport finances, including the amount of any revenue surplus and the amount of concession-generated revenue.

Section 112(a) requires the Secretary to establish policies and procedures that will assure the prompt and effective enforcement of the revenue-use requirement and the requirement that airports be as self-sustaining as possible.

Section 112(b) amends 49 USC § 47111, "Payments under project grant agreements," to provide the Secretary, with certain limitations, to withhold approval of a grant application or a new application to impose a Passenger Facility Charge (PFC) for violation of the revenue-use requirement. Section 112(c) authorizes the Secretary to impose civil penalties up to a maximum of \$50,000 on airport sponsors for violations of the revenue retention requirement. Section 112(d) requires the Secretary, in administering the 1994 Authorization Act's revenue diversion provisions and the AIP discretionary grants, to consider the amount being lawfully diverted pursuant to the grandfathering provision by the sponsor compared to the amount being sought in discretionary grants in reviewing the grant application. Consequently, in addition to the prohibition against awarding grants to airport sponsors that have illegally diverted revenue, the FAA considers the lawful diversion of airport revenues by airport sponsors under the grandfather provision as a factor militating against the distribution of discretionary grants to the airport, if the amounts being lawfully diverted exceed the amounts so lawfully diverted in the airport's first year after August 23, 1994.

Section 112(e), which amended the Anti-Head Tax Act, 49 USC § 40116(d)(2)(A), prohibits a State, political subdivision, or an authority acting for a State or political subdivision from collecting a new tax, fee, or charge which is imposed exclusively upon any business located at a commercial service airport or operating as a permittee of the airport, other than a tax, fee, or charge utilized for airport or aeronautical purposes.

Title VIII of the FAA Reauthorization Act of 1996 included new provisions on the use of airport revenue. Among other things, section 804 codifies the preexisting grant-assurance based revenue-use requirement as 49 U.S.C. § 47133. Section 804 also expands the application of the revenue-use restriction to any airport that is the subject of Federal assistance.

Section 805, codified as 49 U.S.C. § 47107(m) *et seq.*, requires recipients of Federal assistance for airports who are subject to the Single Audit Act to include a review and opinion on airport revenue use in single audit reports.

Under section 47107(n), the Secretary, acting through the Administrator of the FAA, will perform fact finding and conduct hearings in certain cases; may withhold funds that would have otherwise been made available under Title 49 of the U.S. Code to a sponsor including another public entity of which the sponsor is a member entity, and may initiate a civil action under which the sponsor shall be liable for a civil penalty, if the Secretary receives a report disclosing unlawful use of airport revenue. Section 47107(n) also includes a statute of limitations that prevents the recovery of funds illegally diverted more than six years after the illegal diversion occurs. The Secretary is also authorized to recover civil penalties in the amount of three times the unlawfully diverted airport revenue under 49 U.S.C. § 46301(n)(5).

Section 47107(o) requires the Secretary to charge a minimum annual rate of interest on the amount of any illegal diversion of revenues. Interest is due from the date of the illegal diversion.

Section 47107(l)(5) imposes a statute of limitation of six years after the date on which the expense is incurred for repayment of sponsor claims for reimbursement of past expenditures and contributions on behalf of the airport. A sponsor may claim interest on the amount due for reimbursement, but only from the date the Secretary determines that the airport owes a sponsor.

Procedural History

In response to provisions in the 1994 Authorization Act, the FAA issued the Proposed Policy. (61 FR 7134, February 26, 1996) After reviewing all comments received in response to the notice, the FAA issued the Supplemental Notice on December 11, 1996, and requested further public comment. (61 FR 66735, December 18, 1996) Although the FAA published both documents as proposed policies, both notices stated that the FAA would apply the policies in reviewing revenue-use issues pending publication of a final policy.

The Department received 32 comments on the Proposed Policy and received 50 comments on the Supplemental Notice. Comments were received from airport owners and operators, airline organizations, transit authorities, and affected businesses and organizations. Most of the commenters were airport owners and operators. The Airport Council International-North America and the American Association of Airport Executives also provided comments supporting the sponsor/operator positions. Two major groups commented on behalf of the airlines—the Air Transport Association of America and the International Air Transport Association.

The Aircraft Owners and Pilots Association and the National Air Transportation Association commented on behalf of the general aviation and private aircraft owners. AOPA was primarily concerned with sponsor/airport accountability and the prompt and effective enforcement of the revenue diversion prohibitions.

Several port authorities, transit authorities, environmental groups, other public interest groups, trade associations, private businesses and individuals commented on a variety of specific issues.

The following discussion of comments is organized by issue rather than by commenter. Issues are discussed in the order they arise in the Final Policy. Airport proprietors and their representatives who took similar positions on an issue are collectively referred to as "airport operators." Airlines and airline trade associations are referred to as "air carriers" when the organizations took common positions. The summary of comments is intended to represent the general divergence or correspondence in commenters' views on various issues. It is not intended to be an exhaustive restatement of the comments received.

In addition, many comments on the original notice of proposed policy were addressed in the supplemental notice.

Those comments are not addressed again in this discussion.

The FAA considered all comments received, even if they are not specifically identified in this summary.

Discussion of Comments by Issue

1. Applicability

a. Applicability of Policy to Privately Owned Airports

In accordance with the statutes in effect at the time it was published, the Proposed Policy applied only to public agencies that had received AIP grants for airport development. The Proposed Policy included a specific statement that it did not apply to privately owned airports that had taken AIP grants while under private ownership. The Supplemental Notice did not modify these provisions.

The Comments: A public interest group concerned about reducing airport noise and mitigating its impacts recommended that the policy should apply to operators of privately owned airports.

Final Policy: The new statutory provision added by the Reauthorization Act of 1996, governing the restriction on the use airport revenue, 49 U.S.C. § 47133, does not differentiate between publicly or privately owned airports. The statute applies to all airports that have received Federal assistance. Under the AAIA certain privately-owned airports that are available for public use are eligible to receive airport development grants. As a result, any privately owned airport that receives an AIP grant after October 1, 1996, (the effective date of the FAA Reauthorization Act of 1996), is subject to the revenue use requirements. The applicability section of the Final Policy, Section III, is modified to reflect the expansion of the revenue-use requirement to include privately-owned airports.

b. Applicability of Policy to Publicly and Privately Owned Airports Subject to Federal Assistance

As a result of the same change in the law, recipients of Federal assistance provided after October 1, 1996, other than AIP grants, are also subject to the revenue-use restrictions. However, the Reauthorization Act of 1996 did not define Federal assistance, and the legislative history does not provide guidance on the meaning of this term. In addition, it did not explicitly address the status of airports that received Federal assistance other than AIP airport development grants before October 1, 1996, and therefore were not already bound by the revenue use

restrictions. These issues are addressed in the Final Policy, based on the FAA's review of the statute, its legislative history and relevant judicial decisions.

Applicability of the revenue-use requirement under § 47133 depends on the definition of the term "Federal assistance." In the absence of guidance in the statute and legislative history, the FAA has relied on the interpretation given to the similar term "Federal financial assistance" in Federal regulations and court decisions. 28 CFR part 41, "Implementation of Executive Order 12250, Non-discrimination on the Basis of Handicap in Federally Assisted Programs," section 41.4(e) establishes the definition of "Federal financial assistance" for all Federal agencies implementing § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. That definition is in turn subject to the limitation of the Department of Transportation v. Paralyzed Veterans, 477 U.S. 597 (1986) (Paralyzed Veterans), which specifically addressed the issue of whether certain facilities and services provided by the FAA in managing the national airspace system constituted federal assistance. That decision held that the provision of air navigation services and facilities to airlines by the FAA did not make the commercial airline passenger service a Federally assisted program within the meaning of § 504.

The FAA's interpretation of the term "Federal assistance" is included in Section II of the Final Policy, Definitions. The Final Policy's definition of "Federal assistance" adapts the generalized language of 28 CFR § 41.4(e) to the specific circumstances of airports receiving Federal support and reflects the holding of the Paralyzed Veterans decision. The definition lists as Federal Assistance the following:

- (1) Airport development and noise mitigation grants;
- (2) Transfers, under various statutory provisions, of Federal property at no cost to the airport sponsors; and
- (3) Planning grants related to a specific airport.

Under this definition, FAA installation and operation of navigational aids and FAA operation of control towers are not considered Federal assistance, based on the Supreme Court decision in Paralyzed Veterans. Similarly, the FAA does not consider passenger facility charges (PFCs) to be Federal assistance even though PFCs may be collected only with approval of the FAA.

Airport development and noise mitigation grants are considered Federal assistance because they apply to a

specific airport, and that airport is, therefore, "subject to Federal assistance" under the statute. Transfers of Federal property to an airport are considered Federal assistance because they also apply to a specific airport. Planning grants may apply to a specific airport or may be more general in nature. Under § 47133, the FAA considers only planning grants related to a specific airport to be Federal assistance.

However, not all airports that are the subject of Federal assistance are necessarily bound to the revenue-use assurance simply by the passage of § 47133. Established Federal grant law prevents a statute from being construed to modify unilaterally the terms of preexisting grant agreements absent a clear showing of legislative intent to do so. *Bennett v. New Jersey* 470 U.S. 632 (1985), 84 L.Ed 2d 572, 105 S.Ct. 1555. Neither the statutory language nor its legislative history indicates an intent by Congress to apply § 47133 to impose the revenue-use requirement on airports that were not already subject to it. By contrast, a recent example of Congressional intent to modify preexisting grant agreements exists in § 511(a)(14) of the Airport and Airway Improvement Act of 1982, 49 USC App. 2210(a)(14), which was recodified at 49 USC 47107(c)(2)(B). That subsection, which was added to the AAIA in 1987, established requirements for the disposal of land acquired with Federal grants that is no longer needed for airport purposes. The statute by its terms applied to an "airport owner or operator [who] receives a grant before on or after December 31, 1987" for the purchase of land for airport development purposes. This language demonstrated a clear Congressional intent to modify preexisting grant agreements. The language of § 47133 and its legislative history lacks any such express direction.

Therefore, the FAA does not interpret § 47133 to impose the revenue-use requirements on an airport that was not already subject to the revenue-use assurance on October 1, 1996. An airport that had accepted Surplus Property from the Federal government, but did not have an AIP grant in place on October 1, 1996, would not be subject to the revenue-use requirement by operation of § 47133. If that airport accepted additional Federal property or accepted an AIP grant on or after October 1, 1996, the airport would be subject to the revenue-use requirement. As discussed below, by operation of § 47133, the revenue-use requirement would remain in effect as long as the airport functioned as an airport.

For airports that were already subject to the revenue-use requirement on October 1, 1996, and those that become subject to the requirement after that date, the effect of § 47133 is to extend the duration of the requirement indefinitely. This application is not explicit in the statute and reference to the legislative history of the statute is necessary to determine congressional intent and the specific meaning and application of the statutory language. The legislative history of § 47133 makes it clear that Congress enacted § 47133 to extend the duration of the revenue-use requirement for airports that are already subject to it. In describing an earlier version of § 47133, the Committee on Transportation and Infrastructure of the House of Representatives stated that the reason for the change was because "revenue diversion burdens interstate commerce even if the airport is no longer receiving grants. In recognition of this fact, the bill applies the exact same revenue diversion prohibition to airports that have a FAA certificate [modified to airports that are subject to Federal assistance in conference] as now applied to airports that receive AIP grants. For the most part, these will be the same airports." H.R. Rep. 104-714 (July 26, 1996) at 38, reprinted at 1996 US Code, Congressional and Administrative News at 3675. The report further stated that broadening the prohibition would "make it clear that an airport cannot escape this prohibition [on revenue diversion] by refusing to accept AIP grants[;]" remove "this perverse incentive to refuse AIP grants * * * [;]" and "once again [encourage] all airports to use available Federal money to increase safety, capacity, and reduce noise." *Id.*

Any airport that had an outstanding AIP grant agreement in effect on October 1, 1996, was already bound to the same revenue use assurance that is contained in § 47133. Because § 47133 is extending the duration of an existing obligation, there is no conflict with the principle of Federal grant law outlined above.

c. Relationship of Final Policy to Airport Privatization

In the applicability and definition section of the Proposed Policy, the FAA stated that proceeds from the sale of the entire airport as well as from individual parcels of land would be considered as airport revenue. The FAA also stated that it did not intend "to effectively bar airport privatization initiatives," and that the FAA would take into account "the special conditions and constraints imposed by the fact of a change in ownership of the airport." 61 Fed. Reg. at 7140. The FAA proposed to remain

"open and flexible in specifying conditions on the use of revenue that will protect the public interest and fulfill the requirements and objectives of § 47107(b) without unnecessarily interfering with the appropriate privatization of airport infrastructure." *Id.*

Airport operators: A number of airport operators expressed concern that the guidance in the Proposed Policy was too ambiguous to encourage privatization and might discourage privatization initiatives. One operator suggested that the FAA should take a flexible approach to the proceeds of a privatization transaction when an airport's concession revenues are sufficient to allow a public owner to use some sales proceeds for nonairport purposes without increasing fees charged to aeronautical users and without continuing a need for Federal subsidy. Another airport operator suggested that the financial terms of a transaction would reflect the local circumstances in which the transaction was negotiated and recommended that the FAA account for this fact in reviewing revenue diversion claims.

Air carriers: ATA adamantly opposed the sale or transfer of a public use airport in a situation when such an action would cause airport revenue to be taken off the airport. ATA believes that the FAA does not have the flexibility or the statutory authority to require anything less than 100% compliance under 49 USC § 47107(b).

General aviation: The AOPA is concerned that the policy gives the impression that airport privatization is a fully resolved issue. The AOPA believes that the policy must avoid any implication that the issue is resolved or that the FAA endorses privatization.

Other commenters: Three public interest organizations addressed the issue of privatization from different perspectives. A group concerned with preventing and mitigating airport noise suggests that the FAA must ensure that adequate funds remain available to meet current and future airport noise mitigation needs. This group recommended that, before approving a transfer, the FAA should conduct a thorough audit of the airport's compliance with noise compatibility requirements, plans, and promises, and that the FAA should assess the adequacy of resources to address noise compatibility problems. The FAA should also require enforcement mechanisms to ensure implementation of noise compatibility and mitigation measures as a condition of the sale or transfer.

Two other groups supported a policy that does not discourage airport privatization. One of these suggested that the FAA consider defederalization of airports. The comments regarding defederalization are beyond the scope of this proceeding, because they would require statutory changes.

Final Policy: The Final Policy adopts the basic approach of the Proposed Policy toward privatization, with some language changes for clarity and readability. In addition, the Final Policy explicitly acknowledges the Airport Privatization Pilot Program.

Guidance on the process for obtaining FAA approval of the sale or lease of an airport is contained in FAA Order 5190.6a, Airport Compliance Requirements. The Final Policy is not intended to modify the process in any way. FAA approval is required for any transfer, including those between government entities. The Final Policy makes clear, however, that in processing an application for approval the FAA will: (a) treat proceeds from the sale or lease as airport revenue; and (b) apply the revenue-use requirement flexibly, taking into consideration the special conditions and constraints imposed by a change in ownership of the airport. For example, as is noted in the Final Policy, if the owner of a single airport is selling the airport, it may be inappropriate to require the seller to simply return the proceeds to the private buyer to use for operation of the airport.

The FAA requires the transfer document to bind the new operator to all the terms and grant assurances in the sponsor's grant agreement. The FAA retains sufficient authority and power through its grant assurances to ensure compliance by the new owner with all of its obligations, including any grant-based obligations relating to mitigation of environmental impacts of the airport; to conduct sponsor audits and to take other appropriate action to ensure that the airport is self-sustaining.

The Final Policy's approach to privatization does not represent, as ATA suggests, less than 100 percent compliance with the revenue-use requirement. The FAA agrees with the ATA that we cannot waive that requirement. Rather, the FAA has committed to exercise its authority to interpret the requirement in a flexible way to account for the unique circumstances presented by a change of ownership.

The Final Policy is not an endorsement of privatization and it does not resolve the policy debate about privatization. FAA will continue to review the sale or lease of an airport on

a case-by-case basis, including transfers proposed under the Airport Privatization Pilot Program, 49 U.S.C. 47134, created by § 149 of the FAA Reauthorization Act of 1996. The demonstration program authorizes the FAA to exempt five airports from Federal statutory and regulatory requirements governing the use of airport revenue. Under the program, the FAA can exempt an airport sponsor from its obligations to repay Federal grants, to return property acquired with Federal assistance, and to use the proceeds of the sale or lease exclusively for airport purposes. The latter exemption is also subject to approval by the air carriers serving the airport.

The FAA notes the concerns that the revenue-use requirement may discourage privatization. Congress addressed this prospect by enacting the Privatization Pilot Program, which authorizes the FAA to grant exemptions from sections 47107(b) and 47133 to permit the sponsor to use sales or lease proceeds for nonairport purposes, on certain conditions. That exemption would not be required unless sales or lease proceeds were airport revenue. In addition, the FAA will consider the unique circumstances—financial and otherwise—of individual transactions in determining compliance with section 47107(b), and this should address to some degree the commenters' concerns about privatization.

d. Effect of § 47133 on Return on Investment for Private Airport Owners or Operators That Accept Federal Assistance

By extending the revenue-use requirement to privately-owned airports, § 47133 requires the FAA to consider a new issue—the extent to which a private owner that assumes the revenue-use obligation may be compensated from airport revenue for the ownership of the airport. Section 47133 prohibits all such private airport owners or operators from using airport revenue for any purpose other than the capital and operating costs of the airport. However, the FAA does not consider section 47133 to preclude private owners or operators from being paid or reimbursed reasonable compensation for providing airport management services. Private operators, presently, provide airport management services at a number of airports. In many cases, these airports are publicly owned and subject to the revenue-use requirement. The private operator is providing these services under some form of contract with the public owner. These services are considered part of the operating cost of the airport owner, and

the fees can be paid from airport revenue.

It is reasonable to equate private operators managing publicly owned airports with private owner/operators managing privately owned or leased airports. To avoid any confusion of the issue, reasonable compensation for management services provided by the owner of a privately-owned airport is identified as a permitted use of airport revenue in the Final Policy.

Private airport owners may typically expect a return on their capital investment. Such investment could be considered a capital cost of the airport. In the case of private owners or operators of airports who have assumed the revenue-use obligation, that obligation would limit the ability to use the return on capital invested in the airport for nonairport purposes. In particular, the FAA expects private owners to be subject to the same requirements governing a self-sustaining airport rate structure and the recovery of unreimbursed capital contributions and operating expenses from airport revenue as public sponsors. Under section 47107(l)(5), private sponsors—like public sponsors—may recover their original investment within the six-year statute of limitation. In addition, they are entitled to claim interest from the date the FAA determines that the sponsor is entitled to reimbursement under section 47107(p). Any other profits generated by a privately-owned airport subject to section 47133 (after compensating the owner for reasonable costs of providing management services) must be applied to the capital and operating costs of the airport.

This interpretation is required by provisions of 49 U.S.C. 47134, the airport privatization pilot program. Section 47134 authorizes the FAA to grant exemptions from the revenue-use requirement to permit the private operator to "earn compensation from the operations of the airport." This exemption would not be necessary if section 47133 did not restrict the freedom of the private owner of a Federally-assisted airport to use the profits from the investment in the airport for nonairport purposes. This interpretation does not unreasonably burden private owners, because they receive a benefit (in the form of either Federal property added to the airport or Federal grant funds) in exchange for assuming the restrictions on the use of their profit.

e. Grandfather Provisions

The Proposed Policy included a discussion of the grandfather provisions of section 47107(b) in the section on

permitted uses of airport revenue. That discussion included a list of examples of financing obligations and statutory provisions that had been previously found by the Department of Transportation to confer grandfather status.

The Comments: Two airport operators commented on this issue. One is an airport operator whose status under the grandfather provisions was under consideration by the FAA when the Proposed Policy was published. Its concerns were addressed by the FAA's consideration of its individual situation.

The second commenter is airport operator already established as a grandfathered airport operator. This commenter recommends that the Final Policy continue to recognize the rights of grandfathered airports.

Final Policy: The Final Policy continues to recognize the rights of grandfathered airport owners set forth at title 49 U.S.C. 47107(b)(2) and 47133. To qualify an airport for grandfathered status, the statute requires that local covenants, assurances or governing laws pre-dating September 2, 1982, must specifically pledge the use of airport generated revenues to support not only the airport but also the general debt obligations or other facilities of the owner or operator. However, the Final Policy is modified to reflect the requirement in the 1996 FAA Reauthorization Act that the FAA consider the increase in grandfathered payments of airport revenue as a factor militating against the award of discretionary grants.

f. Applicability to Non-municipal Airport Authorities

Lehigh-Northampton Airport Authority (LNAA): LNAA asserted that the airport revenue-use requirement does not allow FAA to regulate airport transactions with non-governmental parties and does not empower FAA to override state and local laws governing the use of airport revenue for airport marketing and promotional activities. The commenter advanced a number of arguments as to why FAA does not have authority to restrict such transactions. First, Congress has shaped the revenue diversion statute to identify financial irregularities in dealings between an airport enterprise account and another unit of government. The statute does not contemplate FAA regulation of airport financial relationships with non-government parties. Second, Congress did not intend the "capital or operating costs" language in the revenue diversion statute to authorize a new Federal regulatory scheme to narrow the types or levels of airport expenditures beyond

what is legal under applicable state and local law. Third, there is not a statutory requirement for FAA to regulate airport expenditures for community events or charitable contributions in the absence of facts suggesting that such expenditures are the result of undue influence by a governmental unit.

The LNAA currently has a case pending before the FAA under FAR Part 13, in which certain expenditures that LNAA characterizes as marketing and promotional expenses are being examined for consistency with the revenue-use requirement. LNAA's assertions with respect to its own promotional activities will be addressed by the FAA in that proceeding. To the extent that LNAA's practices were inconsistent with this Final Policy, LNAA will have an opportunity to argue that the Final Policy should not be applied to its situation.

The general issues of the use of airport revenue for marketing and promotional expenses and charitable donations are discussed separately below.

The FAA is not modifying the applicability of the Final Policy based on LNAA's other concerns. The language of section 47107(b) explicitly states that revenue generated by the airport may only be expended for the capital or operating costs of the airport or local airport system; it contains no limiting language concerning "financial irregularities." The statute further defines expenditures for general economic development and promotion as unlawful use of airport revenue, providing specific authority over transactions that do not involve transfers of airport revenue to other governmental entities. See 49 U.S.C. 47107(l)(2). This provision grants authority for regulation of expenditures for charitable and community-use purposes.

In addition, the Congressional mandate to establish policies and procedures to "assure the prompt and effective enforcement" of the revenue use and self-sustainability requirements (49 U.S.C. 47107(l)(1)) provides statutory authority to adopt more detailed guidance on permitted and prohibited uses of airport revenue. Many airport operators have expressed concern over the difficulty of responding to OIG findings of unlawful revenue use without clear and specific FAA guidance on permitted and prohibited practices.

Finally, the grandfathering provision establishes Congressional intent to prohibit certain airport revenue practices authorized by state or local law that do not satisfy the specific

requirements of the grandfather provisions of the AATA.

2. Definition of Airport Revenue

a. Proceeds From Sale of Airport Property

The Proposed Policy included proceeds from the sale of airport property in the proposed definition of airport revenue. No distinction was made between property acquired with airport revenue and property acquired with other funds provided by the sponsor. In the explanatory statement, the FAA discussed alternatives it had considered, including limiting the definition to property acquired with airport revenue. (61 FR 7138) The FAA also stated that a sponsor would be able to recoup any funds it contributed to finance the acquisition of airport property as an unreimbursed capital contribution.

Airport operators: Airport operators objected to defining proceeds from the sale of airport property as airport revenue. ACI/AAAE argued that the definition would reduce incentives for airport sponsors to pursue legitimate airport endeavors. One airport operator argued that the definition constitutes a transfer of wealth from the taxpayers to the airport users, and that cities would be less willing to contribute to future airport projects. Another individual operator argued that the policy should not apply to property acquired with the sponsor's own funds and to property acquired with airport revenue before 1982. This airport operator further argues that application of the policy to property acquired before 1982 amounts to a taking of airport property without just compensation and without Congressional authorization. Finally, this operator argued that the proposed definition appears to contradict a portion of the FAA Compliance Handbook, Order 5190.6A (October 2, 1989), Paragraph 7-18, that states there is no required disposition of net revenues from sale or disposal of land not acquired with Federal assistance.

Air carriers: The ATA commented that the use of airport revenue for repayment of contributions from prior years should be limited. According to ATA, reimbursements should be permitted only when the sponsor and airport enter into a written agreement concerning the terms of reimbursement before the service or expenditure is provided.

Other commenters: A public interest organization opposed the treatment of proceeds from the sale of airport property as airport revenue. This commenter argued that the sponsor, as

the principal provider of airport's land and capital, has a legitimate claim to cash-out the value of its investments and to use the proceeds for other purposes.

The Final Policy: The Final Policy does not modify the treatment of proceeds from the sale, lease or other disposal of airport property. Proceeds from the sale lease or other disposal of all airport property are considered airport revenue subject to the revenue-use requirement and this policy, unless the property was acquired with Federal funds or donated by the Federal government. While proceeds from disposal of Federally-funded and Federally-donated property are also airport revenue, these proceeds are subject to separate legal requirements that are even more restrictive than the revenue-use requirement.

As discussed in the Proposed Policy, this definition is consistent with the language of the original version of section 47107(b), which applies to "all revenues generated by the airport."

In addition, the Airport Privatization Pilot Program, 49 U.S.C. 47134, permits the FAA to grant exemptions from the revenue-use requirements to permit a sponsor to keep the proceeds from a sale or lease transaction, but only to the extent approved by 65 percent of the air carriers. An exemption would not be required unless the proceeds from the sale or lease of the entire airport were airport revenue within the meaning of section 47107(b) and 47133. Since the proceeds from the sale of an entire airport are airport revenue, it follows that the proceeds from the sale of individual pieces of airport property are also airport revenue.

Further, section 47107(l)(5)(A) establishes a six-year period during which sponsors may claim reimbursement for their capital and operating contributions. This limitation on seeking reimbursement could be avoided through the process of disposing of airport property, if the proceeds of sales were not themselves considered airport revenue. Through section 47107(l)(5)(A) Congress has defined the rights of airport owners and operators to recover their investments in airport property for use for nonairport purposes. Subject to the six-year statute of limitations, the sponsor is entitled to use airport revenues for reimbursement of such contributions. Section 47107(p) provides that a sponsor may also claim interest if the FAA determines that a sponsor is entitled to reimbursement, but interest runs only from the date on which the FAA makes the determination. As discussed below, the Final Policy provides flexibility to

structure future contributions to permit reimbursement over a longer period of time in order to promote the financial stability of the airport. The six-year limitation, which is incorporated in the Final Policy, also addresses ATA's request for a time limit on the airport owner or operator's ability to claim recoupment for past unreimbursed requests.

The FAA does not accept the suggestion that the definition is an unauthorized taking of sponsor property without just compensation. First, as noted, the definition is supported by the 1996 FAA Reauthorization Act, which included an express provision for an exemption from the revenue use restriction for sale and lease proceeds. Second, all airport sponsors, including the airport commenters, voluntarily agreed to their restrictions on the use of airport revenue when they accepted grants-in-aid under the AIP program. Finally, the definition does not deprive the commenter of its property. The proceeds from the disposal will still flow to the commenter sponsor to be used for a legitimate local public purpose—operation and development of the commenter's airport.

The FAA acknowledged in the Proposed Policy that existing FAA internal orders contain provisions on the status of proceeds from the disposal of airport property that are inconsistent with this Final Policy. As stated in the Proposed Policy, this inconsistency does not preclude the FAA from defining proceeds from the disposal of airport property as airport revenue in this Final Policy. Rather, "the Policy takes precedence, and the orders will be revised to reflect the policies in this statement." 61 FR 7138. In addition, the provisions in the FAA internal orders are in conflict with the 1996 FAA Reauthorization Act. Because of this statutory conflict, the FAA cannot continue to apply them.

b. Revenue Generated by Off-airport Property

The Proposed Policy defined as airport revenue the revenue received for the use of property owned and controlled by a sponsor and used for airport-related purposes, but not located on the airport.

Airport operators: The ACI-NA/AAAE and two individual airport operators objected to this definition of airport revenue. The ACI-NA/AAAE stated that revenues received from off-airport activities should ordinarily not be counted as airport revenue. One airport operator argued that this definition is inconsistent with the statutory definition of airport in the

AAIA. The other airport operator (the State of Hawaii) is especially concerned about revenue generated by off-airport duty free shops.

No other comments were received.

Final Policy: The Final Policy does not modify the definition of airport revenue as it pertains to off-airport revenue. This definition is consistent with FAA's prior interpretation, which has defined as airport revenue the revenues received by the airport owner or operator from remote airport parking lots, downtown airport terminals, and off-airport duty free shops.

After enactment of the original revenue-use requirement, the FAA initiated an administrative action to require the State of Hawaii to use its revenue from off-airport duty free sales in a manner consistent with section 47107(b). In response, Congress amended the revenue-use requirement to provide a specific and limited exemption to the State of Hawaii to permit up to \$250 million in off-airport duty-free sales revenue to be used for construction of highways that are part of the Federal-Aid highway system and that are located in the vicinity of an airport. See, 49 U.S.C. § 47107(j). The statutory exemption would only be necessary if the revenue from off-airport duty free shops is airport revenue within the meaning of the statute.

c. Royalties From Mineral Extraction

The Proposed Policy included royalties from mineral extraction on airport property earned by a sponsor as airport revenue.

Airport operators: One airport operator objected to including revenue from the sale of sponsor-owned mineral, natural, or agricultural products or water to be taken from the airport in the definition of airport revenue. The operator stated that the retention of mineral rights as airport property would represent a windfall to the airport at the sponsor's expense; that the Proposed Policy is contrary to congressional intent and that it would take, without compensation, valuable property rights from the sponsor. The operator also cited a prior decision where FAA concluded the production of natural gas at Erie, Pennsylvania, does not serve either the airport or any air transportation purpose. The royalties generated by such production were determined to be outside the scope of the revenue-use requirement.

Final Policy: The Final Policy retains the proposed definition of airport revenue to include the sale of sponsor-owned mineral, natural, agricultural products or water to be taken from the airport. On further review of the Erie

interpretation in this proceeding, the FAA no longer considers the analogy drawn in that interpretation—between mineral extraction and operation of a convention center or water treatment plant—to be appropriate. Rather, mineral and water rights represent a part of the airport property and its value. Just as proceeds from the sale or lease of airport property constitute airport revenue, proceeds from the sale or lease of a partial interest in the property—i.e. water or mineral rights—should also be considered airport revenue. The FAA will not require an airport owner or operator to reimburse the airport for past mineral royalty payments used for nonairport purposes based on the Erie interpretation. However, all airport owners and operators will be required to treat these payments as airport revenue prospectively, starting on the publication date of the Final Policy.

With respect to agricultural products, the FAA has always treated lease revenue from agricultural use of airport property as airport revenue, even if that revenue is calculated as a portion of the revenue generated by the crops grown on the airport property. The definition in the Final Policy will assure that the airport gets the full benefit of agricultural leases of airport property, regardless of the form of compensation it receives for agricultural use of airport property.

The FAA does not consider this interpretation to create a taking of airport owner or operator property. As discussed in other contexts, the limitation on the use of airport revenue was voluntarily undertaken by the airport operator upon receiving AIP grants. In addition, the revenues generated by these activities will still flow to the sponsor for its use for a legitimate local governmental activity, the operation and development of its airport.

d. Other Issues

The Final Policy includes a discussion of the requirement of 49 U.S.C. § 40116(d)(2)(A). This provision requires that taxes, fees or charges first taking effect after August 23, 1994, assessed by a governmental body exclusively upon businesses at a commercial service airport or upon businesses operating as a permittee of the airport be used for aeronautical, as well as airport purposes. This addition is included, at the suggestion of a commenter, to comply with the statutory provision, which was enacted as section 112(d) of the 1994 FAA Authorization Act.

3. Permitted Uses of Airport Revenue

a. Promotion/marketing of the Airport

Congress, in the FAA Authorization Act of 1994, permitted the use of airport revenues for promotion of the airport by expressly prohibiting "use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems." The Supplemental Proposed Policy cited this law and recognized that many airport sponsors engage in some form of promotional effort, to encourage use of the airport and increase the level of service. Accordingly, the Supplemental Notice provided that "[a]irport revenue may be used for * * * [c]osts of activities directed toward promoting public and industry awareness of airport facilities and services, and salary and expenses of employees engaged in efforts to promote air service at the airport." 61 FR 66470.

However, the preamble to the Supplemental Notice stated that promotional/marketing expenditures directed toward regional economic development, rather than specifically toward promotion of the airport, would not be considered a permitted use of airport revenue. In addition, the FAA proposed to prohibit the use of airport revenue for a direct purchase of air service or subsidy payment to air carriers because the FAA does not consider these payments to be capital or operating costs of the airport.

Airport operators: In their comments to the original proposed policy, ACI-NA/AAAE requested that FAA establish a "safe harbor," or a maximum dollar amount (perhaps based on a percentage of airport costs), under which an airport could spend airport revenue on certain promotional and marketing activities. Greater percentage amounts would be allowed for the costs of airport-specific activities, while lower amounts would be allowed for joint efforts for campaigns and organizations that have broader, regional marketing missions.

Several airport operators supported this "safe harbor" concept in their comments to the docket for the original Proposed Policy. One such commenter, without reference to ACI/AAAE's remarks, suggested a cap of 5% of an airport's budget as a "safe harbor" for marketing expenses that are not directly related to the airport or airport system. Furthermore, this commenter would limit the use of airport revenue to a maximum share of 20 percent of the overall cost of any joint-project budget.

ACI/AAAE did not pursue the concept of "safe harbor" in their comments to the docket for the

Supplemental Policy, focusing instead on the discretion of the airport operator to use reasonable business judgment to determine potential benefits to the airport. Several airports concurred with the ACI-NA/AAAE position, and one airport operator added that joint-marketing expenses, if reasonable and clearly related to aviation, should be considered an operating cost of the airport.

The ACI/AAAE and several individual airport operators commented that an airport cannot be distinguished from the region served by the airport. ACI/AAAE commented that the policy should permit reasonable spending for marketing of communities and regions because airports are not ultimate destinations of passengers. Therefore, airport operators must be free to make a reasonable attempt to increase revenues by investing in the promotion of their community as a destination.

Some airports specifically opposed the ATA's suggestion of a cap, described below.

Air carriers: In its comments to the Supplemental Notice, the ATA mentioned the concept of a maximum or "cap" under which expenditures would be considered reasonable, but would apply it to efforts to promote the services of the airport itself. The ATA would have the policy prohibit entirely the use of airport revenue for the promotion of regional development, because "expenditures by an airport to promote local or regional economic development—as opposed to the services and functionality of an airport—should not be considered legitimate airport costs." In regard to cooperative or joint-marketing expenses, the ATA focused on airport participation in joint-marketing of new airline services, suggesting that these activities be limited to a 60-day promotional period. ATA also warned against abuses of cooperative marketing, in particular programs that result in promotion of a particular airline.

The ATA rejected the airport position that use of airport revenue to fund regional promotional activities is acceptable, because airports themselves are not destinations. They stated, "[l]ocal governments that are also airport sponsors should not be permitted to pass off local and regional promotional activities in order to charge such costs to an airport. Indeed, many civic organizations and chambers of commerce undertake such activities directly, since continued economic development directly benefits the local businesses that constitute such organizations."

The Final Policy: The FAA has modified the provisions on permitted uses of airport revenue in regard to promotion and marketing in the Final Policy. The FAA has applied the sections 47107(b) and 47107(l) to determine to what extent various kinds and amounts of promotional and marketing activities can be considered legitimate operating costs of the airport. The permitted uses of airport revenue for marketing and promotion are split into two paragraphs, V.A.2 and V.A.3., in the Final Policy—one addressing costs that may be fully paid with airport revenue, and one addressing costs that may be shared. The issues of general economic development, direct subsidies of air carriers, the waiving of fees to airport users and airport participation in airline marketing and promotion is further addressed in Section VI.

The Final Policy provides, under V.A.2, that expenditures for the promotion of an airport, promotion of new air service and competition at the airport, and marketing of airport services are legitimate costs of an airport's operation. These expenditures may be financed entirely with airport revenue, and the expenditures may include the costs of employees engaged in the promotion of airport services. In addition, cooperative airport-airline advertising of air service at the airport may be financed with airport revenue, with or without matching funds. The FAA is prepared to rely on airport management to assure that the level of expenditures for such purposes would be reasonable in relation to the airport's specific financial situation. In addition, cooperative airport-airline advertising of air service must be conducted in compliance with applicable grant assurances prohibiting unjust discrimination in providing access to the airport.

For other advertising and promotional activities, such as regional or destination marketing, airport revenue may be used to pay a share of the costs only if the advertising or promotional material includes a specific reference to the airport. The share must be reasonable, based on the benefits to the airport of participation in the activity. The FAA construes the prohibition on "use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems" to preclude the reliance on airport management judgment to support the use of airport revenue for general destination advertising containing no references to the airport. Likewise, the prohibition precludes adoption of a safe-harbor

provision for general promotional expenses.

Except as discussed above, the Final Policy does not limit the amounts of airport revenue that can be spent for all permitted promotional marketing and advertising activities. The FAA expects that expenditure of airport revenues for these purposes would be reasonable in relation to the airport's specific financial situation. Disproportionately high expenditures for these activities may cause a review of the expenditures on an *ad hoc* basis to verify that all expenditures actually qualify as legitimate airport costs. Examples of permissible and prohibited expenditures are included in the Final Policy itself.

b. Reimbursement of Past Contributions

The Proposed Policy permitted airport revenue to be used to reimburse a sponsor for past unreimbursed capital or operating costs of the airport. The Proposed Policy did not include a limit on how far back in time a sponsor could go to claim reimbursement, in accordance with the law in effect at the time. In addition, the Preamble noted that the FAA had not to date permitted a sponsor to claim reimbursement for more than the principal amount actually contributed to the airport. The FAA requested comment on whether the FAA should permit recoupment of interest or an inflationary adjustment or whether, in the case of contributed land, recoupment should be based on current land values.

Airport operators: ACI-NA/AAAE and a number of individual airport operators supported recoupment of interest or inflation adjustment on previous contributions or subsidies to the airport.

Air carriers: The ATA objected to the Proposed Policy and commented that recoupment should be subject to a number of requirements to prevent abuses.

The Final Policy: After the proposed policy was issued, Congress enacted legislation to limit the use of airport revenue for reimbursement of past contributions, and to limit claims for interest on past contributions. 49 U.S.C. §§ 47107(l)(5), 47107(p). The Final Policy incorporates these statutory provisions. Based on Congressional intent evidenced by the legislative history of these provisions, airport revenue may be used to reimburse a sponsor only for contributions or expenditures for a claim made after October 1, 1996, when the claim is made within six years of the contribution or expenditure. In addition, a sponsor may claim interest

only from the date the FAA determines that the sponsor is entitled to reimbursement, pursuant to section 47107(p). The FAA interprets these statutory provisions to apply to contributions or expenditures made before October 1, 1996, so long as the claim is made after that date.

If an airport is unable to generate sufficient funds to repay the airport owner or operator within six years, the Final Policy permits repayment over a longer period, with interest, if the contribution is structured and documented as an interest bearing loan to the airport when it is made. The interest rate charged to the airport should not exceed a rate that the sponsor received for other investments at the time of the contribution.

c. Donations of Airport Revenue to Charitable/Community Service Organizations

The Supplemental Proposed Policy addressed the use of airport property for public recreational purposes, and addressed the use of airport funds to support community activities and for participation in community events. The FAA proposed that the use of airport revenue for such donations would not be considered a cost of operating the airport, unless the expenditure is directly related to the operation of the airport. For example, expenditures to support participation in the airport's federally approved disadvantaged business enterprise program would be considered permissible as supporting a use directly related to the operation of the airport. In contrast, expenditures to support a sponsor's participation in a community parade would not be considered to be directly related to the operation of the airport.

Airport operators: ACI-NA/AAAE contended that the expenditure of airport revenue for community or charitable purposes is appropriate and should be recognized as legitimate. Airports, regardless of their size, type, and certification or lack thereof, are important members of their local communities and, therefore, must be able to maintain their prominent, highly visible roles in their respective communities. Airports are regarded by their communities as local business enterprises and, consequently, are expected to contribute to local non-profit charitable concerns in the same manner as other local business enterprises.

Individual airport operators generally supported the position of ACI-NA/AAAE, although some individual operators acknowledged that some limitation on the expenditures may be

appropriate. One suggested a *de minimis* standard; another proposed a "safe harbor" based on a percentage of the airport's total budget. Another urged that airport owners/operators be allowed leeway to make contributions of airport funds, in reasonable amounts and consistent with the local circumstances, and to use airport property for charitable purposes on the same basis.

Other airport operators commented that the Final Policy should give comparable treatment to the use of airport funds and airport property for community goodwill by recognizing the limited use of airport revenue to support charitable and community organizations as a legitimate operating cost of the airport.

Air carriers: Air carriers did not comment specifically on charitable contributions, although they commented extensively on the use of airport property for community or charitable purposes. Generally the air carriers suggested that use of airport property should be subject to strict conditions to avoid abuse.

Other commenters: An advocacy group in support of a particular airport commented that, in order for an airport to be as self-sustaining as possible, the use of each income dollar is critical, and that federally assisted airports must be fully responsive to the citizens of the community by providing information on the use of airport funds.

Final Policy: The Final Policy generally follows the approach of the Supplemental Notice. Airport funds may be used to support community activities, or community organizations, if the expenditures are directly and substantially related to the operation of the airport. In addition, the policy provides explicitly that where the amount of the contribution is minimal, the airport operator may consider the "directly and substantially related to air transportation" standard to be met if the contribution has the intangible benefit of enhancing the airport's acceptance in local communities impacted by the airport.

Expenditures that are directly and substantially related to the operation of the airport qualify inherently as operating costs of the airport. The FAA recognizes that contributions for community or charitable purposes can provide a direct benefit to the airport through enhanced community acceptance, but that benefit is intangible and not quantifiable. Where the amount of the contribution is minimal, the value of the benefit will not be questioned as long as there is a reasonable connection between the recipient organization and

the benefit of community acceptance for the airport.

However, if there is no clear relationship between the charitable or community expenditure and airport operations, the use of airport revenue may be an expenditure for the benefit of the community, rather than an operating cost of the airport. The different treatment of the use of airport funds (direct payments to charitable and community organizations) and the use of airport property (less than FMV leases for charitable or community purposes) is grounded in the applicable laws: the revenue-use requirement (section 47107(b)), which governs the use of airport funds, provides far less flexibility than the requirement for a self-sustaining rate structure (section 47107(a)(13)), which applies to the use of airport property.

Examples of permitted and prohibited expenditures are included in the Final Policy.

d. Use of Airport Revenue to Fund Mass Transit Airport Access Projects

The Supplemental Proposed Policy addressed in Part VII.C., the circumstances in which an airport sponsor could provide airport property at less than fair market value to a transit operator. The Supplemental Proposed Policy did not address the use of airport revenue to finance the construction of transit facilities. That issue, however, was raised in the comments.

Airport Operators: Two airport operators supported the use of airport revenue for the construction of transit facilities. One commenter stated that an airport should be permitted to use airport revenues and assets to provide mass transit service to on-airport commercial uses. Another commenter referred to the AIP Handbook, FAA Order 5100.38A §555, which provides AIP project eligibility for rapid transit facilities.

Air carriers: Air carriers did not specifically discuss the use of airport revenue to finance transit facilities. However, as discussed below, they objected to providing airport property for transit facilities at nominal lease rates.

Other Commenters: Two commenters representing transit operator interests supported the expenditure of airport revenues to finance transit facilities. A transit operator stated that in order to create a better balance between transit and highway interests, transit facilities should be totally eligible expenses, paid for in the same manner as other road and parking enhancements. A transit trade association urged the FAA to take appropriate actions to ensure that

passenger fees and other airport revenues are widely eligible to fund a range of airport surface transportation modes, including public transportation.

The FAA also received extensive comments on providing airport property for use by transit providers at less than FMV rents. These comments are addressed separately below.

Final Policy: The Final Policy has been modified to provide guidance on the use of airport revenues to finance airport ground access projects. The Final Policy states that airport revenue may be used for the capital or operating costs of such a project if it can be considered an airport capital project, or is part of a facility owned or operated by the airport sponsor and directly and substantially related to air transportation of passengers or property, relying directly on the statutory language of §47107(b).

As an example, the Final Policy summarizes the FAA's decision on the use of airport revenue to finance construction of the rail link between San Francisco International Airport and the Bay Area Rapid Transit (BART) rail system extension running past the airport. In that decision, the FAA approved the use of airport revenues to pay for the actual costs incurred for structures and equipment associated with an airport terminal building station and a connector between the airport station and the BART line. The structures and equipment were located entirely on airport property, and were designed and intended exclusively for use of airport passengers. The BART extension was intended for the exclusive use of people travelling to or from the airport and included design features to discourage use by through passengers. Based on these considerations, the FAA determined that the possibility of incidental use by nonairport passengers did not preclude airport revenues from being used to finance 100 percent of the otherwise eligible cost items. For purposes of this analysis, the FAA considered "airport passengers" to include airport visitors and employees working at the airport.

4. Accounting Issues

a. Principles for Allocation of Indirect Costs

Based on the comments to the Proposed Policy, the FAA addressed the principles of indirect cost allocation in its Supplemental Notice. The Supplemental Notice made clear that the allocation of indirect costs is allowable under 49 USC §47107(b), and that no particular method of cost allocation will be required, including

OMB Circular A-87. To ensure, however, that indirect costs are limited to allowable capital and operating costs, the FAA proposed to apply certain general principles and prohibitions to the allocation of costs. The Supplemental Notice did not limit significantly the development of local cost allocation methodologies, or interfere with the application of Generally Accepted Accounting Principles (GAAP) and other accounting industry recognized standards.

In the Supplemental Notice, the FAA stated that it would expect that a Federally approved cost allocation plan that complied with OMB Circular A-87 or other Federal guidance and was consistent with GAAP would be reasonable and transparent, and would generally meet the requirements of section 47107(b). However, the use of a Federally approved cost allocation plan does not rule out the possibility that a particular cost item allowable under that guidance would be in violation of the airport revenue retention requirement if allocated to the airport.

The Supplemental Notice also required specifically that indirect cost allocations be applied consistently across departments to the sponsoring government agency, and not unfairly burden the airport account. The general sponsor cost allocation plan could not result in an over-allocation to an enterprise fund. In addition, the sponsor would have to charge comparable users, such as enterprise accounts, for indirect costs on a comparable basis.

Lastly, the Supplemental Notice proposed to prohibit the allocation of general costs of the sponsoring government to the airport. However, this prohibition would not affect direct or indirect billing for actual services provided to the airport by local government.

Airport Operators: Generally, airport operators agreed with the proposal to acknowledge that the allocation of indirect costs as allowable under 49 USC §47107(b), and to provide that no particular allocation methodology, including OMB Circular A-87, be required.

One airport operator requested the FAA to further clarify that it is not imposing on airport sponsors all of the specific elements of OMB Circular A-87. The operator was concerned that the statement in the Supplemental Notice that the FAA "believe[s] the specific principles identified by the OIG are an appropriate construction of the revenue retention requirement" may lead to confusion over whether adherence to OMB Circular A-87 is mandatory for

allocating costs to be paid by airport revenue.

Several airport operators were concerned that the FAA would not accept the allocation of costs in accordance with a Federally-approved cost allocation plan, but could review the plan to ensure that allocation of specific cost items meet the special revenue retention requirements. For example, one airport operator commented that the FAA's approach would impose on airport sponsors burdens and requirements in excess of the detailed requirements of OMB-Circular A-87, which are designed to ensure a reasonable and consistent cost allocation system. The airport proprietor proposed that such compliance with a federally-approved cost allocation plan be considered sufficient to satisfy the revenue retention requirement.

Another airport operator proposed that the FAA revise the policy to clarify that a specific cost, as opposed to a type of cost, cannot be treated as both a direct and an indirect cost. The airport operator offered as an example a city-owned and operated airport at which some police services are provided by officers assigned exclusively to the airport and other services are provided by general duty police officers. The commenter suggested that it should be permissible to charge the airport for the officers assigned exclusively to the airport as a direct cost and to charge for the general duty officers as an indirect cost allocation.

Additionally, this commenter proposed revising the policy to clarify that costs that are chargeable to one city department on a direct basis may be charged to other city departments on an indirect basis. The airport operator offered an example in which police are exclusively assigned to a city-owned airport, but are not exclusively assigned to other city departments. The commenter argued that it would be reasonable to charge the airport for police services as a direct cost, and to charge the other departments as an indirect cost allocation.

Several airport operators were also concerned that the supplemental policy implied that a local cost allocation plan must provide that all users for a service be billed equally. For example, ACI-NA and AAEE suggested that the requirement for consistent application should be interpreted to require the local government to go through the exercise of assessing indirect costs against all governmental departments, including those wholly funded by that governmental entity. Likewise, an airport operator requested that the FAA clarify that the supplemental policy

does not mean that an airport sponsor must actually bill all of its General Fund agencies for certain municipal costs in order to be able to charge such costs to its airports. All of those airport proprietors that expressed concern over this proposed policy generally commented that this issue was considered and rejected by the Department of Transportation in the Second Los Angeles International Airport Rates Proceeding, Docket OST-95-474. According to the airport proprietors, the DOT recognized that in many cases sponsor agency operations are paid from a common General Fund. Under those circumstances, it is illogical and unnecessary for one General Fund agency to bill another General Fund agency for municipal services.

One airport operator proposed that the word "equally" be removed from VII.B.4 of the proposed policy. The commenter urged that the FAA allow airport sponsors the flexibility to allocate costs to various users on a reasonable, equitable basis relative to the benefits received, even though specific users may sometimes be treated differently. Returning to its example of police services, the commenter suggested that if the sponsor chooses not to charge a housing authority for costs of a special police unit assigned to that authority, it should be of no concern to the FAA as long as those costs are not then charged to the airport.

Another airport operator argued that each of its proprietary departments are unique and governed by different City Charter provisions; that they make different uses of city services; and have different financial arrangements with the sponsor's general fund. This commenter argued that treating the departments the same for cost allocation purposes because the departments are enterprise funds would, therefore, serve no valid purpose.

Several airport operators disagreed with FAA's proposed policy to prohibit the indirect cost allocation of general costs of government. Several commenters stated that the proposed policy would reverse longstanding practice at many airports and could be inconsistent with federally-approved cost allocation plans, which provide for the allocation of a share of indirect costs of various local government functions. One airport operator argued that there is no statutory basis for prohibiting the allocation of general costs of government, other than costs for particular identified services.

Finally, one airport operator commented that the proposed policy does not sufficiently clarify the

appropriate allocations for fire and police stations that do not serve the airport exclusively. The airport operator proposed that policy explicitly permit a sponsor to allocate costs based on the intended purpose and value of the station to the airport, not its actual use. The airport operator argues that a more flexible approach could better implement the applicable statutory provision that prohibits "direct payments or indirect payments, other than payments reflecting the value of services and facilities provided to the airport."

Airlines: ATA supports the proposed policy clarification that no particular cost allocation methodology for indirect costs is preferred.

The Final Policy: The Final Policy reflects a different and simplified approach to indirect cost allocation that is intended to facilitate development of permissible cost allocation plans and the review of those plans in the single audit process. The Final Policy specifies that the cost allocation plans must be consistent with Attachment A of OMB Circular A-87. Attachment A sets forth general principles for developing cost allocation plans. Those principles are essentially a restatement of the principles proposed in the Supplemental Policy. By referring to Attachment A, the Final Policy establishes a standard that is well understood by airport cost accountants and by airport operators' independent auditors. The Final Policy does not require compliance with the other attachments to OMB Circular A-87, which include more rigid requirements and defines categories of grant recipient costs that are eligible and ineligible for reimbursement with Federal grant funds.

The Final Policy continues to specify that the costs allocated must themselves be eligible for expenditure of airport revenue under section 47107(b). Attachment A to OMB Circular A-87 provides principles for cost allocation methodologies. The cost items that may be charged to airport revenue are determined by the requirements of section 47107(b). Therefore, sponsors, and the FAA, cannot rely solely on compliance with OMB Circular A-87 to assure that the costs items charged to the airport in a Federally approved cost allocation plan are consistent with section 47107(b).

The Final Policy continues to specify that the airport must not be charged directly and indirectly for the same costs. The FAA is not persuaded that the example of police services offered by an airport sponsor requires a modification of this requirement. This

provision is not intended to preclude both the direct and indirect billing in the situation cited by the commenter—where police services are provided to the airport on both an exclusive-use and a shared-use basis. In the cited example, it would be preferable to bill for police exclusively assigned to the Airport on a direct cost basis. It would be impossible, however, to bill for the shared-use police without engaging in some form of indirect cost allocation. The FAA did not intend the supplemental policy to preclude treatment of police services as both direct and indirect costs in these circumstances, only to preclude double billing on both a direct and indirect basis, for the same police costs.

Similarly, with respect to the second example of police services where the airport receives exclusive-use police services and other sponsor departments receive shared-use police services, the FAA did not intend the Supplemental Notice to preclude disparate billing methodologies. Inherent in Attachment A is that comparable units of a sponsoring government making comparable uses of the sponsor's services should have costs allocated and billed in a comparable fashion. The clarification noted above should address this situation as well. In the second example cited, the FAA would consider the sponsor departments receiving shared-use police services not to be comparable to the airport receiving exclusive use police services.

The Final Policy also provides that the allocation plan must not burden the airport with a disproportionate share of allocated costs, and requires that all comparable units of the airport owner or operator be billed for indirect costs billed to the airport. The FAA is unwilling to accept the suggestion that comparable users of a service may sometimes be treated differently for billing purposes, so long as the costs attributed to one unit of government are not then charged to the airport. The FAA believes that such practices would result in an unfair burden being placed upon the airport simply because of the airport's ability to pay.

This provision, however, is not intended to require a sponsor's General Fund activities to bill other General Fund activities for indirect costs that are properly allocable to those activities, if the airport is billed. The policy is clear that comparable billing for services is required only for comparable users.

Enterprise funds need not be treated as comparable to units of a sponsoring government financed from the sponsor's general fund, and comparable billing between enterprise funds and other units of government is not required.

While the FAA may presume that enterprise funds are comparable to each other, an airport sponsor is free to demonstrate that particular enterprise funds are sufficiently different in material ways—such as the way they consume sponsor services or their overall financial relationships with the sponsor—to justify different practices in charging for indirect costs. The Final Policy does not further define comparability because decisions on comparability will depend on the specific circumstances of a sponsor. The Final Policy also explicitly permits the allocation of general costs of government and central services costs to the airport, if the cost allocation plan meets the Final Policy's requirements. As specified in the Final Policy, however, the allocation of these costs to the airport may require special scrutiny to assure that the airport is not being burdened with a disproportionate share of the allocated costs.

In addition, the FAA continues to recognize that use of airport revenue to pay some expenses not normally considered to be allowable pursuant to OMB Circular A-87, such as fire and police services, is consistent with the revenue retention requirement. If such costs are allocated as an indirect cost in accordance with the Final Policy, they will be considered by the FAA as acceptable charges.

The Final Policy is modified to permit the allocation of certain categories of a sponsor's general cost of government as an indirect charge to the airport. Such charges include indirect expenses of the Office of Governor of a State, State legislatures, offices of mayors, county supervisors, city councils, etc. An airport owner's or operator's central service costs may also be allocated to the airport. The Final Policy specifies that allocation of these categories of costs to the airport may require special scrutiny to assure that the airport is not being burdened with a disproportionate share of the costs.

The FAA proposed to prohibit the allocation of all general costs to the airport on the grounds that the payment of such costs with airport revenue would be inconsistent with the purpose of the revenue use restriction—to avoid subsidy of general sponsor governmental activity. It is clear from the comments that airports routinely pay for a share of the general costs the legislative and executive branches of the governmental unit of which the airport is a part under cost allocation plans prepared in accordance with GAAP. Further, the comments demonstrate that the payment of legislative and executive branch costs by airport revenue can be

justified as a cost of the airport because the legislative and executive branches have direct, tangible oversight and control responsibilities for the airport, and their activities provide direct benefits to the airport, such as in the areas of funding, capital development, and marketing.

In addition, under the Final Policy, the costs of shared-use facilities must be allocated to all users of the facility, even if the original purpose of constructing the facility was to provide exclusive use or benefit to the airport. While a sponsor-owned facility may have originally been established for the benefit of the airport, the FAA believes that the purpose of the facility can change from time to time based on local circumstances and that allocation of costs should be based on current purpose, as well as use. The FAA may consider a number of factors in determining current purpose, including current use, design and functionality.

b. Standard of Documentation for the Reimbursement of Cost of Services and Contributions to Government Entities

In its administration of airport agreements, the FAA is not normally concerned with the internal management or accounting procedures used by airport owners. As a matter of policy and procedure, the FAA has consistently required that reimbursement of capital and operating costs of an airport made by a government entity must be clearly supportable and documented.

Neither the Proposed Policy nor the Supplemental Notice explicitly discussed a standard of documentation that must be achieved for a sponsor to claim reimbursement for services and/or contributions it provided to the airport. However, events subsequent to the issuance of both documents indicate a need for FAA to provide specific guidance on the standard of documentation that will support the expenditure of airport revenues.

In the examination of a possible diversion of airport revenue by the City of Los Angeles at Los Angeles International, Ontario, Van Nuys and Palmdale Airports (FAA Docket No. 16-01-96), the FAA reviewed the underlying documentation which the City of Los Angeles offered to support the payment of approximately \$31 million in airport revenue to the Los Angeles' general fund as the reimbursement of sponsor contributions and services provided to the airport. In the Director's Determination dated March 17, 1997, the FAA stated its standard of documentation to justify such reimbursements. Accordingly, the

FAA is including that standard in the Final Policy.

The Final Policy requires that reimbursements for capital and operating costs of the airport made by a government entity, both direct and indirect, be supported by adequate documentary evidence. Adequate documentation consists of underlying accounting records and corroborating evidence, such as invoices, vouchers and cost allocation plans, to support all payments of airport revenues to other government entities. If this underlying accounting data is not available, the Final Policy allows reimbursement to a government entity based on audited financial statements, if such statements clearly identify the expenses as having been incurred for airport purposes consistent with the Final Policy statement. In addition, the Final Policy provides that budget estimates are not a sufficient basis for reimbursement of government entities. Budget estimates are just that—estimates of projected expenditures, not records of actual expenditures. Therefore, budget estimates cannot be relied on as documentary evidence to show that the funds claimed for reimbursement were actually expended for the benefit of the airport.

Indirect cost allocation plans, however, may use budget estimates to establish pre-determined indirect cost allocation rates. Such estimated rates must, however, be adjusted to actual expenses in the subsequent accounting period.

5. Prohibited Uses of Airport Revenue

a. Impact Fees/Contingency Fees

The Proposed Policy prohibited the payment of impact fees assessed by a non-sponsoring governmental body that the airport sponsor is not obligated to pay or that exceed such fees assessed against commercial or other governmental entities. The Supplemental Notice did not modify this provision. The term "impact fees" was not defined in the Proposed Policy.

Airport operators: One Florida airport sponsor stated that impact fees should be allowable to either a sponsoring or non-sponsoring governmental body. Another commented that the language referring to a "non-sponsoring" governmental body was vague and confusing. Within the state of Florida, impact fees are typically administered by a non-sponsoring government body. It was stated that the wording did not seem to prohibit impact fee payments when assessed by a "sponsoring" agency, or impact fees that an airport sponsor is obligated to pay.

The Final Policy: For clarity, the Final Policy is modified to delete the reference to "non-sponsoring" governmental body and to delete the reference to fees the sponsor is not obligated to pay. In addition, the FAA is adding a statement that in appropriate circumstances, airport revenue may be used to reimburse a governmental body for expenditures that the imposing government will incur as a result of on-airport development, based on actual expenses incurred.

The effect of the deletions is to broaden the prohibition to all impact fees, within the meaning of the term used in the policy statement. As such, the deletions are consistent with the statutory prohibition on payment of airport revenues that do not reflect the value of services or facilities actually provided to the airport. Until a governmental unit undertakes the activity for which the impact fee is intended to compensate, it is impossible to know with certainty whether the impact fee is an accurate reflection of the cost of the activity attributable to the airport or its value to the airport, or even that the activity will occur. This situation is true regardless of both the status of the governmental unit as airport sponsor and the status of the fee as discretionary. The FAA understands that many local laws or regulations authorizing impact fees do not require the fees to be spent to mitigate or accommodate the results of the airport action that triggers the fee. The FAA has no basis for assuring the payment of impact fees would be consistent with the purpose of section 47107(b)—to prevent an airport sponsor who received Federal assistance from using airport revenues for expenditures unrelated to the airports.

The broader prohibition is consistent with applicable FAA policies. Longstanding FAA policy has permitted a sponsor to claim reimbursement from airport revenue only for "clearly supportable and documented charges, * * * supported by documented evidence." FAA Order 5190.6A, par. 4-20.a(2)(c)(ii). An impact fee assessed before the imposing government incurred any expenses to accommodate airport growth would not meet this standard.

In addition, a standard of documentation required by the Final Policy applies to all expenditures of airport revenues subject to section 47107(b), including impact fee payments. That standard requires that expenditures of airport revenues be supported by data on the actual costs incurred for the benefit of the airport, not by budget or other estimates, which

impact fees essentially are. The Final Policy will allow submission of those assessed fees resulting from the proposed development when the amount of the fees become fully quantifiable, as provided for in Section IV of the Final Policy, following implementation by the imposing government of the mitigation measures for which the impact fee is assessed. At that time, the FAA can best determine whether the fees assessed against airport revenue satisfy the requirements of section 47107(b) and this policy. In unusual circumstances, the FAA may permit a prepayment of estimated impact fees at the commencement of a mitigation project, if the funds are necessary to permit the mitigation project to go forward, so long as there is a reconciliation process that assures the airport is reimbursed for any overpayments, based on actual project costs, plus interest.

However, the Final Policy does take into account the potential that an airport operator may be required by state or local law to finance the costs of mitigating the impact of certain airport development projects undertaken by the airport sponsor. Therefore, where airport development causes a government agency to take an action, such as constructing a new highway interchange in the vicinity of the airport, airport revenues may be used equal to the prorated share of the cost. In all cases, the action must be shown to be necessitated by the airport development. In the case of infrastructure projects, such impact mitigation must also be located in the vicinity of the airport. This proximity requirement is not being applied to all mitigation measures because some mitigation measures—especially certain environmental mitigation measures—may not occur in the vicinity of the airport.

The Final Policy also acknowledges the possibility that an airport operator may be bound by local or state law to use airport revenue to pay an impact fee that is prohibited by this policy. The Final Policy states that the FAA will consider any such local circumstances in determining appropriate corrective action.

b. Subsidy of Air Carriers

As discussed in Section V "Permitted Uses," the Supplemental Notice acknowledged the fact that Congress, in the 1994 FAA Authorization Act, effectively authorized the use of airport revenue for promotion of the airport by expressly prohibiting "use of airport revenues for general economic development, marketing, and

promotional activities unrelated to airports or airport systems." At the same time, that statutory provision also limited the scope of acceptable promotional activity.

In the Supplemental Notice, the FAA proposed new policy language that more clearly addressed the kinds of promotional and marketing activities that are and are not legitimate operating costs of the airport under 47107(b). In the Supplemental Notice, Section VIII(I), the FAA proposed that "[d]irect subsidy of air carrier operations" is a prohibited use of airport revenue because it is not considered a cost of operating the airport. The FAA drew a distinction between methods of encouraging new service. Supplemental Notice proposed to allow the use of airport revenue to encourage passengers to use the airport through promotional activities, including cooperative promotional activities with airlines and to allow airport operators to enhance the viability of new service through fee incentives, on the one hand, the FAA proposed to prohibit the use of airport revenue to simply buy increased use of the airport by paying an air carrier to operate aircraft, on the other. The FAA considered the former activities to be a permitted expenditure for the promotion and marketing of the airport and the latter to be a prohibited expenditure for general economic development. The FAA explained in the preamble to the Supplemental Notice that neither promotional activities nor promotional fee discounts would be considered a prohibited direct subsidy of airline operations. 61 FR at 66738.

Airport operators: In their comments on the Supplemental Notice, ACI-NA/AAAE state that, generally, an expenditure or activity should not be considered revenue diversion if there is a reasonable expectation that such an expenditure or activity will benefit the airport. Furthermore, they note that the law does not single out direct air carrier subsidy or fee waivers for more stringent scrutiny than other marketing activities. This argument in favor of the reasonable business judgment of the airport management should be applied to the use of airport revenue for promotion and marketing not unrelated to the airport, including direct air carrier subsidies and fee waivers. ACI/AAAE stated "both forms of financial assistance should be permitted, if an airport has a reasonable expectation that the subsidy will benefit the airport and the subsidy or discount is made available on a non-discriminatory basis."

ACI/AAAE further stated that there is no real distinction between direct

subsidy and fee waivers, as well as none between direct subsidy and the residual airport costing methodologies, making the distinction in the policy illogical. They predicted that the proposed policy is likely to promote detrimental effects, including eliminating air service to some small airports, increasing congestion at dominant hubs at the expense of medium-sized airports, reducing potential competition and raising fares.

Several individual airport operators concurred with the ACI-NA/AAAE position. One operator commented that any subsidies should be permitted, as long as the airport remains self-sustaining and the subsidies are not included in airline costs in calculating landing fees, terminal rents and other user charges.

Another airport operator, the LNAA, which is engaged as a party in a 14 CFR Part 13 investigation regarding its former air carrier subsidy program, commented that there is no real difference between an airport making a direct subsidy to an air carrier or waiving fees.

Two airport operators expressed different views. One operator agreed that airport revenues should not be used to subsidize new air carrier service because the practice of subsidization could lead to destructive competition for air service among airports. Another airport operator stated that it "does not currently engage in nor does it contemplate any form of direct subsidy to air carriers in exchange for air service." This operator considers the Supplemental Notice to provide adequate flexibility to airport operators to foster and promote air service development.

Air carriers: The ATA strongly opposed the assertion that direct subsidies of airline operations with airport revenue may be considered to be operating costs of the airport and would extend the prohibition to indirect subsidies. They argued that the distinction in the proposed policy that allows fee waivers under certain circumstances, but prohibits direct subsidy is illogical. Both result in revenue diversion, whether the beneficiary is "a start up carrier, a new entrant in a market, or an existing carrier at an airport." The ATA further commented, in connection with joint marketing endeavors, that the permissible "promotional period" should be defined, as should the scope of permissible marketing activities.

The Final Policy: The FAA has clarified the policy provision on the direct subsidy of air carriers with airport revenue; however, the prohibition

remains, as does the distinction between direct subsidy and the waiving of fees and the joint promotion of new service. The FAA has applied the test of section 47107(b) to determine to what extent various kinds and amounts of promotional and marketing activities can be considered legitimate operating costs of the airport.

In pursuit of uniformity, the FAA has integrated references to the section on the permitted uses of airport revenue, as well as to the section on self-sustainability, to assist airport operators in pursuing reasonable strategies to promote the airport and provide incentives to encourage new air service. Among other things, marketing of air service to the airport, and expenditures to promote the airport to potential air service providers can be treated as operating costs of the airport. Of course, support for marketing of air service to the airport must be provided consistently with grant assurances prohibiting unjust discrimination.

The setting of fees is a recognized management task, based on a number of considerations, including the airport management's assessment of the services needed by airport consumers, and the airport management's assessment of the financial arrangements necessary to secure that service. The FAA has consistently maintained that fee waivers or discounts involving no expenditure of airport funds raise issues of compliance with the self-sustaining rate structure requirement, not the revenue-use requirement. The Final Policy therefore, permits fee waivers and discounts during a promotional period. The waiver or discount must be offered to all users that are willing to provide the type and level of new service that qualifies for the promotional period. The Policy limits the fee waiver or discount to promotional periods because of the requirement that the airport maintain a self-sustaining airport rate structure. In addition, indefinite fee waivers or discounts could raise questions of compliance with grant assurances prohibiting unjust discrimination. The Final Policy does not define a permitted promotional period. There is too much variation in the circumstances of individual airports throughout the country to permit adoption of a single national definition of a suitable promotional period.

In contrast, the direct payment of subsidies to airline involves the expenditure of airport funds and hence raises questions under the revenue-use requirements. The FAA continues to believe that the costs of operating aircraft, or payments to air carriers to

operate certain flights, are not reasonably considered an operating cost of an airport. In addition, payment of subsidy for air service can be viewed as general regional economic development and promotion, rather than airport promotion. Use of airport revenue for these purposes is expressly prohibited under the terms of the 1994 FAA Authorization Act. The Final Policy does not preclude a sponsor from using funds other than airport revenue to pay airline subsidies for new service, and it does not preclude other community organizations—such as chambers of commerce or regional economic development agencies—from funding a program to support new air service. Therefore, the Final Policy maintains the distinction between direct subsidy of air carriers and the waiving of fees, and prohibits the former.

6. Policies Regarding the Requirement for a Self-Sustaining Rate Structure

As noted in the summary, the Final Policy contains a separate section on the requirement that an airport maintain a rate structure that makes the airport as self-sustaining as possible under the circumstances at the airport, to provide more comprehensive guidance in a single document. The 1994 FAA Authorization Act directed the FAA to adopt policies and procedures to assure compliance with both the revenue uses and self-sustaining airport rate structure requirement. The general guidance repeats the guidance appearing in the Department of Transportation Policy Statement Regarding Airport Rates and Charges, 61 FR 31994 (June 21, 1996). The Final Policy interprets the basic requirement and addresses exceptions to the basic rule for leases of airport property at nominal or less-than fair market value (FMV) to specific categories of users.

Each federally assisted airport owner/operator is required by statute and grant assurance to have an airport fee and rental structure that will make the airport as self-sustaining as possible under the particular airport circumstances, in order to minimize the airport's reliance on Federal funds and local tax revenues. The FAA has generally interpreted the self-sustaining assurance to require airport sponsors to charge FMV commercial rates for nonaeronautical uses of airport property. However, in the case of aeronautical uses, user charges are also subject to the standard of reasonableness. In applying the two standards together for aeronautical property, the FAA has considered it acceptable for an airport operator to charge fees to aeronautical users that are

less than FMV, but more than nominal charges. The FAA defines "aeronautical use" as any activity which involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations. Policy Statement Regarding Airport Fees, Statement of Applicability, 61 FR at 32017.

Many entities lease airport property for aeronautical and nonaeronautical uses at nominal lease rates. The FAA has determined that nominal leases to many of these entities is consistent with the requirement to maintain a self-sustaining airport rate structure. The Final Policy provides specific guidance regarding nominal leases for six categories of users. This guidance is discussed below.

a. Use of Property at Less Than FMV for Community/Charitable/Recreational Use

Airport operators: The ACI-NA/AAAE agree with the general conclusion that use of airport property for community and charitable purposes at less than FMV should be permissible. However, they argued that the criteria listed in the Supplemental Notice are too narrow. Other criteria should be considered, and an airport should be required to provide no more than one justification. The ACI-NA/AAAE specifically mentioned aeronautical higher education institutions and not-for-profit air and space museums as additional permitted uses, based on H.R. Rep. 104-714, 104th Cong. 2nd Sess. at 39 (1996) reprinted in 1996 USCC.A.N. 3676.

Individual airport operators also requested more flexibility in various forms. One operator suggested that the Supplemental Notice establishes an unnecessary two-part test which many community uses of airport property will fail to satisfy. Another operator argued that such airport property use should not be limited to temporary arrangements, e.g., parks and baseball fields, which indicates that only uses that allow property to be returned rather quickly to the airport inventory would be permitted.

In contrast, another airport operator suggested that, in order to place less burden on the airport operator, such uses should be limited in scope and that the below-market value amount that an airport operator could charge for such usage should be established as some percentage of the appraised value of the property.

Air carriers: The ATA agrees in principle with the concept of limited use of airport property for certain specified community purposes at less

than FMV. However, ATA stated that the Supplemental Notice lacks specificity and that its application would consequently be inconsistent with the self-sustaining and revenue-use requirements. The ATA proposed to narrow the first element of the standard to permit contribution of property if the property is put to a general public use desired by the local community and the use does not adversely affect the capacity, safety or operations of the airport. The ATA would narrow the second test by permitting the use of property that is expected to generate no more than minimal revenue, which the ATA would define as minimal revenue equal to or less than 20 percent of revenue that could be earned by similar airport property in commercial or air carrier use. When the property could be expected to earn more than this defined minimal amount, the ATA would permit less than FMV rental if the revenue earned by the community use approximates the revenue that would otherwise be generated.

The ATA would also require that the community use be subject to periodic review and renewed justification and that the airport proprietor retain absolute discretion to reclaim the property for airport use.

Other commenters: A member of the United States House of Representatives expressed concern that the policy, if adopted as proposed, does not provide sufficient flexibility to airport operators to be good neighbors within their community. This commenter suggested that in rural areas, requiring community organizations to pay FMV could reduce airport revenue as paying community organizations are forced off of the airport by higher rents and no new tenants are found.

Final Policy: The Final Policy generally permits below-FMV rental of airport property for community uses, but generally limits the uses to property that is not potentially capable of producing substantial income and not needed for aeronautical use. Consistent with the suggestions of the ATA, the permitted community uses of such property will be limited to those that are compatible with the safe and efficient operation of the airport and which are for general local use. In addition, the community use should not preclude reuse of the property for airport purposes, if the airport operator determines that such reuse will provide greater benefits to the airport than the continued community use. Leases to private, non-profit organizations generally will be required to be at market rates unless the sponsor can demonstrate a "community goodwill"

purpose to the lease, or can demonstrate a benefit to aviation and the airport, as discussed below.

While the Final Policy states that property provided for community use at no charge should be expected to produce no more than minimal revenue, we are not adopting a definition of minimal. For property that is capable of generating more than minimal revenue, a sponsor could charge less than FMV rental rates for community use, if the revenue earned from the community use approximates that revenue that could otherwise be generated. Providing such property for community use at no charge would not be appropriate.

The FAA has determined that this approach to community use strikes an appropriate balance between the needs of the airport to be a good neighbor and the Federal requirements on the use of airport revenue and property. This formulation provides substantial flexibility to airport operators. At the same time, the self-sustaining requirement and the policy goal of the revenue-use requirement justify some limitation on local discretion in this area.

The requirement that community use not preclude reversion to airport use is based on both the self-sustaining requirement and the airport sponsor's basic AIP obligation to operate a grant-obligated airport as an airport.

Under the Final Policy, the lease of airport property to a unit of the sponsoring government for nonaeronautical use at less than fair market value is considered a prohibited revenue diversion unless one of the specific exceptions permitting below-market rental rates applies. If a sponsor's use of airport property qualifies as community use, and the other requirements for community-use leases are satisfied, the FAA would not object to a lease at less than fair market value. Qualified uses could include park or recreational uses or other public service functions. However, such use would be subject to special scrutiny to ensure that the requirements for below-FMV community use is satisfied. The community use provision of the Final Policy does not apply to airport property used by a department or subsidiary agency of the sponsoring government seeking an alternative site for the sponsor's general governmental purposes at less-than-commercial value. For example, a city cannot claim the community use exception for a nominal value lease of airport property for a municipal vehicle maintenance garage. Such usage, while beneficial to the taxpaying citizens of the sponsoring government, would be difficult to justify

as benefiting the airport by improving the airport's acceptance in the community.

b. Not for Profit Aviation Museums

The DOT OIG has cited instances in which an aviation museum at a federally assisted airport is leasing airport property at less than a fair market rental rate. In clarifying the revenue diversion prohibitions recommended for inclusion in the FAA Authorization Act of 1996, the House Transportation and Infrastructure Committee urged the FAA to take a flexible approach to the lease of airport property at below-market rates to not-for-profit air and space museums located on airport property. H.R. Rep. No. 104-714, 104th Cong. 2nd Sess. at 39 (1996) reprinted in 1996 U.S.C.C.A.N. 3676 (House Report). The Committee recommended that this type of rental arrangement should not be considered revenue diversion because of the contribution that such museums make to the understanding and support of aviation.

One airport operator commented that long-term, less-than-market value rental arrangements, particularly for leaseholds encompassing permanent facilities, should be permitted when such arrangements serve a clear and valuable aviation-related purpose. This comment could include aviation museums.

One operator of a not-for-profit aviation museum urged the FAA to permit nominal rate leases. This operator stated that a FMV-based lease for its museum property would double its current operating budget.

The Final Policy: The Final Policy permits airport operators to charge reduced rental rates and fees, including nominal rates, to not-for-profit aviation museums, to the extent that the reduction is reasonably justified by the tangible and intangible benefits to the airport or civil aviation. This provision recognizes the potential for aviation museums to provide benefits to the airport by stimulating understanding and support of aviation, consistent with the suggestion contained in the House Report, U.S.C.C.A.N. 3676. Benefits to the airport may include any in-kind services provided to the airport and airport users by the aviation museum. The limitation to not-for-profit museums is consistent with the requirement for a self-sustaining airport rate structure, because there is no reason to give for-profit aviation museums preferential treatment over other commercial aeronautical activities. All for-profit aeronautical activities provide some benefit to the airport, by making it more

attractive for potential airport users. If this benefit were a sufficient reason to permit reduced rental rates to commercial aviation businesses on a routine basis, the requirement for a self-sustaining airport rate structure would be virtually unenforceable.

The Final Policy permits but does not require below-market rental rates, including nominal rates. The airport operator is free to treat a qualified aviation museum as it would any other aeronautical activity in setting rental rates and other fees to be paid by the museum.

c. Aeronautical Higher Education Programs

The DOT OIG has cited instances in which aeronautical secondary and post-secondary education programs at federally assisted airports are leasing airport property at less than a fair market rental rate.

In the House Report, 1996 U.S.C.C.A.N. 3676, the House Transportation and Infrastructure Committee also urged the FAA to take a flexible approach to aeronautical higher education programs located on airports. The Committee recognized that some federally obligated airports have leased property to non-profit, accredited collegiate aviation programs, and that facilitating these programs will help build a base of support for airport operations by giving students, who will be the future users of the national airspace system, easy access to aviation facilities.

The Final Policy: The Final Policy permits reduced rental rates, including nominal rates, to not-for-profit aeronautical secondary and post-secondary education programs conducted by accredited educational institutions, to the extent that the reduction is justified by tangible or intangible benefits to the airport or to civil aviation. This treatment is justified for the same reason that reduced rental rates and fees to certain aviation museums are permitted. Again, the benefits may include in-kind services provided to the airport and airport users. As with aviation museums, the educational institution and education program must be not-for-profit. For-profit aviation education, such as flight-training, is a standard commercial aeronautical activity at many airports. Permitting reduced rental rates and fees to for-profit aviation education programs would seriously undermine compliance with the self-sustaining requirement and could raise questions of compliance with the grant assurances prohibiting unjust discrimination.

The Final Policy permits but does not require below-market rental rates, including nominal rates. The airport operator is free to treat a qualified not-for-profit aeronautical education program as it would any other aeronautical activity in setting rental rates and other fees to be paid by the education program.

d. Civil Air Patrol Leases

Reduced-rental leases, including nominal leases, to the Civil Air Patrol/United States Air Force Auxiliary (CAP) at a number of airports have also been criticized in OIG audits. As a result of this criticism, some airport operators have been seeking higher rents from the CAP when leases have come up for renewal.

In its comments, the CAP contends that the current standard airport industry practice of permitting CAP use of airport property for a nominal rent confers substantial benefits to the airport and, in general, to the aviation community. The CAP, therefore, requests that a policy be adopted which would formally permit CAP units to continue to occupy facilities on federally obligated airports at a nominal rent, whether under formal lease arrangements, or otherwise, at the discretion of the airport owner/operator.

The Final Policy: The Final Policy permits reduced rental rates and fees to CAP units operating at the airport, in recognition of the benefits to the airport and benefits to aviation similar to those provided by not-for-profit aviation museums and aeronautical secondary education programs. As with other not-for-profit-aviation entities, the reduction must be reasonably justified by benefits to the airport or to civil aviation. In-kind services to the airport and airport users may be considered in determining the benefits that the CAP unit provides. In addition, this treatment of the CAP, which has been conferred with the status of an auxiliary to the United States Air Force, is not identical to the treatment provided to military units in the Final Policy, as discussed below, but is consistent with that treatment.

The reduced rental rates and fees are available only to those CAP units operating aircraft at the airport. For CAP units without aircraft, a presence at the airport is not critical. The airport operator can accommodate those CAP units with property that is not subject to Federal requirements on maintaining a self-sustaining rate structure, without compromising the effectiveness of the CAP units. Of course, if such units provide in-kind services that benefit the airport, the value of those services may be recognized as an offset to FMV rates.

The Final Policy permits but does not require nominal rental rates. The airport operator is free to treat a qualified not-for-profit aeronautical CAP lease as it would any other aeronautical activity in setting rental rates and other fees to be paid by the education program.

e. Police/Firefighting Units Operating Aircraft at the Airport

Many airports host police or fire-fighting units operating aircraft (often helicopters). The OIG has frequently criticized reduced rate or no-cost leases to these units of government as inconsistent with the self-sustaining and revenue-use requirements.

The Final Policy requires the airport operator to charge reasonable rental rates and fees to these units of government. In effect, these units of government must be treated the same as other aeronautical tenants of the airport. This treatment is consistent with the policy's general approach toward dealings between units of government—fees should be set at the level that would be produced by arm's-length bargaining. The treatment is also justified because police and fire-fighting aircraft units provide benefits to the community as a whole, and not necessarily to the airport. However, as with other police and fire-fighting units located at an airport, the policy does allow rental payments to be offset to reflect the value of services actually provided to the airport by the police and fire-fighting aircraft units.

f. Use of Property by Military Units

The US Air Force Reserve and the Air National Guard both have numerous flying units located on federally obligated, public-use airports. The majority of these aircraft-operating units are located on leased property at civilian airports established on former military airport land transferred by the US Government to the airport owner/operator under the Surplus Property Act of 1944, as amended, or under other statutes authorizing the conveyance of surplus Federal property for use as a public airport. Frequently, the favorable lease terms were contemplated in connection with the transfer of the former military property and may have been incorporated in property conveyance documents as obligations of the civilian airport sponsor. As with other reduced-rate leases, these arrangements have been criticized in individual OIG audits.

The Final Policy: The Final Policy provides that leasing of airport property at nominal lease rates to military units with aeronautical missions is not inconsistent with the requirement for a

self-sustaining rate structure. The Department of Defense (DOD) has a substantial investment in facilities and infrastructure at these locations, and its operating budgets are based on the existence of these leases. Moving those facilities upon expiration of a lease or the payment of FMV rent for facilities to support military aeronautical activities required for national defense and public safety would be beyond the capability of the DOD without additional legislation and enlargement of the DOD operating budget. In all of the enactments on the self-sustaining rate structure requirement and use of airport revenue and the accompanying legislative history, the FAA can find no indication that Congress intended the airport revenue requirements to be applied in a way to disrupt the United States' defense capabilities or add significantly to the cost of maintaining those capabilities. Moreover, Congress specifically charged the FAA, in 49 U.S.C. § 47103, with developing a national plan of integrated airport systems (NPIAS) to meet, among other things, the country's national defense needs. Inclusion in the NPIAS is a prerequisite for eligibility for AIP funding. Thus, Congress clearly contemplated a military presence at civil airports. Therefore, the FAA will not construe the requirement for a self-sustaining airport rate structure to prohibit nominal leases to military units operating aircraft at an airport.

The Final Policy permits but does not require nominal rental rates. The airport operator is free to treat a qualified military unit as it would any other aeronautical activity in setting rental rates and other fees to be paid by the military unit.

7. Lease of Airport Property at Less Than FMV for Mass Transit Access to Airports

The Supplemental Notice proposed that airport property could be made available at less than fair rental value for public transit terminals, rights-of-way, and related facilities, without being considered in violation of the requirements governing airport finances, under certain conditions. The transit system would have to be publicly owned and operated (or privately operated by contract on behalf of the public owner) and the transit facilities directly related to the transportation of air passengers and airport visitors and employees to and from the airport. Twenty-one responses addressed this issue.

Airport commenters: The airport operators concur with the principle of making airport land available for mass

transit at rates below fair market value. ACI-NA/AAAE stated that the determination to use airport property for a transit terminal, transit right-of-way, or related facilities at less than fair rental value is consistent with the grant assurance requiring airports to be self-sustaining.

Air carriers: The ATA asserted that FAA has exceeded its statutory authority in the proposal. ATA's considers transit facilities to be like commercial business enterprises, because they occupy airport property and charge their customers for their services. ATA also stressed that airport transit facilities are non-aeronautical facilities which are not "directly and substantially related to the air transportation of passengers or property."

Other commenters: Transit operators, including a transit operator trade association generally supported the position in the Supplemental Notice.

Another commenter stated that making airport property available at less than fair market rental value or making airport revenue available for transit facilities equates to the airport paying a hidden taxation. This commenter argued that it was not the intention of Congress, when it passed the AAIA, to have grant funds used to subsidize, either directly or indirectly, any activity that provides no benefit to air travel.

The Final Policy: The Final Policy incorporates the provision proposed in the Supplemental Notice, with a technical correction to include transit facilities use for the transportation of property to or from the airport. The FAA does not consider public transit terminals to be the equivalent of commercial business enterprises. Rather, they are more like public and airport roadways providing ground access to the airport. Generally speaking, the FAA does not construe the self-sustaining assurance to require an airport owner or operator to charge for roadways and roadway rights-of-way at FMV.

Moreover, even though publicly-owned transit systems charge passengers for their services, they generally operate at a loss and are subsidized by general taxpayer revenue. Charging fair market value for on airport facilities would thus burden general taxpayers with the costs of providing facilities used exclusively by transit passengers visiting the airport. Therefore, a requirement to charge FMV would not further the purpose of the self-sustaining assurance—to avoid burdening local taxpayers with the cost of operating the airport system.

a. Private Transit

ACI-NA/AAAE and four airport operators commented that private transit operators should have treatment equal to public transit operators. They argued that the concepts of public-private partnerships, and privatization of transportation facilities, may be realities in the not-too-distant future. Moreover, private ownership would not detract in the least from the functions identified in the Notice for these facilities, such as bringing passengers to and from the airport. They also noted that the language in the AIP Handbook (Order 5100.38A, Section 6) does not specifically exclude private operators. The language states transit facilities will be allowable provided they will primarily serve the airport.

One state Department of Transportation also urged that reduced rental rates should be offered to privately-owned and operated transit systems on the same basis as publicly-owned systems.

Final Policy: The Final Policy retains some distinctions between privately and publicly owned systems. In general, privately-owned systems are more analogous to other ground transportation providers—private taxis and limousine services, rental car companies—and even private parking lot operators. These entities are commercial enterprises that operate for profit and are a significant source of revenue for the airport. Most importantly, they are not supported by general taxpayer funds, and charging FMV would not raise questions of burdening local taxpayers with the cost of the airport.

However, the FAA is aware that, in many communities with no publicly-owned bus systems or very limited systems, privately-owned bus systems fulfill the role of providing public transit services to the airport. Accordingly, the FAA is revising the Final Policy to permit an airport operator to provide airport property at less than FMV rates to privately-owned systems in these limited circumstances.

b. Airport Passengers

Nine airport commenters addressed the proposed requirement that transit facilities be directly related to the transportation of air passengers and airport visitors and employees to and from the airport to qualify for less-than-FMV rentals. The commenters argue that the provision is too narrow by restricting the transit service to air-passengers and airport visitors and employees. One airport operator states that airport sponsors must have the

flexibility to build airport transit systems that principally serve airport passengers, employees and other users but which may also secondarily transport some nonairport users. Two airport operators with general-use rail transit systems planned or operating on or near their airports argue that the airport benefits from improved ground access, reduced traffic congestion and improved air quality of general use systems and that rent-free property should, therefore, be provided to general use systems.

Final Policy: The Final Policy incorporates the language of the Supplemental Notice. That language does not preclude any use of transit facilities constructed on airport property by nonairport passengers if the property is to be leased at less-than-FMV. The requirement that the facilities be "directly related" to the airport does not equate to a requirement that the facilities be "exclusively used" for airport purposes. However, if the intended use of a facility is not exclusive airport use, some rental charge may be necessary to reflect the benefits provided to the general public. The determination on whether the facilities are "directly related" will be made on a case-by-case basis.

It appears that some of the concern about this issue was generated by the language in the preamble, which referred to transit facilities "necessary for the transportation of air passengers, airport visitors and airport employees to and from the airport." The preamble offered a maintenance/repair facility as an example of facilities that would not qualify. The FAA is not convinced that the benefits to the airport of having such facilities on the airport is sufficient to justify less-than-FMV rental rates. However, as noted, the FAA does not construe the policy language "facilities directly related the transportation of [airport passengers]" to require that the facilities be used exclusively by airport passengers.

8. Military Base Conversions Issues

In its comments to the Proposed Policy, one airport operator argued that using airport revenue to assist in development of revenue-generating properties on former military bases that are converted to civil airports should not be considered a prohibited use of revenue.

In addition, ACI-NA/AAAE state that a base closure and conversion to civilian use often results in the existence of significant recreational facilities on property owned by an airport. In regard to these facilities on converted military bases, ACI/AAAE stated, "[a] leasing

arrangement whereby a municipality assumes all liability and operating expenses in exchange for a no-revenue lease is beneficial to the airport and should not be prohibited."

Final Policy: The Final Policy provides for no special treatment of converted military bases with respect to airport revenue use, and no special provisions are included in the final policy.

The FAA policy on the use of public and recreational use of property will be consistently applied to airports whether or not they are former military bases. Ordinarily, airport revenue may not be used to finance the costs of public and recreational facilities at the airport, just as airport revenue may not be used to develop other facilities not needed for the airport, even if those facilities will generate revenue for the airport. In addition, unless the recreational facilities qualify under the community-use exception, the airport operator would be expected to receive FMV-based rental payments for the recreational or public property. Operational costs borne by a municipality as a result of a base conversion can be considered in the analysis of whether a reduced rent is justified by tangible or intangible benefits to the airport.

9. Enforcement Policy, Whether to Impose Civil Penalty Even if Funds are Returned

The Proposed Policy provided that if the FAA received information that improper use of airport revenue had occurred, the FAA would investigate the matter and attempt to resolve the issue informally. The matter could be resolved if the sponsor persuaded the FAA that the use of airport revenue was not improper, or if the sponsor took corrective action (which usually would involve crediting the diverted amount to the airport account with interest). The proposed policy provided that the FAA would propose enforcement action only if the FAA made a preliminary finding of noncompliance and the sponsor had failed to take corrective action. The Proposed Policy outlined the enforcement actions available to the FAA as of the date of publication. The actions included: (1) withholding of new AIP grants and payments under existing grants (49 USC §§ 47111(e) and (d), respectively); (2) withholding of new authority to impose PFCs (49 USC 47111(e)); (3) withholding of all Federal transportation funds appropriated in Fiscal Years 1994 and 1995 (as provided in the Department of Transportation appropriation legislation for those years); (4) assessment of civil penalties

not to exceed \$50,000 (49 USC § 46301); and (5) initiation of a civil action to compel compliance with the grant assurances (49 USC § 47111(f)).

The Proposed Policy outlined the administrative procedural rules applicable to airport compliance matters at the time of publication, 14 C.F.R., Part 13 "Investigation and Enforcement Procedures."

Airport operators: ACI-NA and AAEE strongly urged the FAA to provide in the final policy that remittance of any diverted amounts, together with associated interest, should be sufficient to "cure" instances of revenue diversion, regardless of how those instances come to the attention of the FAA. In particular, a non-airport party should not be given the capacity, through the filing of a formal complaint, to eliminate an airport's ability to cure the problem.

Air carriers: ATA suggested that the proposed policy should be strengthened, backed up by a stronger enforcement policy and aggressive monitoring and vigorous enforcement action. ATA additionally argued that FAA should promulgate one rule that sets forth in detail the substantive requirements regarding revenue retention and diversion and a separate compliance and enforcement policy document.

ATA objected that the proposed policy continues to provide a passive monitoring procedure and this approach is not sufficient to provide prompt and efficient enforcement. IATA objected that the Proposed Policy does not promote prompt or effective enforcement.

ATA suggested that the FAA establish a formal compliance monitoring and inspection program that includes compliance monitoring and audits/inspections similar to those it conducts at certificated airlines, such as for drug and alcohol testing. Further, ATA stated that FAA's enforcement policy should result in civil penalties being assessed with the same vigor with which they are assessed against airlines for alleged regulatory violations. In addition, ATA urged that FAA should maintain the threat of assessing civil penalties for each day an airport or sponsor is in violation of the revenue-use requirement and for each day a sponsor fails to repay amounts determined to have been diverted unlawfully. IATA similarly supported assessment of the maximum civil penalty for each instance of unlawful revenue use.

The Final Policy: After publication of the Proposed Policy, the FAA Reauthorization Act of 1996 mandated new remedies for improper use of

airport revenues and new compliance monitoring programs. The Final Policy has been modified to reflect the new requirements. Implementation of the requirements will result in more active and systematic monitoring of airport revenue use and more systematic resolution of questionable airport practices, as requested by the ATA and the IATA. It should be noted that the FAA had already assumed a more active role in monitoring through the implementation of the financial reporting requirements of the 1994 FAA Authorization Act.

In accordance with the requirements of the 1996 FAA Reauthorization Act, the Final Policy reflects the clear congressional intent that the FAA focus compliance efforts on the lawful use of airport revenue. The FAA will use all means at its disposal to monitor and enforce the revenue-use requirements and will take appropriate action when a potential violation is brought to the FAA's attention by any means. To detect whether airport revenue has been diverted from an airport, the FAA will use four primary sources of information: (1) the annual airport financial reports submitted by the sponsor; (2) findings from a single audit conducted in accordance with OMB Circular A-133 (including the audit review and opinion required by the 1996 Reauthorization Act); (3) investigation following a third-party complaint, and, (4) DOT Office of Inspector General audits.

The FAA will seek penalties for the diversion of airport funds if the airport sponsor is not willing to correct the diversion and make restitution, with interest, in a timely manner. This approach is consistent with the FAA's objective of achieving compliance with a sponsor's obligations. Moreover, it is consistent with section 805 of the 1996 Reauthorization Act, which provides for imposition of administrative and civil penalties only after a sponsor has been given an opportunity to take corrective action and failed to do so.

10. Form of Policy

As is reflected in the Proposed Policy and Supplemental Notice, the FAA proposed to implement section 112 of the 1994 Act by publishing a policy statement, rather than adopting a regulation.

The Comments: The ATA argued that the FAA should promulgate a regulation establishing substantive requirements for use of airport revenue and a separate enforcement policy. The ATA argued that a substantive regulation will provide more clarity on prohibited and permitted practices and be less

susceptible to conflicts over interpretation.

The AOPA also raised concerns over the prompt and effective enforcement of airport revenue diversion within the terms of this Proposed Policy.

The Final Policy: The FAA will publish policy guidance on airport revenue use and enforcement as a policy rather than as a regulation. Section 112 of the 1994 FAA Authorization Act directs the Secretary to "establish policies and procedures" to assure "prompt and effective enforcement" of the revenue retention grant assurances, which clearly contemplates the issuance of a policy statement for this purpose.

As discussed in connection with specific issues, the wide variation in airport situations makes it impractical for the FAA to promulgate standards with the specificity and inflexibility urged by ATA. Moreover, a regulation is not required to obtain compliance with the revenue-use requirement. Airports are obligated by the statutory assurance in AIP grant agreements pursuant to § 47107(b)(2), or directly under § 47133, and rulemaking is not required to implement those statutes.

On the issue raised by ATA and AOPA concerning the prompt and effective enforcement mechanism to address specific revenue diversion issues, the FAA had been using 14 CFR Part 13. However, on December 16, 1996, 14 CFR Part 16, Rules of Practice for Federally Assisted Airport Proceedings, took effect. Part 16 established new investigation and enforcement procedures for airport compliance matters, including compliance with the revenue-use requirement. Part 16 includes time deadlines and processes to assure that FAA promptly and effectively investigates and adjudicates specific airport compliance matters involving Federally Assisted Airports. The FAA considers the procedural requirements of the Reauthorization Act of 1996 to be self-executing and will apply the statutory provisions in the case of any conflict with Part 16. However, the FAA is in the process of revising Part 16 to incorporate those new procedural requirements.

Paperwork Reduction Act Requirements

The Office of Management and Budget (OMB) has previously approved, pursuant to the Paperwork Reduction Act, the annual airport financial reports described in Section VIII.A of the Final Policy under OMB Number 2120-0569.

Policy Statement

For the reasons discussed above, the Federal Aviation Administration adopts the following statement of policy concerning the use of airport revenue:

Policies and Procedures Concerning the Use of Airport Revenue

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Section I.—Introduction

The Federal Aviation Administration (FAA) issues this document to fulfill the statutory provisions in section 112 of the Federal Aviation Administration Authorization Act of 1994, Pub.L. No. 103-305, 108 Stat. 1569 (August 23, 1994), 49 USC 47107(l), and Federal Aviation Administration Reauthorization Act of 1996, Public Law 104-264, 110 Stat. 3213 (October 9, 1996), to establish policies and procedures on the generation and use of airport revenue. The sponsor assurance prohibiting the unlawful diversion of airport revenues, also known as the revenue-use requirement, was first mandated by Congress in 1982. Simply stated, the purpose of that assurance, now codified at 49 USC §§ 47107(b) and 47133, is to provide that an airport owner or operator receiving Federal financial assistance will use airport revenues only for purposes related to the airport. The Policy Statement implements requirements adopted by Congress in the FAA Reauthorization Acts of 1994 and 1996, and takes into consideration comments received on the interim policy statements issued on February 26, 1996, and December 18, 1996.

Section II—Definitions

A. Federal Financial Assistance

Title 49 USC § 47133, which took effect on October 1, 1996, applies the airport revenue-use requirements of § 47107(b) to any airport that has received "Federal assistance." The FAA considers the term "Federal assistance" in § 47133 to apply to the following Federal actions:

1. Airport development grants issued under the Airport Improvement Program and predecessor Federal grant programs;
2. Airport planning grants that relate to a specific airport;
3. Airport noise mitigation grants received by an airport operator;
4. The transfer of Federal property under the Surplus Property Act, now codified at 49 USC § 47151 *et seq.*; and
5. Deeds of conveyance issued under Section 16 of the Federal Airport Act of 1946, under Section 23 of the Airport and Airway Improvement Act of 1970, or under Section 516 of the Airport and Airway Improvement Act of 1982 (AAIA).

B. Airport Revenue

1. All fees, charges, rents, or other payments received by or accruing to the sponsor for any one of the following reasons are considered to be airport revenue:

a. Revenue from air carriers, tenants, lessees, purchasers of airport properties, airport permittees making use of airport property and services, and other parties. Airport revenue includes all revenue received by the sponsor for the activities of others or the transfer of rights to others relating to the airport, including revenue received:

i. For the right to conduct an activity on the airport or to use or occupy airport property;

ii. For the sale, transfer, or disposition of airport real property (as specified in the applicability section of this policy statement) not acquired with Federal assistance or personal airport property not acquired with Federal assistance, or any interest in that property, including transfer through a condemnation proceeding;

iii. For the sale of (or sale or lease of rights in) sponsor-owned mineral, natural, or agricultural products or water to be taken from the airport; or

iv. For the right to conduct an activity on, or for the use or disposition of, real or personal property or any interest therein owned or controlled by the sponsor and used for an airport-related purpose but not located on the airport (e.g., a downtown duty-free shop).

b. Revenue from sponsor activities on the airport. Airport revenue generally includes all revenue received by the sponsor for activities conducted by the sponsor itself as airport owner and operator, including revenue received:

i. From any activity conducted by the sponsor on airport property acquired with Federal assistance;

ii. From any aeronautical activity conducted by the sponsor which is directly connected to a sponsor's ownership of an airport subject to 49 U.S.C. §§ 47107(b) or 47133; or

iii. From any nonaeronautical activity conducted by the sponsor on airport property not acquired with Federal assistance, but only to the extent of the fair rental value of the airport property. The fair rental value will be based on the fair market value.

2. State or local taxes on aviation fuel (except taxes in effect on December 30, 1987) are considered to be airport revenue subject to the revenue-use requirement. However, revenues from state taxes on aviation fuel may be used to support state aviation programs or for noise mitigation purposes, on or off the airport.

3. While not considered to be airport revenue, the proceeds from the sale of land donated by the United States or acquired with Federal grants must be used in accordance with the agreement between the FAA and the sponsor. Where such an agreement gives the FAA discretion, FAA may consider this policy as a relevant factor in specifying the permissible use or uses of the proceeds.

C. Unlawful Revenue Diversion

Unlawful revenue diversion is the use of airport revenue for purposes other than the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, when the use is not "grandfathered" under 49 U.S.C. § 47107(b)(2). When a use would be diversion of revenue but is grandfathered, the use is considered lawful revenue diversion. See Section VI, Prohibited Uses of Airport Revenue.

D. Airport Sponsor

The airport sponsor is the owner or operator of the airport that accepts Federal assistance and executes grant agreements or other documents required for the receipt of Federal assistance.

Section III—Applicability of the Policy

A. Policy and Procedures on the Use of Airport Revenue and State or Local Taxes on Aviation Fuel

1. With respect to the use of airport revenue, the policies and procedures in the Policy Statement are applicable to all public agencies that have received a grant for airport development since September 3, 1982, under the Airport and Airway Improvement Act of 1982 (AAIA), as amended, recodified without substantive change by Public Law 103-272 (July 5, 1994) at 49 U.S.C. 47101, et seq., and which had grant obligations regarding the use of airport revenue in effect on October 1, 1996 (the effective date of the FAA Authorization Act of 1996). Grants issued under that statutory authority are commonly referred to as Airport Improvement Program (AIP) grants. The Policy Statement applies to revenue uses at such airports even if the sponsor has not received an AIP grant since October 1, 1996.

2. With respect to the use of state and local taxes on aviation fuel, this Policy Statement is applicable to all public agencies that have received an AIP development grant since December 30, 1987, and which had grant obligations regarding the use of state and local taxes

on aviation fuel in effect of October 1, 1996.

3. Pursuant to 49 U.S.C. § 47133, this Policy Statement applies to any airport for which Federal assistance has been received after October 1, 1996, whether or not the airport owner is subject to the airport revenue-use grant assurance, and applies to any airport for which the airport revenue-use grant obligation is in effect on or after October 1, 1996. Section 47133 does not apply to an airport that has received Federal assistance prior to October 1, 1996, and does not have AIP airport development grant assurances in effect on that date.

4. Requirements regarding the use of airport revenue applicable to a particular airport or airport operator on or after October 1, 1996, as a result of the provisions of 49 U.S.C. § 47133, do not expire.

5. The FAA will not reconsider agency determinations and adjudications dated prior to the date of this Policy Statement, based on the issuance of this Policy Statement.

B. Policies and Procedures on the Requirement for a Self-Sustaining Airport Rate Structure

1. These policies and procedures apply to the operators of publicly owned airports that have received an AIP development grant and that have grant obligations in effect on or after the effective date of this policy.

2. Grant assurance obligations regarding maintenance of a self-sustaining airport rate structure in effect on or after the effective date of this policy apply until the end of the useful life of each airport development project or 20 years, whichever is less, except obligations under a grant for land acquisition, which do not expire.

C. Application of the Policy to Airport Privatization

1. The Airport Privatization Pilot Program, codified at 49 U.S.C. § 47134, provides for the sale or lease of general aviation airports and the lease of air carrier airports. Under the program, the FAA is authorized to exempt up to five airports from Federal statutory and regulatory requirements governing the use of airport revenue. The FAA can exempt an airport sponsor from its obligations to repay Federal grants, in the event of a sale, to return property acquired with Federal assistance and to use the proceeds of the sale or lease exclusively for airport purposes. The exemptions are subject to a number of conditions.

2. Except as specifically provided by the terms of an exemption granted under the Airport Privatization Pilot

Program, this policy statement applies to a privatization of airport property and/or operations.

3. For airport privatization transactions not subject to an exemption under the Pilot Program:

FAA approval of the sale or other transfer of ownership or control, of a publicly owned airport is required in accordance with the AIP sponsor assurances and general government contract law principles. The proceeds of a sale of airport property are considered airport revenue (except in the case of property acquired with Federal assistance, the sale of which is subject to other restrictions under the relevant grant contract or deed). When the sale proposed is the sale of an entire airport as an operating entity, the request may present the FAA with a complex transaction in which the disposition of the proceeds of the transfer is only one of many considerations. In its review of such a proposal, the FAA would condition its approval of the transfer on the parties' assurances that the proceeds of sale will be used for the purposes permitted by the revenue-use requirements of 49 U.S.C. §§ 47107(b) and 47133. Because of the complexity of an airport sale or privatization, the provisions for ensuring that the proceeds are used for the purposes permitted by the revenue-use requirements may need to be adapted to the special circumstances of the transaction. Accordingly, the disposition of the proceeds would need to be structured to meet the revenue-use requirements, given the special conditions and constraints imposed by the fact of a change in airport ownership. In considering and approving such requests, the FAA will remain open and flexible in specifying conditions on the use of revenue that will protect the public interest and fulfill the objectives and obligations of revenue-use requirements, without unnecessarily interfering with the appropriate privatization of airport infrastructure.

4. It is not the intention of the FAA to effectively bar airport privatization initiatives outside of the pilot program through application of the statutory requirements for use of airport revenue. Proponents of a proposed privatization or other sale or lease of airport property clearly will need to consider the effects of Federal statutory requirements on the use of airport revenue, reasonable fees for airport users, disposition of airport property, and other policies incorporated in Federal grant agreements. The FAA assumes that the proposals will be structured from the outset to comply with all such

requirements, and this proposed policy is not intended to add to the considerations already involved in a transfer of airport property.

Section IV—Statutory Requirements for the Use of Airport Revenue

A. General Requirements, 49 U.S.C. §§ 47107(b) and 47133

1. The current provisions restricting the use of airport revenue are found at 49 U.S.C. §§ 47107(b), and 47133. Section 47107(b) requires the Secretary, prior to approving a project grant application for airport development, to obtain written assurances regarding the use of airport revenue and state and local taxes on aviation fuel. Section 47107(b)(1) requires the airport owner or operator to provide assurances that local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of—

- The airport;
- The local airport system; or
- Other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

B. Exception for Certain Preexisting Arrangements (Grandfather Provisions)

Section 47107(b)(2) provides an exception to the requirements of Section 47107(b)(1) for airport owners or operators having certain financial arrangements in effect prior to the enactment of the AAIA. This provision is commonly referred to as the "grandfather" provision. It states:

Paragraph (1) of this subsection does not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

C. Application of 49 U.S.C. § 47133

1. Section 47133 imposes the same requirements on all airports, privately-owned or publicly-owned, that are the subject of Federal assistance. Subsection 47133(a) states that:

Local taxes on aviation fuel (except taxes in effect on December 30, 1987) or the revenues generated by an airport that is the subject of Federal assistance may not be expended for any purpose other than the capital or operating costs of—

- the airport;
- The local airport system; or
- Other local facilities owned or operated by the person or entity that owns or operates the airport that is directly and substantially related to the air transportation of persons or property.

2. Section 47133(b) contains the same grandfather provisions as section 47107(b).

3. Enactment of section 47133 resulted in three fundamental changes to the revenue-use obligation, as reflected in the applicability section of this policy statement.

- Privately owned airports receiving Federal assistance (as defined in this policy statement) after October 1, 1996, are subject to the revenue-use requirement.

- In addition to airports receiving AIP grants, airports receiving Federal assistance in the form of gifts of property after October 1, 1996, are subject to the revenue-use requirement.

- For any airport or airport operator that is subject to the revenue-use requirement on or after October 1, 1996, the revenue-use requirement applies indefinitely.

4. This section of the policy refers to the date of October 1, 1996, because the FAA Authorization Act of 1996 is by its terms effective on that date.

D. Specific Statutory Requirements for the Use of Airport Revenue

1. In section 112 of the FAA Authorization Act of 1994, 49 U.S.C. § 47107(l)(2) (A–D), Congress expressly prohibited the diversion of airport revenues through:

- Direct payments or indirect payments, other than payments reflecting the value of services and facilities provided to the airport;
- Use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems;
- Payments in lieu of taxes or other assessments that exceed the value of services provided; or
- Payments to compensate non-sponsoring governmental bodies for lost tax revenues exceeding stated tax rates.

2. Section 47107(l)(5), enacted as part of the FAA Authorization Act of 1996, provides that:

- Any request by a sponsor to any airport for additional payments for services conducted off of the airport or for reimbursement for capital contributions or operating expenses shall be filed not later than 6 years after the date on which the expense is incurred; and

- Any amount of airport funds that are used to make a payment or

reimbursement as described in subparagraph (a) after the date specified in that subparagraph shall be considered to be an illegal diversion of airport revenues that is subject to subsection (n).

3. 49 U.S.C. § 40116(d)(2)(A) provides, among other things, that a State, political subdivision of a State or authority acting for a State or a political subdivision may not: "(iv) levy or collect a tax, fee or charge, first taking effect after August 23, 1994, exclusively upon any business located at a commercial service airport or operating as a permittee of such an airport other than a tax, fee or charge wholly utilized for airport or aeronautical purposes."

E. Passenger Facility Charges and Revenue Diversion

The Aviation Safety and Capacity Expansion Act of 1990 authorized the imposition of a passenger facility charge (PFC) with the approval of the Secretary.

1. While PFC revenue is not characterized as "airport revenue" for purposes of this Policy Statement, specific statutory and regulatory guidelines govern the use of PFC revenue, as set forth at 49 U.S.C. 40117, "Passenger Facility Fees," and 14 CFR Part 158, "Passenger Facility Charges." (For purposes of this policy, the terms "passenger facility fees" and "passenger facility charges" are synonymous.) These provisions are more restrictive than the requirements for the use of airport revenue in 49 U.S.C. 47107(b), in that the PFC requirements provide that PFC collections may only be used to finance the allowable costs of approved projects. The PFC regulation specifies the kinds of projects that can be funded by PFC revenue and the objectives these projects must achieve to receive FAA approval for use of PFC revenue.

2. The statute and regulations prohibit expenditure of PFC revenue for other than approved projects, or collection of PFC revenue in excess of approved amounts.

3. As explained more fully below under enforcement policies and procedures in Section IX, "Monitoring and Compliance," a final FAA determination that a public agency has violated the revenue-use provision prevents the FAA from approving new authority to impose a PFC until corrective action is taken.

Section V—Permitted Uses of Airport Revenue

A. Permitted Uses of Airport Revenue

Airport revenue may be used for:

1. The capital or operating costs of the airport, the local airport system, or other

local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property. Such costs may include reimbursements to a state or local agency for the costs of services actually received and documented, subject to the terms of this policy statement. Operating costs for an airport may be both direct and indirect and may include all of the expenses and costs that are recognized under the generally accepted accounting principles and practices that apply to the airport enterprise funds of state and local government entities.

2. The full costs of activities directed toward promoting competition at an airport, public and industry awareness of airport facilities and services, new air service and competition at the airport (other than direct subsidy of air carrier operations prohibited by paragraph VI.B.12 of this policy), and salary and expenses of employees engaged in efforts to promote air service at the airport, subject to the terms of this policy statement. Other permissible expenditures include cooperative advertising, where the airport advertises new services with or without matching funds, and advertising of general or specific airline services to the airport. Examples of permitted expenditures in this category include: (a) a Superbowl hospitality tent for corporate aircraft crews at a sponsor-owned general aviation terminal intended to promote the use of that airport by corporate aircraft; and (b) the cost of promotional items bearing airport logos distributed at various aviation industry events.

3. A share of promotional expenses, which may include marketing efforts, advertising, and related activities designed to increase travel using the airport, to the extent the airport share of the promotional materials or efforts meets the requirements of V.A.2. above and includes specific information about the airport.

4. The repayment of the airport owner or sponsor of funds contributed by such owner or sponsor for capital and operating costs of the airport and not heretofore reimbursed. An airport owner or operator can seek reimbursement of contributed funds only if the request is made within 6 years of the date the contribution took place. 49 U.S.C. 47107(l).

a. If the contribution was a loan to the airport, and clearly documented as an interest-bearing loan at the time it was made, the sponsor may repay the loan principal and interest from airport funds. Interest should not exceed a rate which the sponsor received for other investments for that period of time.

b. For other contributions to the airport, the airport owner or operator may seek reimbursement of interest only if the FAA determines that the airport owes the sponsor funds as a result of activities conducted by the sponsor or expenditures by the sponsor for the benefit of the airport. Interest shall be determined in the manner provided in 49 U.S.C. 47107(o), but may be assessed only from the date of the FAA's determination.

5. Lobbying fees and attorney fees to the extent these fees are for services in support of any activity or project for which airport revenues may be used under this Policy Statement. See Section VI: Prohibited Uses of Airport Revenue.

6. Costs incurred by government officials, such as city council members, to the extent that such costs are for services to the airport actually received and documented. An example of such costs would be the costs of travel for city council members to meet with FAA officials regarding AIP funding for an airport project.

7. A portion of the general costs of government, including executive offices and the legislative branches, may be allocated to the airport indirectly under a cost allocation plan in accordance with V.B.3. of this Policy Statement.

8. Expenditure of airport funds for support of community activities, participation in community events, or support of community-purpose uses of airport property if such expenditures are directly and substantially related to the operation of the airport. Examples of permitted expenditures in this category include: (a) the purchase of tickets for an annual community luncheon at which the Airport director delivers a speech reviewing the state of the airport; and (b) contribution to a golf tournament sponsored by a "friends of the airport" committee. The FAA recognizes that contributions for community or charitable purposes can provide a direct benefit to the airport through enhanced community acceptance, but that a benefit of that nature is intangible and not quantifiable. Where the amount of contribution is minimal, the value of the benefit will not be questioned as long as there is a reasonable connection between the recipient organization and the benefit of local community acceptance for the airport. An example of a permitted expenditure in this category was participation in a local school fair with a booth focusing on operation of the airport and career opportunities in aviation. The expenditure in this example was \$250.

9. Airport revenue may be used for the capital or operating costs of those

portions of an airport ground access project that can be considered an airport capital project, or of that part of a local facility that is owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, including use by airport visitors and employees. The FAA has approved the use of airport revenue for the actual costs incurred for structures and equipment associated with an airport terminal building station and a rail connector between the airport station and the nearest mass transit rail line, where the structures and equipment were (1) located entirely on airport property, and (2) designed and intended exclusively for the use of airport passengers.

B. Allocation of Indirect Costs

1. Indirect costs of sponsor services may be allocated to the airport in accordance with this policy, but the allocation must result in an allocation to the airport only of those costs that would otherwise be allowable under 49 U.S.C. § 47107(b). In addition, the documentation for the costs must meet the standards of documentation stated in this policy.

2. The costs must be allocated under a cost allocation plan that meets the following requirements:

a. The cost is allocated under a cost allocation plan that is consistent with Attachment A to OMB Circular A-87, except that the phrase "airport revenue" should be substituted for the phrase "grant award," wherever the latter phrase occurs in Attachment A;

b. The allocation method does not result in a disproportionate allocation of general government costs to the airport in consideration of the benefits received by the airport;

c. Costs allocated indirectly under the cost allocation plan are not billed directly to the airport; and

d. Costs billed to the airport under the cost allocation plan must be similarly billed to other comparable units of the airport owner or operator.

3. A portion of the general costs of government, such as the costs of the legislative branch and executive offices, may be allocated to the airport as an indirect cost under a cost allocation plan satisfying the requirements set forth above. However, the allocation of these costs may require special scrutiny to assure that the airport is not paying a disproportionate share of these costs.

4. Central service costs, such as accounting, budgeting, data processing, procurement, legal services, disbursing and payroll services, may also be allocated to the airport as indirect costs

under a cost allocation plan satisfying the requirements set forth above. However, the allocation of these costs may require special scrutiny to assure that the airport is not paying a disproportionate share of these costs.

C. Standard of Documentation for the Reimbursement to Government Entities of Costs of Services and Contributions Provided to Airports

1. Reimbursements for capital and operating costs of the airport made by a government entity, both direct and indirect, must be supported by adequate documentary evidence. Documentary evidence includes, but is not limited to:

a. Underlying accounting data such as general and specialized journals, ledgers, manuals, and supporting worksheets and other analyses; and corroborating evidence such as invoices, vouchers and indirect cost allocation plans, or

b. Audited financial statements which show the specific expenditures to be reimbursed by the airport. Such expenditures should be clearly identifiable on the audited financial statements as being consistent with section VIII of this policy statement.

2. Documentary evidence to support direct and indirect charges to the airport must show that the amounts claimed were actually expended. Budget estimates are not sufficient to establish a claim for reimbursement. Indirect cost allocation plans, however, may use budget estimates to establish pre-determined indirect cost allocation rates. Such estimated rates should, however, be adjusted to actual expenses in the subsequent accounting period.

D. Expenditures of Airport Revenue by Grandfathered Airports

1. Airport revenue may be used for purposes other than capital and operating costs of the airport, the local airport system, or other local facilities owned or operated by the sponsor and directly and substantially related to the air transportation of passengers or property, if the "grandfather" provisions of 49 U.S.C. § 47107(b)(2) are applicable to the sponsor and the particular use. Based on previous DOT interpretations, examples of grandfathered airport sponsors may include, but are not limited to the following:

a. A port authority or state department of transportation which owns or operates other transportation facilities in addition to airports, and which have pre-September 3, 1982, debt obligations or legislation governing financing and providing for use of airport revenue for non-airport purposes. Such sponsors may have obtained legal opinions from

their counsel to support a claim of grandfathering. Previous DOT interpretations have found the following examples of pre-AAIA legislation to provide for the grandfather exception:

b. Bond obligations and city ordinances requiring a five percent "gross receipts" fee from airport revenues. The payments were instituted in 1954 and continued in 1968.

c. A 1955 state statute for the assessing of a five percent surcharge on all receipts and deposits in an airport revenue fund to defray central service expenses of the state.

d. City legislation authorizing the transfer of a percentage of airport revenues, permitting an airport-air carrier settlement agreement providing for annual payments to the city of 15 percent of the airport concession revenues.

e. A 1957 state statutory transportation program governing the financing and operations of a multi-modal transportation authority, including airport, highway, port, rail and transit facilities, wherein state revenues, including airport revenues, support the state's transportation-related, and other, facilities. The funds flow from the airports to a state transportation trust fund, composed of all "taxes, fees, charges, and revenues" collected or received by the state department of transportation.

f. A port authority's 1956 enabling act provisions specifically permitting it to use port revenue, which includes airport revenue, to satisfy debt obligations and to use revenues from each project for the expenses of the authority. The act also exempts the authority from property taxes but requires annual payments in lieu of taxes to several local governments and gives it other corporate powers. A 1978 trust agreement recognizes the use of the authority's revenue for debt servicing, facilities of the authority, its expenses, reserves, and the payment in lieu of taxes fund.

2. Under the authority of 49 U.S.C. § 47115(f), the FAA considers as a factor militating against the approval of an application for AIP discretionary funds, the fact that a sponsor has exercised its rights to use airport revenue for nonairport purposes under the grandfather clause, when in the airport's fiscal year preceding the date of application for discretionary funds, the FAA finds that the amount of airport revenues used for nonairport purposes exceeds the amount used for such purposes in the airport's first fiscal year ending after August 23, 1994, adjusted by the Secretary for changes in the Consumer Price Index of All Urban

Consumers published by the Bureau of Labor Statistics of the Department of Labor.

Section VI—Prohibited Uses of Airport Revenue

A. Lawful and Unlawful Revenue Diversion

Revenue diversion is the use of airport revenue for purposes other than the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, unless that use is grandfathered under 49 U.S.C. § 47107(b)(2) and the use does not exceed the limits of the 'grandfather' clause. When such use is so grandfathered, it is known as lawful revenue diversion. Unless the revenue diversion is grandfathered, the diversion is unlawful and prohibited by the revenue-use restrictions.

B. Prohibited Uses of Airport Revenue

Prohibited uses of airport revenue include but are not limited to:

1. Direct or indirect payments that exceed the fair and reasonable value of those services and facilities provided to the airport. The FAA generally considers the cost of providing the services or facilities to the airport as a reliable indicator of value.
2. Direct or indirect payments that are based on a cost allocation formula that is not consistent with this policy statement or that is not calculated consistently for the airport and other comparable units or cost centers of government.
3. Use of airport revenues for general economic development.
4. Marketing and promotional activities unrelated to airports or airport systems. Examples of prohibited expenses in this category include participation in program to provide hospitality training to taxi drivers and funding an airport operator's float containing no reference to the airport, in a New Years Day parade.
5. Payments in lieu of taxes, or other assessments, that exceed the value of services provided or are not based on a reasonable, transparent cost allocation formula calculated consistently for other comparable units or cost centers of government;
6. Payments to compensate non-sponsoring governmental bodies for lost tax revenues to the extent the payments exceed the stated tax rates applicable to the airport;
7. Loans to or investment of airport funds in a state or local agency at less than the prevailing rate of interest.
8. Land rental to, or use of land by, the sponsor for nonaeronautical

purposes at less than fair rental/market value, except to the extent permitted by Section VII.D of this policy.

9. Use of land by the sponsor for aeronautical purposes rent-free or for nominal rental rates, except to the extent permitted by Section VII.E of this policy.

10. Impact fees assessed by any governmental body that exceed the value of services or facilities provided to the airport. However, airport revenue may be used where airport development requires a sponsoring agency to take an action, such as undertaking environmental mitigation measures contained in an FAA record of decision approving funding for an airport development project, or constructing a ground access facility that would otherwise be eligible for the use of airport revenue. Payments of impact fees must meet the general requirement that airport revenue be expended only for actual documented costs of items eligible for use of airport revenue under this Policy Statement. In determining appropriate corrective action for an impact fee payment that is not consistent with this policy, the FAA will consider whether the impact fee was imposed by a non-sponsoring governmental entity and the sponsor's ability under local law to avoid paying the fee.

11. Expenditure of airport funds for support of community activities and participation in community events, or for support of community-purpose uses of airport property except to the extent permitted by this policy. See Section V, Uses of Airport Revenue. Examples of prohibited expenditures in this category include expenditure of \$50,000 to sponsor a local film society's annual film festival; and contribution of \$6,000 to a community cultural heritage festival.

12. Direct subsidy of air carrier operations. Direct subsidies are considered to be payments of airport funds to carriers for air service. Prohibited direct subsidies do not include waivers of fees or discounted landing or other fees during a promotional period. Any fee waiver or discount must be offered to all users of the airport, and provided to all users that are willing to provide the same type and level of new services consistent with the promotional offering. Likewise prohibited direct subsidies do not include support for airline advertising or marketing of new services to the extent permitted by Section V of this Policy Statement.

Section VII—Policies Regarding Requirement for a Self-Sustaining Airport Rate Structure

A. Statutory Requirements

49 U.S.C. § 47107(a)(13) requires airport operators to maintain a schedule of charges for use of the airport: "(A) that will make the airport as self-sustaining as possible under the circumstances existing at the airport, including volume of traffic and economy of collection."

The requirement is generally referred to as the "self-sustaining assurance."

B. General Policies Governing the Self-Sustaining Rate Structure Assurance

1. Airport proprietors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible. In considering whether a particular contract or lease is consistent with this requirement, the FAA and the Office of the Inspector General (OIG) generally evaluate the individual contract or lease to determine whether the fee or rate charged generates sufficient income for the airport property or service provided, rather than looking at the financial status of the entire airport.

2. If market conditions or demand for air service do not permit the airport to be financially self-sustaining, the airport proprietor should establish long-term goals and targets to make the airport as financially self-sustaining as possible.

3. At some airports, market conditions may not permit an airport proprietor to establish fees that are sufficiently high to recover aeronautical costs and sufficiently low to attract and retain commercial aeronautical services. In such circumstances, an airport proprietor's decision to charge rates that are below those needed to achieve a self-sustaining income in order to assure that services are provided to the public is not inherently inconsistent with the obligation to make the airport as self-sustaining as possible in the circumstances.

4. Airport proprietors are encouraged, when entering into new or revised agreements or otherwise establishing rates, charges, and fees, to undertake reasonable efforts to make their particular airports as self-sustaining as possible in the circumstances existing at such airports.

5. Under 49 U.S.C. § 47107(a)(1) and the implementing grant assurance, charges to aeronautical users must be reasonable and not unjustly discriminatory. Because of the limiting effect of the reasonableness requirement, the FAA does not consider the self-sustaining requirement to require airport sponsors

to charge fair market rates to aeronautical users. Rather, for charges to aeronautical users, the FAA considers the self-sustaining assurance to be satisfied by airport charges that reflect the cost to the sponsor of providing aeronautical services and facilities to users. A fee for aeronautical users set pursuant to a residual costing methodology satisfies the requirement for a self-sustaining airport rate structure.

6. In establishing new fees, and generating revenues from all sources, airport owners and operators should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for other purposes for which airport revenues may be spent under 49 U.S.C. § 47107(b)(1), including reasonable reserves and other funds to facilitate financing and to cover contingencies. While fees charged to nonaeronautical users are not subject to the reasonableness requirement or the Department of Transportation Policy on airport rates and charges, the surplus funds accumulated from those fees must be used in accordance with 49 U.S.C. § 47107(b).

C. Policy on Charges for Nonaeronautical Facilities and Services

Subject to the general guidance set forth above and the specific exceptions noted below, the FAA interprets the self-sustaining assurance to require that the airport receive fair market value for the provision of nonaeronautical facilities and services, to the extent practicable considering the circumstances at the airport.

D. Providing Property for Public Community Purposes

Making airport property available at less than fair market rental value for public recreational and other community uses, for the purpose of maintaining positive airport-community relations, can be a legitimate function of an airport proprietor in operating the airport. Accordingly, in certain circumstances, providing airport land for such purposes will not be considered a violation of the self-sustaining requirement. Generally, the circumstances in which below-market use of airport land for community purposes will be considered consistent with the grant assurances are:

1. The contribution of the airport property enhances public acceptance of the airport in a community in the immediate area of the airport; the property is put to a general public use desired by the local community; and the public use does not adversely affect the

capacity, security, safety or operations of the airport. Examples of acceptable uses include public parks, recreation facilities, and bike or jogging paths. Examples of uses that would not be eligible are road maintenance equipment storage; and police, fire department, and other government facilities if they do not directly support the operation of the airport.

(2) The property involved would not reasonably be expected to produce more than *de minimis* revenue at the time the community use is contemplated, and the property is not reasonably expected to be used by an aeronautical tenant or otherwise be needed for airport operations in the foreseeable future. When airport property reasonably may be expected to earn more than minimal revenue, it still may be used for community purposes at less than FMV if the revenue earned from the community use approximates the revenue that could otherwise be generated, provided that the other provisions of VII. D. are met.

3. The community use does not preclude reuse of the property for airport purposes if, in the opinion of the airport sponsor, such reuse will provide greater benefits to the airport than continuation of the community use.

4. Airport revenue is not to be used to support the capital or operating costs associated with the community use.

E. Use of Property by Not-for-Profit Aviation Organizations

1. An airport operator may charge reduced rental rates and fees to the following not-for-profit aviation organizations, to the extent that the reduction is reasonably justified by the tangible or intangible benefits to the airport or to civil aviation:

- a. Aviation museums;
- b. Aeronautical secondary and post-secondary education programs conducted by accredited educational institutions; or
- c. Civil Air Patrol units operating aircraft at the airport;

2. Police or fire-fighting units operating aircraft at the airport generally will be expected to pay a reasonable rate for aeronautical use of airport property, but the value of any services provided by the unit to the airport may be offset against the applicable reasonable rate.

F. Use of Property by Military Units

The FAA acknowledges that many airports provide facilities to military units with aeronautical missions at nominal lease rates. The FAA does not consider this practice inconsistent with the requirement for a self-sustaining airport rate structure. Military units

with aeronautical missions may include the Air National Guard, aviation units of the Army National Guard, U.S. Air Force Reserve, and Naval Reserve air units operating aircraft at the airport. Reserve and Guard units typically have an historical presence at the airport that precedes the Airport and Airway Improvement Act of 1982, and provide services that directly benefit airport operations and safety, such as snow removal and supplementary ARFF capability.

G. Use of Property for Transit Projects

Making airport property available at less than fair market rental for public transit terminals, right-of-way, and related facilities will not be considered a violation of 49 U.S.C. §§ 47107(b), 47133 or 47107(a)(13) if the transit system is publicly owned and operated (or operated by contract on behalf of the public owner), and the facilities are directly and substantially related to the air transportation of passengers or property, including use by airport visitors and employees. A lease of nominal value in the circumstances described in this section would be considered consistent with the self-sustaining requirement.

H. Private Transit Systems

Generally, private ground transportation services are charged as a nonaeronautical use of the airport. In cases where publicly-owned transit services are extremely limited and where a private transit service (i.e., bus, rail, or ferry) provides the primary source of public transportation, making property available at less than fair market rental to this private service would not be considered inconsistent with 49 U.S.C. §§ 47107(b), 47133 or 47107(a)(13).

Section VIII—Reporting and Audit Requirements

The Federal Aviation Administration Authorization Act of 1994 established a new requirement for airports to submit annual financial reports to the Secretary, and the Act required the Secretary to compile the reports and to submit a summary report to Congress. The Federal Aviation Reauthorization Act of 1996 established a new requirement for airports to include, as part of their audits under the Single Audit Act, a review and opinion on the use of airport revenue.

A. Annual Financial Reports

Section 111(a)(4) of the 1994 Authorization Act, 49 U.S.C. § 47107(a)(19), requires airport owners or operators to submit to the Secretary

and to make available to the public an annual financial report listing in detail (1) all amounts the airport paid to other government units and the purposes for which each payment was made, (2) all services and property the airport provided to other government units and compensation received for each service or unit of property provided. Additionally, Section 111(b) of the 1994 Authorization Act requires a report, for each fiscal year, in a uniform simplified format, of the airport's sources and uses of funds, net surplus/loss and other information which the Secretary may require.

FAA Forms 5100-125 and 126 have been developed to satisfy the above reporting requirements. The forms must be filed with the FAA 120 days after the end of the sponsor's fiscal year. Extensions of the filing date may be granted if audited financial information is not available within 120 days of the end of the local fiscal year. Requests for extension should be filed in writing with the FAA Airport Compliance Division, AAS-400.

B. Single Audit Review and Opinion

1. General requirement and applicability. The Federal Aviation Reauthorization Act of 1996, Section 805; 49 U.S.C. § 47107(m) requires public agencies that are subject to the Single Audit Act, 31 U.S.C. § 7501-7505, and that have received Federal financial assistance for airports to include, as part of their single audit, a review and opinion of the public agency's funding activities with respect to their airport or local airport system.

2. Federal Financial Assistance. For the purpose of complying with 49 U.S.C. § 47107(m), Federal financial assistance for airports includes any interest in property received, by a public agency since October 1, 1996, for the purpose of developing, improving, operating, or maintaining a public airport, or an AIP grant which was in force and effect on or after October 1, 1996, either directly or through a state block grant program.

3. Frequency. The opinion will be required whenever the auditor under OMB Circular A-133 selects an airport improvement program grant as a major program. In those cases where the airport improvement program grant is selected as a major program the requirements of 49 U.S.C. § 47107(m) will apply.

4. Major Program. For the purposes of complying with 49 U.S.C. § 47107(m), major program means an airport improvement program grant determined to be a major program in accordance with OMB Circular A-133, § 520 or an

airport improvement program grant identified by FAA as a major program in accordance with OMB A-133 § 215(c); except additional audit costs resulting from FAA designating an airport improvement program grant as a major program are discussed at paragraph 9 below.

5. FAA Notification. When FAA designates an airport improvement program grant as a major program, FAA will generally notify the sponsor in writing at least 180 days prior to the end of the sponsor's fiscal year to have the grant included as a major program in its next Single Audit.

6. Audit Findings. The auditor will report audit findings in accordance with OMB Circular A-133.

7. Opinion. The statutory requirement for an opinion will be considered to be satisfied by the auditor's reporting under OMB Circular A-133. Consequently when an airport improvement program grant is designated as a major program, and the audit is conducted in accordance with OMB Circular A-133, FAA will accept the audit to meet the requirements of 49 USC § 47107(m) and this policy.

8. Reporting Package. The Single Audit reporting package will be distributed in accordance with the requirements of OMB Circular A-133. In addition when an airport improvement program grant is a major program, the sponsor will supply, within 30 days after receipt by the sponsor, a copy of the reporting package directly to the FAA, Airport Compliance Division (AAS-400), 800 Independence Ave. SW 20591. The FAA regional offices may continue to request the sponsor to provide separate copies of the reporting package to support their administration of airport improvement program grants.

9. Audit Cost. When an opinion is issued in accordance with 47107(m) and this policy, the costs associated with the opinion will be allocated in accordance with the sponsor's established practice for allocating the cost of its Single Audit, regardless of how the airport improvement program grant is selected as a major program.

10. Compliance Supplement. Additional information about this requirement is contained in OMB Circular A-133 Compliance Supplement for DOT programs.

11. Applicability. This requirement is not applicable to (a) privately-owned, public-use airports, including airports accepted into the airport privatization program (the Single Audit Act governs only states, local governments and non-profit organizations receiving Federal assistance); (b) public agencies that do not have a requirement for the single

audit; (c) public agencies that do not satisfy the criteria of paragraph B.1 and 2; above; and Public Agencies that did not execute an AIP grant agreement on or after June 2, 1997.

Section IX—Monitoring and Compliance

A. Detection of Airport Revenue Diversion

To detect whether airport revenue has been diverted from an airport, the FAA will depend primarily upon four sources of information:

1. Annual report on revenue use submitted by the sponsor under the provisions of 49 U.S.C. § 47107(a)(19), as amended.

2. Single audit reports submitted, pursuant to 49 U.S.C. § 47107(m), with annual single audits conducted under 31 U.S.C. §§ 7501-7505. The requirement for these reports is discussed in Part IX of this policy.

3. Investigation following a third party complaint filed under 14 CFR, Part 16, FAA Rules of Practice for Federally Assisted Airport Proceedings.

4. DOT Office of Inspector General audits.

B. Investigation of Revenue Diversion Initiated Without Formal Complaint

1. When no formal complaint has been filed, but the FAA has an indication from one or more sources that airport revenue has been or is being diverted unlawfully, the FAA will notify the sponsor of the possible diversion and request that it respond to the FAA's concerns. If, after information and arguments submitted by the sponsor, the FAA determines that there is no unlawful diversion of revenue, the FAA will notify the sponsor and take no further action. If the FAA makes a preliminary finding that there has been unlawful diversion of airport revenue, and the sponsor has not taken corrective action (or agreed to take corrective action), the FAA may issue a notice of investigation under 14 CFR § 16.103.

If, after further investigation, the FAA finds that there is reason to believe that there is or has been unlawful diversion of airport revenue that the sponsor refuses to terminate or correct, the FAA will issue an appropriate order under 14 CFR § 16.109 proposing enforcement action. However, such action will cease if the airport sponsor agrees to return the diverted amount plus interest.

2. Audit or investigation by the Office of the Inspector General. An indication of revenue diversion brought to the attention of the FAA in a report of audit or investigation issued by the DOT Office of the Inspector General (OIG)

will be handled in accordance with paragraph B.1 above.

C. Investigation of Revenue Diversion Precipitated by Formal Complaint

When a formal complaint is filed against a sponsor for revenue diversion, the FAA will follow the procedures in 14 CFR Part 16 for notice to the sponsor and investigation of the complaint. After review of submissions by the parties, investigation of the complaint, and any additional process provided in a particular case, the FAA will either dismiss the complaint or issue an appropriate order proposing enforcement action.

If the airport sponsor takes the corrective action specified in the order, the complaint will be dismissed.

D. The Administrative Enforcement Process

1. Enforcement of the requirements imposed on sponsors as a condition of the acceptance of Federal grant funds or property is accomplished through the administrative procedures set forth in 14 CFR part 16. Under part 16, the FAA has the authority to receive complaints, conduct informal and formal investigations, compel production of evidence, and adjudicate matters of compliance within the jurisdiction of the Administrator.

2. If, as a result of the investigative processes described in paragraphs B and C above, the FAA finds that there is reason to proceed with enforcement action against a sponsor for unlawful revenue diversion, an order proposing enforcement action is issued by the FAA and under 14 CFR 16.109. That section provides for the opportunity for a hearing on the order.

E. Sanctions for Noncompliance

1. As explained above, if the FAA makes a preliminary finding that airport revenue has been unlawfully diverted and the sponsor declines to take the corrective action, the FAA will propose enforcement action. A decision whether to issue a final order making the action effective is made after a hearing, if a hearing is elected by the respondent. The actions required by or available to the agency for enforcement of the prohibitions against unlawful revenue diversion are:

a. Withhold future grants. The Secretary may withhold approval of an application in accordance with 49 USC § 47106(d) if the Secretary provides the sponsor with an opportunity for a hearing and, not later than 180 days

after the later of the date of the grant application or the date the Secretary discovers the noncompliance, the Secretary finds that a violation has occurred. The 180-day period may be extended by agreement of the Secretary and the sponsor or in a special case by the hearing officer.

b. Withhold approval of the modification of existing grant agreements that would increase the amount of funds available. A supplementary provision in section 112 of the 1994 Authorization Act, 49 USC § 47111(e), makes mandatory not only the withholding of new grants but also withholding of a modification to an existing grant that would increase the amount of funds made available, if the Secretary finds a violation after hearing and opportunity to cure.

c. Withhold payments under existing grants. The Secretary may withhold a payment under a grant agreement for 180 days or less after the payment is due without providing for a hearing. However, in accordance with 49 USC § 47111(d), the Secretary may withhold a payment for more than 180 days only if he or she notifies the sponsor and provides an opportunity for a hearing and finds that the sponsor has violated the agreement. The 180-day period may be extended by agreement of the Secretary and the sponsor or in a special case by the hearing officer.

d. Withhold approval of an application to impose a passenger facility charge. Section 112 also makes mandatory the withholding of approval of any new application to impose a passenger facility charge under 49 USC § 40117. Subsequent to withholding, applications could be approved only upon a finding by the Secretary that corrective action has been taken and that the violation no longer exists.

e. File suit in United States district court. Section 112(b) provides express authority for the agency to seek enforcement of an order in Federal court.

f. Withhold, under 49 USC § 47107(n)(3), any amount from funds that would otherwise be available to a sponsor, including funds that would otherwise be made available to a State, municipality, or political subdivision thereof (including any multi-modal transportation agency or transit agency of which the sponsor is a member entity) as part of an apportionment or grant made available pursuant to this title, if the sponsor has failed to reimburse the airport after receiving notification of the requirement to do so.

g. Assess civil penalties.

(1) Under section 112(c) of Public Law 103-305, codified at 49 USC § 46301(a) and (d), the Secretary has statutory authority to impose civil penalties up to a maximum of \$50,000 on airport sponsors for violations of the AIP sponsor assurance on revenue diversion. Any civil penalty action under this section would be adjudicated under 14 CFR Part 13, Subpart G.

(2) Under section 804 of Public Law 104-264, codified at 49 USC § 46301(a)(5), the Secretary has statutory authority to obtain civil penalties of up to three times the amount of airport revenues that are used in violation of 49 USC §§ 47107(b) and 47133. An action for civil penalties in excess of \$50,000 must be brought in a United States District Court.

(3) The Secretary may, under 49 USC § 47107(n)(4), initiate a civil action for civil penalties in the amount equal to the illegal diversion in question plus interest calculated in accordance with 49 USC § 47107(o), if the airport sponsor has failed to take corrective action specified by the Secretary and the Secretary is unable to withhold sufficient grant funds, as set forth above.

(4) An action for civil penalties under this provision must be brought in a United States District Court. The Secretary intends to use this authority only after the airport sponsor has been given a reasonable period of time, after a violation has been clearly identified to the airport sponsor, to take corrective action to restore the funds or otherwise come into compliance before a penalty is assessed, and only after other enforcement actions, such as withholding of grants and payments, have failed to achieve compliance.

F. Compliance With Reporting and Audit Requirements

The FAA will monitor airport sponsor compliance with the Airport Financial Reporting Requirements and Single Audit Requirements described in this Policy Statement. The failure to comply with these requirements can result in the withholding of future AIP grant awards and further payments under existing AIP grants.

Issued in Washington, DC on February 8, 1999.

Susan L. Kurland,

Associate Administrator for Airports.

[FR Doc. 99-3529 Filed 2-11-99; 8:45 am]

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U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

National Policy

**ORDER
5190.6B**

Effective Date:
September 30, 2009

SUBJ: FAA Airport Compliance Manual

The Airport Compliance Program ensures airport sponsors' compliance with their federal obligations in the form of grant assurances, surplus and nonsurplus obligations, or other applicable federal law. The Airport Compliance Program is administered by the FAA headquarters Airport Compliance Division (ACO-100) based in Washington, DC.

This handbook provides guidance to FAA personnel on interpreting and administering the various continuing commitments airport sponsors make to the U.S. Government when they accept grants of federal funds or federal property for airport purposes. The handbook (i) analyzes the various federal obligations set forth in legislatively mandated airport sponsor assurances, (ii) addresses the nature of the assurances and the application of the assurances in the operation of public use airports, and (iii) facilitates interpretation of the assurances by FAA personnel. This manual was designed to provide guidance to FAA personnel pertaining to the Federal Aviation Administration (FAA) Airport Compliance Program.

Randall S. Fiertz

Randall S. Fiertz
Director
Airport Compliance and Field Operations Division (ACO-1)

Chapter 17. Self-sustainability

17.1 Introduction. This chapter provides guidance on the requirement that the airport remain as self-sustaining as possible under the circumstances. It is the responsibility of the FAA airports district offices (ADOs) and regional airports divisions to provide guidance to airport sponsors regarding the sponsor's requirement to be as self-sustaining as possible and to ensure that the airport maintains a rate and fee schedule that conforms to the grant assurances and is consistent with the FAA's *Policy Regarding Airport Rates and Charges*, 61 Fed. Reg. 31994, June 21, 1996, and as amended at 73 Fed. Reg. 40430, July 14, 2008) (*Rates and Charges Policy*).

17.2. Legislative History. Congress set forth the requirement for airports to be as self-sustaining as possible in two acts:

a. Section 511(a)(9) of the Airport and Airway Improvement Act of 1982 (AAIA) requires airports to be as self-sustaining as possible under the circumstances at that airport. (See 49 United States Code (U.S.C.) § 47107(a)(13) and Grant Assurance 24, *Fee and Rental Structure*.)

b. Section 112(a) of the Federal Aviation Administration Authorization Act of 1994 (1994 Authorization Act) amended 49 U.S.C. § 47107(l)⁴² to require FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7696, February 16, 1999, (*Revenue Use Policy*) to take into account whether sponsors – when



Airports must maintain a fee and rental structure that makes the airport as financially self-sustaining as possible under airport-specific circumstances. Absent an agreement with aeronautical users, the federal obligation to make the airport as self-sustaining as possible does not permit the airport to establish fees for the use of the airfield that exceed the airport's airfield costs. Aeronautical users include general aviation from single-engine operators to corporate flight departments and commercial air carriers. (Photos: FAA)



⁴² The referenced section is the small letter "L" (not the number "1").

entering into new or revised agreements otherwise establishing rates, charges, and fees – have undertaken reasonable efforts to be self-sustaining in accordance with 49 U.S.C. § 47107(a)(13).

17.3. Applicability. The self-sustaining requirement, Grant Assurance 24, *Fee and Rental Structure*, applies to both publicly and privately owned airports that are obligated under an Airport Improvement Program (AIP) grant.

17.4. Related FAA Policies. The FAA has included the self-sustaining rule in two policies:

a. FAA's *Policy Regarding Airport Rates and Charges*, 61 Fed. Reg. 31994, June 21, 1996 (*Rates and charges Policy*).

b. FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7696, February 16, 1999 (*Revenue Use Policy*).

17.5. Self-sustaining Principle.

Airports must maintain a fee and rental structure that makes the airport as financially self-sustaining as possible under the particular circumstances at that airport. The requirement recognizes that individual airports will differ in their ability to be fully self-sustaining, given differences in conditions at each airport. The purpose of the self-sustaining rule is to maintain the utility of the federal investment in the airport.

17.6. Airport Circumstances. At some airports, market conditions may not permit a sponsor to establish fees that are sufficiently high to recover aeronautical costs and sufficiently low to attract and retain commercial aeronautical services.

In such circumstances, a sponsor's decision to charge rates that are below those needed to achieve self-sustainability in order to assure that services are provided to the public is not inherently inconsistent with the federal obligation to make the airport as self-sustaining as possible given its particular circumstances.



A sponsor may charge aviation museums and aeronautical secondary and post secondary education programs conducted by accredited education institutions operating aircraft reduced rental rates to the extent that civil aviation receives reasonable tangible or intangible benefits from such use. However, attention must be paid to whether an aviation museum or post secondary school operates actual aircraft. This is important since a "flying" museum is an aeronautical activity, while one that does not operate aircraft may not be classified as one. (Photo: FAA)

17.7. Long-term Approach. If market conditions or demand for air service do not permit the airport to be financially self-sustaining, the sponsor should establish long-term goals and targets to make the airport as financially self-sustaining as possible.

17.8. New Agreements. Sponsors are encouraged to undertake reasonable efforts to make their particular airports as self-sustaining as possible when entering into new or revised agreements or when otherwise establishing rates, charges, and fees.

17.9. Revenue Surpluses. Some airports may have sufficient market power to charge fees that exceed total airport costs. In establishing new fees and generating revenues from all sources, sponsors should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for other purposes for which airport revenue may be spent under 49 U.S.C. § 47107(b)(1).

Reasonable reserves and other funds to facilitate financing and to cover contingencies are not considered revenue surpluses. The sponsor must use any surplus funds accumulated in accordance with the *Revenue Use Policy*.

Additionally, the progressive accumulation of substantial amounts of surplus aeronautical revenue could warrant an FAA inquiry into whether the aeronautical fees are consistent with the sponsor's obligation to make the airport available on fair and reasonable terms.

The FAA will not ordinarily investigate the reasonableness of a general aviation airport's fees absent evidence of a progressive accumulation of surplus aeronautical revenues.

17.10. Rates Charged for Aeronautical Use. Charges for aeronautical uses of the airport must be reasonable. For aeronautical users, the FAA considers charges that reflect the cost of the services or facilities satisfies the self-sustaining requirement. Accordingly, the FAA does not consider the self-sustaining obligation to require the sponsor to charge fair market value rates to aeronautical users.

As explained in more detail in chapter 18 of this Order, *Airport*



At some airports, market conditions may not permit a sponsor to establish fees that are sufficiently high to recover aeronautical cost (such as the hangar/fixed-base operator (FBO) facility seen here) and sufficiently low to attract and retain commercial aeronautical services. In such circumstances, a sponsor's decision to charge rates that are below those needed to achieve self-sustainability in order to assure that services are provided to the public is not inherently inconsistent with the obligation to make the airport as self-sustaining as possible given its particular circumstances. (Photo: FAA)

Rates and Charges, fees for the use of the airfield generally may not exceed the airport's capital and operating costs of providing the airfield. Aeronautical fees for landside or non-movement area airfield facilities (e.g., hangars and aviation offices) may be at a fair market rate, but are not required to be higher than a level that reflects the cost of services and facilities. In other words, those charges can be somewhere between cost and fair market value. In part, this is because hangars and aviation offices are exclusively used by the leaseholders while airfield facilities are used in common by all aeronautical users.

The FAA will not ordinarily investigate the reasonableness of a general aviation airport's fees absent evidence of a progressive accumulation of surplus aeronautical revenues.

17.11. Nonaeronautical Rates. Rates charged for nonaeronautical use (e.g., concessions) of the airport must be based on fair market value (e.g., lease of land at fair market rent subject to the specific exceptions listed in this chapter).

If market rent for nonaeronautical uses results in a surplus, that surplus can be used to subsidize aeronautical costs of the airport. It is to the benefit of aviation and the traveling public that aeronautical users be able to use the airport at rates and charges below the cost of providing the aviation facilities and services if these are effectively subsidized by nonaeronautical revenues. See, for example, *Bombardier Aerospace, et al. v. City of Santa Monica*, FAA Docket No. 16-03-11, January 3, 2004, (available online) where the FAA noted that it promotes the practice of using nonaviation revenues to subsidize aeronautical activities since it reduces the economic impact on aviation users and the aviation public.

17.12. Fair Market Value. Fair market fees for use of the airport are required for nonaeronautical use of the airport and are optional for non-airfield aeronautical use. Fair market pricing of airport facilities can be determined by reference to negotiated fees charged for similar uses of the airport or by appraisal of comparable properties. However, in view of the various restrictions on use of property on an airport (i.e., limits on the use of airport property, height restrictions, etc.), appraisers will need to account for such restrictions when comparing on-airport with off-airport commercial nonaeronautical properties in making fair market value determinations.

17.13. Exceptions to the Self-sustaining Rule: General. While the general rule requires market rates for nonaeronautical uses of the airport, several limited exceptions to the general rule have been defined by congressional direction and agency policy based on longstanding airport practices and public benefit. These limited exceptions include (a) property for community purposes and (b) not-for-profit aviation organizations, (c) transit projects and systems, and (d) military aeronautical units, all of which are discussed in the following paragraphs.

17.14. Property for Community Purposes. A sponsor may make airport property available for community purposes at less than fair market value on a limited basis provided all of the following conditions exist: (a) the property is not needed for an aeronautical purpose, (b) the property is not producing airport revenue and there are no near-term prospects for producing revenue, (c) allowing the community purpose will not impact the aeronautical use of the airport, (d) allowing the community purpose will maintain or enhance positive community relations in

support of the airport, (e) the proposed community use of the property is consistent with the Airport Layout Plan (ALP), and (f) the proposed community use of the property is consistent with other requirements, such as certain surplus and nonsurplus property federal obligations requiring the production of revenue by all airport parcels.

17.15. Exception for Community Use. The following are the circumstances where the FAA will consider community use to be consistent with the self-sustaining requirement. Agreements for community use of airport land should incorporate the following requirements as conditions of use.

a. Acceptance. The local community must use the land in a way that enhances the community's acceptance of the airport; the use may not adversely affect the airport's capacity, security, safety, or operations. Acceptable uses include public parks and recreation facilities, including bike or jogging paths.

When the use does not directly support the airport's operations, a sponsor may not provide land at less than fair market value rent. Accordingly, the airport must generally be reimbursed at fair market rent for airport land used for road maintenance or equipment-storage yards or for use by police, fire, or other government departments.

b. Minimal Revenue Potential. At the time it contemplates allowing community use, the sponsor may only consider land that has minimal revenue-producing potential. The sponsor may not reasonably expect that an aeronautical tenant will need the land or that the airport will need the land for airport operations for the foreseeable future (i.e., master plan cycle). When a sponsor finds that the land may earn more than minimal revenue, but still below fair market value, the sponsor may still permit community use of the land at less than fair market value rent provided the rental rate approximates the revenue that the airport could otherwise earn.



The FAA acknowledges that many airports provide facilities to military units with aeronautical missions at nominal lease rates. The FAA does not consider this practice inconsistent with the requirement for a self-sustaining airport rate structure. Military units with aeronautical missions may include the Air National Guard, aviation units of the Army National Guard, U.S. Coast Guard, the U.S. Air Force Reserve, Civil Air Patrol, and Naval Reserve air units operating aircraft at the airport. (Photo: Top, FEMA; Bottom, USAF)

c. Reclaiming Land. The community use does not preclude reuse of the property for airport purposes. If the sponsor determines that the land has greater value than the community's continued use, the sponsor may reclaim the land for the higher value use.

d. No Airport Revenue. The sponsor generally may not use airport revenue to support the capital or operating costs associated with the community use.

NOTE: As explained in chapter 22 of this Order, *Releases from Federal Obligations*, airport sponsors considering requests to use airport land for recreational purposes who are planning future airport development projects should assess potential applicability of section 4(f) of the Department of Transportation Act of 1966 (49 United States Code (U.S.C.) § 303).^{43 44}

17.16. Exception for Not-for-Profit Aviation Organizations.

a. Reduced Rent. A sponsor may charge reduced rental rates to aviation museums and aeronautical secondary and post secondary education programs conducted by accredited education institutions to the extent that civil aviation receives reasonable tangible or intangible benefits from such use. A sponsor may also charge reduced rental rates to Civil Air Patrol units operating aircraft at the airport.

b. In-kind Services. The FAA expects sponsors to charge police or fire fighting units that operate aircraft at the airport reasonable fees for their aeronautical use. However, the airport may offset the value of any services that the units provide to the airport against the applicable airport fees.

17.17. Exception for Transit Projects. When the airport sponsor owns a transit system and its use is for the transportation of airport passengers, property, employees, and visitors, the sponsor may make its property available at less than fair market value rent for public transit terminals, right-of-way, and related facilities without violating the *Revenue Use Policy* or self-sustaining requirements. In such circumstances, the FAA would consider a lease of nominal value to be consistent with the self-sustaining requirement.

17.18. Exception for Private Transit Systems. Airports generally charge private ground transportation providers fair market value rental rates. However, a sponsor may, without violating the *Revenue Use Policy* or self-sustaining requirements, charge private operators less than fair market value rent when the service is extremely limited and where the private transit service – such as bus, rail, or ferry – provides the primary source of public transportation to the airport.

⁴³ Department of Transportation (DOT) Section 4(f) property refers to publicly owned land of a public park, recreation area, wildlife or waterfowl refuge, or historic site of national, state, or local significance. It also applies to those portions of federally designated Wild and Scenic Rivers that are otherwise eligible as historic sites or that are publicly owned and function as – or are designated in a management plan as – a significant park, recreation area, or wildlife and waterfowl refuge. (See 49 U.S.C. § 303.)

⁴⁴ See 23 CFR § 774.11(g) and FHWA and FTA Final Rule; Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites, 73 F.R. 13368-01, March 12, 2008 (Interpreting DOT Section 4(f) not to apply to temporary use of airport property.)

17.19. Exception for Military Aeronautical Units. The FAA acknowledges that many airports provide facilities to military units with aeronautical missions at nominal lease rates. The FAA does not consider this practice inconsistent with the requirement for a self-sustaining airport rate structure. Military units with aeronautical missions may include the Air National Guard, aviation units of the Army National Guard, the U.S. Air Force Reserve, U.S. Coast Guard, Civil Air Patrol (CAP) and Naval Reserve air units operating aircraft at the airport. The search and rescue (SAR) and disaster relief roles played by Coast Guard, the U.S. Air Force Auxiliary, and the Civil Air Patrol are also recognized as a prime aeronautical role. These units generally provide services that directly benefit airport operators and safety.

This exception does not apply to military units with no aeronautical mission on the airport.

17.20. through 17.24. reserved.



**FAA
Airports**

ASSURANCES

Airport Sponsors

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. Airport Planning Undertaken by a Sponsor.

Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Airport Revenue so long as the airport is used as an airport.

C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

1. General Federal Requirements.

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.¹
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act - 5 U.S.C. 1501, et seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.^{1 2}
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).¹
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.¹
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.¹
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 - 42 U.S.C. 4151, et seq.¹
- s. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.¹
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.¹
- u. Copeland Anti-kickback Act - 18 U.S.C. 874.1
- v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.¹
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

Executive Orders

- a. Executive Order 11246 - Equal Employment Opportunity¹
- b. Executive Order 11990 - Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 - Intergovernmental Review of Federal Programs
- e. Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction¹
- f. Executive Order 12898 - Environmental Justice

Federal Regulations

- a. 2 CFR Part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].^{4, 5, 6}
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
- d. 14 CFR Part 13 - Investigative and Enforcement Procedures 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- e. 14 CFR Part 150 - Airport noise compatibility planning.
- f. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.
- g. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- h. 29 CFR Part 1 - Procedures for predetermination of wage rates.¹
- i. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.¹
- j. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).¹
- k. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).¹
- l. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- m. 49 CFR Part 20 - New restrictions on lobbying.
- n. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.

- p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.^{1 2}
- q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- r. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.¹
- s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- t. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)
- v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- w. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.

Specific Assurances

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

Footnotes to Assurance C.1.

- ¹ These laws do not apply to airport planning sponsors.
- ² These laws do not apply to private sponsors.
- ³ 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.
- ⁴ On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.

⁵ Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

⁶ Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor:

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Sponsor Fund Availability.

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

4. Good Title.

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

6. Consistency with Local Plans.

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. Consideration of Local Interest.

It has given fair consideration to the interest of communities in or near where the project may be located.

8. Consultation with Users.

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. Public Hearings.

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. Metropolitan Planning Organization.

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

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11. Pavement Preventive Maintenance.

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. Terminal Development Prerequisites.

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and

has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. Minimum Wage Rates.

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. Veteran's Preference.

It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. Conformity to Plans and Specifications.

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans,

specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

17. Construction Inspection and Approval.

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. Planning Projects.

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. Operation and Maintenance.

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal,

state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

- 1) Operating the airport's aeronautical facilities whenever required;
 - 2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
 - 3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use.

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or

to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

- 1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
 - 2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
 - d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
 - e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
 - f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
 - g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
 - h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
 - i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights.

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure.

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
 - 1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or

operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

- 2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
 - 3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
 - c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 - 1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 - 2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft.

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. Land for Federal Facilities.

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. Airport Layout Plan.

- a. It will keep up to date at all times an airport layout plan of the airport showing
 - 1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
 - 2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and

roads), including all proposed extensions and reductions of existing airport facilities;

- 3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and
 - 4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.
- b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.
- b. Applicability
 - 1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
 - 2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.

3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

1) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or

2) So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

“The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

e. Required Contract Provisions.

1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.

2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.

3) It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.

4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a

covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:

- a) For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b) For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

31. Disposal of Land.

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.
- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another

eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.

- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
- d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. Engineering and Design Services.

It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. Foreign Market Restrictions.

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. Policies, Standards, and Specifications.

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated _____ (the latest approved version as of this grant offer) and included in this grant, and in accordance

with applicable state policies, standards, and specifications approved by the Secretary.

35. Relocation and Real Property Acquisition.

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. Access By Intercity Buses.

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its DBE and ACDBE programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

38. Hangar Construction.

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. Competitive Access.

- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
 - 1) Describes the requests;
 - 2) Provides an explanation as to why the requests could not be accommodated; and
 - 3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

dred eleven be, and the same is hereby amended by adding thereto the following:

"Provided, that in cases where either party requests a trial by jury under Section eight of this Act, as amended, the party so requesting shall, before trial, deposit with the recorder the sum of six dollars (\$6.00) for jury fees, which sum shall be in lieu of the tax imposed in the first sentence of this section. The sum so deposited shall be paid into the Federal fund of the county and applied to the salary fund."

Deposit required upon request for trial by jury.

Deposit paid into General County Fund.

SEC. 3. That all laws and clauses of laws in conflict with this Act are hereby repealed.

Conflicting laws repealed.

SEC. 4. That this Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 9th day of March, 1939.

H. B. No. 476 CHAPTER 168

AN ACT ENABLING THE CITY OF RALEIGH, THE CITY OF DURHAM, THE COUNTY OF DURHAM, AND THE COUNTY OF WAKE, TO JOINTLY ESTABLISH AN AIRPORT AND PROVIDING FOR THE MAINTENANCE OF A JOINT AIRPORT BY SAID CITIES AND COUNTIES.

The General Assembly of North Carolina do enact:

SECTION 1. Airport or landing field for the purposes of this and the sections following is defined as any plot of land or water formally set aside, and designated as a place where aircraft may land or take off.

"Airport" and "landing field" defined.

SEC. 2. The governing bodies of the City of Raleigh, of the City of Durham, of the County of Durham, and of the County of Wake are hereby authorized to jointly acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports or landing fields for the use of airplanes and other aircraft without the limits of said cities and within the limits of both of said counties or either of them; and may use for such purpose or purposes any properties suitable therefor that are now or may at any time hereafter be jointly owned or controlled by said cities and counties.

Establishment and maintenance, etc., of joint airport by City of Raleigh, City of Durham, County of Durham and County of Wake.

SEC. 3. Any lands acquired, owned, controlled, or occupied by said cities and counties, for the purposes enumerated in Section two hereof, shall and are hereby declared to be acquired, owned, controlled and occupied for a public purpose, and said cities and counties shall have the right to acquire property for such purpose or purposes under the power of eminent domain as and for a public purpose.

Airport operations declared public purpose.

Exercise of power of eminent domain



Acquisition of private property.

SEC. 4. Private property needed by the said cities and counties for an airport or landing field may be acquired by gift or devise or shall be acquired by purchase if said cities and counties are able to agree with the owners on the terms thereof, and otherwise by condemnation, in the manner provided by law under which the said cities and counties are authorized to acquire real property for public purposes, other than street purposes, or if there be no such law, in the manner provided for and subject to the provisions of the condemnation law. The purchase price, or award for property acquired for an airport or landing field may be paid for by appropriation of monies available therefor, or by the application of any funds derived by either of said cities or by either of said counties from the sale of any lands now or heretofore or hereafter owned for airport or landing field purposes or other purposes, or wholly or partly from the proceeds of the sale of bonds of either of said cities or either of said counties as the governing bodies of such cities and counties shall determine.

Authorized method of payment.

Appropriations from proceeds of operations of public utilities, etc., for establishment and maintenance of airport.

SEC. 5. The governing bodies of said cities and counties and each of them are hereby authorized to appropriate and use from the net proceeds derived from the operation, by either of said cities or either of said counties, of any public utility, or from funds derived from any source other than ad valorem taxes, sums sufficient to carry out the provisions of this Act as to the establishment and maintenance of any airport in such proportion and upon such equal basis as may be determined upon by a joint board to be appointed by the governing bodies of the said cities and counties. Provided nothing herein shall be construed to permit the governing bodies of said cities or counties to issue bonds under the provisions of this Act without a vote of the people.

Appointment of joint board.

Municipality representation.

Term.

County representation.

Appointment of county representative.

SEC. 6. The joint board to be appointed by the governing bodies of the said cities and counties shall be appointed as follows: Each municipality shall be entitled to have one representative on said board and that representative shall be appointed biennially by a majority of the governing body of said municipality, at the first regular meeting in January. Said representative shall hold office from his appointment until the first regular meeting of the governing body in the second January thereafter, when his successor shall be appointed. Only a city or cities contributing an equal part to the establishment of an airport shall be entitled to have representation on the board. Each county shall be entitled to have one representative on said board, and that representative shall be appointed biennially by a majority of the Board of County Commissioners of said county, at the first regular meeting in January. Said representative shall hold

office from his election until the first regular meeting of the County Commissioners in the second January thereafter, when his successor shall be elected. Only a county or counties contributing an equal part to the establishment of such an airport shall be entitled to have representation on said board. The said board so appointed by the governing bodies of the cities and counties, shall be known as the "Aeronautics Authority for the City of Raleigh, City of Durham, the County of Durham and the County of Wake." Upon the occurrence of any vacancy on said authority, said vacancy shall be filled within sixty (60) days after notice thereof at a regular meeting of the governing body of the governmental unit which has a vacancy within its representation. Within thirty (30) days after the ratification of this Act the governing body of each of the said municipalities and counties may appoint its representative on said board to hold office until his successor shall be appointed in the manner hereinbefore set forth: *Provided, however,* that the representative first so appointed by each of said cities shall hold office from his appointment until the following January, at which time his successor shall be appointed as hereinbefore set forth, and provided further that the representative first so appointed by each of said counties shall hold office from his appointment until the second January thereafter at which time his successor shall be appointed in the manner hereinbefore set forth.

Sec. 7. The board so appointed by the governing bodies of said cities and counties shall act in an administrative capacity and shall be vested with the authority to control, lease, maintain, improve, operate, and regulate the joint airport or landing field. It shall have complete authority over any airport or landing field jointly acquired by the several governmental bodies represented on said board. *Provided that* said board or the individual members thereof shall have no authority to pledge the credit of any of said governmental units. The said board shall have authority to deal with the Civil Aeronautics Authority of the United States Government and any other representative of said Federal Government relative to the grading, constructing, equipping, improving, maintaining, and operating of airports or landing fields established under the authority of this Act. A majority of said board shall control its decisions. At the first meeting of said board and annually thereafter it shall elect a chairman from among its members. Each member of said board, including the chairman, shall have one vote. The said authority shall meet at such place and time as the chairman of said authority shall designate. The members of said board shall serve without compensation and shall take an oath of office administered by the resident

Term.

Board designated
Aeronautics
Authority.Vacancy
appointments.Appointment of
representatives
within 30 days
after ratification
of Act.Term of municipal
appointments.Term of county
appointments.Powers and
authority of board.Election of
chairman.

Meetings.

Members to serve
without compen-
sation.

- Oath.** Judge having jurisdiction over the governmental unit which the member represents. Members of said authority shall not be personally liable in any manner for their acts as members of the authority, except for malfeasance or misfeasance.
- Liabilities on personal liability of members.**
- Application of Act.** SEC. 8. This Act shall apply only to the City of Raleigh, City of Durham, County of Durham, and the County of Wake.
- Partial invalidity clause.** SEC. 9. If any part or parts of this Act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act. The General Assembly expressly declares that it would have passed the remaining parts of this Act, if it had known that such part or parts thereof would be declared unconstitutional.
- SEC. 10. This Act shall take effect from and after its ratification.
- In the General Assembly read three times and ratified, this the 9th day of March, 1939.

H. B. No. 556 CHAPTER 169
AN ACT RELATIVE TO JURY TRIAL IN RECORDER'S COURT IN DARE COUNTY.

The General Assembly of North Carolina do enact:

- Transfer of Recorder's Court cases to Superior Court upon demand for jury trial, Dare County.**
New bond.
- SECTION 1. That in all trials in Recorder's Court in Dare County, upon demand for a jury by the defendant or the Prosecuting Attorney representing the State, the Recorder shall transfer said trial to the Superior Court of Dare County, and the defendant shall execute a new bond in such amount as named by the Recorder for his appearance at the next term of Superior Court of Dare County, and the Recorder of said court shall immediately transfer the case to the Superior Court of Dare County, without requiring any deposit from the defendant for the privilege of a jury trial.
- No Recorder's Court fees taxed in final bill of costs.**
- SEC. 2. No Recorder's fee or Prosecuting Attorney's fee for said Recorder's Court shall be taxed in the final bill of costs where any case is transferred to the Superior Court of Dare County, under the provisions of this Act, but this Act shall not affect said fees in other cases.
- Conflicting laws repealed.**
- SEC. 3. That all laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.
- SEC. 4. That this Act shall be in full force and effect from and after its ratification.
- In the General Assembly read three times and ratified, this the 9th day of March, 1939.

Signing and
countersigning
of checks.

Treasurer
required to keep
correct accounts.
Audit.

Conflicting laws
repealed.

County, the clerk of Superior Court of said county, and a committee of three to be appointed annually by the Stanly County Bar Association. All checks on said account shall be drawn and signed by the treasurer of the Stanly County Bar Association and countersigned by either the county accountant for Stanly County or the president of the Stanly County Bar Association, and it shall not be necessary for such disbursements to have the approval of the Board of Commissioners of Stanly County. It shall be the further duty of said treasurer to keep a correct and accurate account of all receipts and disbursements in connection with the said library fund, which account shall be audited at least annually, when the other records of Stanly County are audited.

SEC. 6. That all laws and clauses of laws in conflict herewith regarding the disposition of costs received by the office of the clerk of the Superior Court of Stanly County, or any of the courts inferior to said Superior Court, are hereby repealed.

SEC. 7. That this Act shall be in full force and effect from and after the date of its ratification.

In the General Assembly read three times and ratified, this the 12th day of March, 1941.

S. B. No. 253 CHAPTER 292

AN ACT TO AMEND CHAPTER ONE HUNDRED AND SIXTY-EIGHT, PUBLIC-LOCAL LAWS OF ONE THOUSAND NINE HUNDRED AND THIRTY-NINE, RELATIVE TO AN ACT ENABLING THE CITY OF RALEIGH, THE CITY OF DURHAM, THE COUNTY OF DURHAM, AND THE COUNTY OF WAKE, TO JOINTLY ACQUIRE AND ESTABLISH AN AIRPORT BY SAID CITIES AND COUNTIES.

The General Assembly of North Carolina do enact:

SECTION 1. That Chapter one hundred and sixty-eight of the Public-Local Laws of one thousand nine hundred and thirty-nine be, and the same is hereby amended, by inserting and adding as a separate section after Section four and before Section five the following, to be known and designated as Section four(a) in words and figures as follows, to-wit:

"SEC. 4(a). The power to acquire lands by condemnation herein granted to the said cities and counties for the purpose of such airport or landing field shall embrace the power to acquire by condemnation any dwelling, yard, orchard, garden, kitchen, burial ground, graveyard or cemetery located or situate upon the lands found necessary to be acquired for such purpose; and in the event there are graves located upon such lands which may be necessary to be acquired by condemnation, it shall be lawful for said cities and counties, after thirty (30) days' notice to the surviving husband or wife, or next of kin of the deceased buried therein, or the person in control of such graves, if any are known, and if not known, then after publishing a notice once a

Ch. 166,
Public-Local
Laws, 1939,
amended, as to
powers of
Raleigh, Durham,
Wake and
Durham counties,
in establishing
airport.

Acquisition of
graveyards, etc.,
by condemna-
tion.

Procedure for
removing and
reinterring dead.

Notice to
surviving kin.

week for four (4) weeks in a newspaper published in Wake County and for a like period in a newspaper published in Durham County, to open any such graves, and to take therefrom any dead body, or part thereof buried therein, and anything interred therewith, and to remove and re-inter the same in some other cemetery or suitable place in the same county to be selected by the next of kin, or the welfare officer of the county or by the Clerk of the Superior Court of said county in the order named. Due care shall be taken to do said work in a proper and decent manner, and, if necessary, to furnish suitable coffins or boxes for re-interring said remains. Due care shall also be taken to remove all tombstones and other markers from said graves, and to protect and replace all such tombstones or other markers so as to leave the new grave in as good condition as the former one. All of said work shall be done under the supervision and direction of the welfare officer of the county, if one, or his representative, but if there is no welfare officer, then under the supervision and direction of the Clerk of the Superior Court of said county, or his representative. All the expense connected with said work, including the actual expense of one of "next of kin" in attending to same, if one does attend, shall be borne by the said cities and counties doing or causing same to be done."

Notice by publication.

Removal and burial in another cemetery.

Due care required in removing tombstones, etc.

Expenses of work by welfare officer or Clerk.

Expenses born by cities and counties.

SEC. 2. That Section seven of Chapter one hundred and sixty-eight of the Public-Local Laws of one thousand nine hundred and thirty-nine be, and the same is hereby amended by inserting in line three after the word "to" and before the word "control" the following: "establish, construct."

Sec. 7, amended as to powers of Appropriation Authority.

SEC. 3. That Chapter one hundred and sixty-eight of the Public-Local Laws of one thousand nine hundred and thirty-nine be and the same is hereby amended by adding at the end of Section seven the following:

Sec. 7, amended further, empowering Authority to expend funds, make contracts, etc.

"Said authority shall have the right and is empowered to expend such funds as are appropriated from time to time by the said governmental units jointly or severally for joint airport purposes and is empowered to enter into contracts and pledge the credit of the authority to the extent of the moneys appropriated by the said governmental units for joint airport purposes."

SEC. 4. That all laws and clauses of laws in conflict with this Act are hereby repealed.

Conflicting laws repealed.

SEC. 5. That this Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 12th day of March, 1941.

dash" between the word "Moore" and the word "Person" in
is twenty thereof.

SEC. 2. All laws and clauses of laws in conflict with this Act
e hereby repealed. Conflicting laws
repealed.

SEC. 3. This Act shall be in full force and effect from and after
ratification.

Ratified this the 7th day of February, 1945.

. B. 111 CHAPTER 79

N ACT TO AMEND CHAPTER ONE HUNDRED AND
SIXTY-EIGHT PUBLIC-LOCAL LAWS OF ONE THOU-
SAND NINE HUNDRED AND THIRTY-NINE RELATIVE
TO AN ACT ENABLING THE CITY OF RALEIGH, THE
CITY OF DURHAM, THE COUNTY OF DURHAM, AND
THE COUNTY OF WAKE TO JOINTLY ACQUIRE AND
ESTABLISH AN AIRPORT BY SAID CITIES AND COUN-
TIES.

As General Assembly of North Carolina do enact:

SECTION 1. That Chapter one hundred and sixty-eight of the
Public-Local Laws of one thousand nine hundred and thirty-nine
amended by Chapter two hundred and ninety-two of the Public-
Local Laws of one thousand nine hundred and forty-one, be, and
in the same is, hereby amended by striking out Sections six and
seven and adding in lieu thereof the following: Amendment law, relat-
ing to estab-
lishment of air-
port by Durham,
Raleigh and
County of Dur-
ham and Wake.

SEC. 3. The joint board to be appointed by the governing
bodies of the said municipalities and counties shall be appointed
as follows: Appointment of
Board, governing
said airport.

Each municipality shall be entitled to have two representatives
on said board and the representatives shall be appointed bienni-
ally by a majority of the governing body of the said municipi-
ality, at the first regular meeting in January. Said represen-
tatives shall hold office from their appointment until their suc-
cessors are appointed and qualified and until the first regular
meeting of the governing body in the second January thereafter,
when successors shall be appointed. Only a municipality con-
tributing in equal part to the establishment of an airport or air-
ports shall be entitled to have representation on the board. Each city to have
two members.

Each county shall be entitled to have two representatives on
said board and the representatives shall be appointed biennially
by a majority of the board of county commissioners of said county
at the first regular meeting in January. Said representatives
shall hold office from their appointment until their successors
are appointed and qualified and until the first regular meeting Each County to
have two mem-
bers.

of the board of county commissioners in the second January thereafter, when successors shall be appointed. Only a county or counties contributing an equal part to the establishment of an airport or airports shall be entitled to have representation on said board. The said board so appointed by the governing bodies of the municipalities and counties, shall be known as the "Raleigh-Durham Airport Authority." Upon the occurrence of any vacancy on said board, said vacancy shall be filled within sixty (60) days after notice thereof by a majority of the governing body of the municipality or county which has a vacancy within its representation. Within thirty (30) days after the ratification of this Act, the governing body of each of said municipalities and counties shall appoint its representatives on said board to hold office until successors shall be appointed in the manner hereinbefore set forth, *provided however*, that the representatives first so appointed by each of said municipalities and counties shall hold office from appointment until the second January thereof, at which time successors shall be appointed in the manner hereinbefore set forth.

SEC. 7. The board appointed as herein provided for by the governing bodies of said municipalities and counties shall act in an administrative capacity and shall be vested with the authority to establish, construct, control, lease, maintain, improve, operate and regulate joint airports or landing fields. It shall have complete authority over any airport or landing field jointly acquired, established or constructed by the said municipalities and counties represented on said board. *Provided* that said board or the individual members thereof shall have no authority to pledge the credit of said municipalities or counties. The said board shall have the right and authority and is empowered to expend such funds as are appropriated from time to time by the said municipalities and counties jointly or severally for joint airport purposes and is empowered to enter into contracts and pledge the credit of the board to the extent of the moneys appropriated by the said municipalities and counties for joint airport purposes. The said board shall have authority to deal with the Civil Aeronautics Authority of the United States Government and any other representative of the United States Government relative to the grading, constructing, equipping, improving, maintaining and operating of airports and landing fields established or acquired under the authority of this Act. A majority of said board shall control its decisions. Each member of said board, including the chairman, shall have one vote. At the first meeting of said board and annually thereafter, it shall elect from among its members a chairman and a secretary and a treasurer. The said board shall meet at such places and time as the chairman shall designate. The members of said board shall take an oath of office to faithfully perform his duties.

Said Board to be known as Raleigh-Durham Airport Authority.

Said Board shall not have authority to pledge credit of either participating City or County.

Certain powers of said Board.

All members of time employees of serve without con not fulltime offici nicipality or cou (\$10.00) for each board, and in ad necessary expens ing actual travel mile where such :

The board is he to fix a reasonable or not such secre municipalities or

SEC. 2. That a Act are hereby re

SEC. 3. That 1 and after its ratif

Ratified this th

H. B. 161

AN ACT TO AL LEASE ANY LANDS FOR CATION OF STREETS IN

The General Ass

SECTION 1. T boro is hereby : deeds, quitclaim necessary to rel the public gener Streets situate, l of Greensboro, l as follows:

Beginning at : point being Nor seconds West 1 from a point w the West line c North line of Tl minutes thirty t sixty-six one h Cypress Street

All members of said board who are fulltime officials or fulltime employees of either of the municipalities or counties shall serve without compensation. Members of said board who are not fulltime officials or fulltime employees of either said municipality or county shall be paid a per diem of ten dollars (\$10.00) for each day served in attending the meetings of said board, and in addition thereto shall be reimbursed for actual necessary expenses incurred in attending the meetings, including actual traveling expenses or an allowance of five cents per mile where such member uses his personally owned automobile.

Compensation of Board members.

The board is hereby authorized and empowered in its discretion to fix a reasonable salary for the secretary of said board whether or not such secretary is an official or fulltime employee of said municipalities or counties.

Secretary of Board.

SEC. 2. That all laws and clauses of laws in conflict with this Act are hereby repealed.

Conflicting laws repealed.

SEC. 3. That this Act shall be in full force and effect from and after its ratification.

Ratified this the 7th day of February, 1945.

H. B. 151 CHAPTER 80

AN ACT TO ALLOW THE CITY OF GREENSBORO TO RELEASE ANY INTEREST IT MAY HAVE IN CERTAIN LANDS FOR THE PURPOSE OF CHANGING THE LOCATION OF A PORTION OF CYPRESS AND THIRD STREETS IN THE CITY OF GREENSBORO.

The General Assembly of North Carolina do enact:

SECTION 1. That the governing body of the City of Greensboro is hereby authorized to execute and deliver such release deeds, quitclaim deeds, or other instruments or papers as may be necessary to release the interest of the City of Greensboro and the public generally in and to those portions of Cypress and Third Streets situate, lying and being in Gilmer Township, in the City of Greensboro, North Carolina, and more particularly described as follows:

Authorizing Greensboro to convey certain lands.

Beginning at a point in the North margin of Third Street, said point being North eighty-six degrees thirty-eight minutes thirty seconds West forty-five and thirty-two one hundredths feet from a point where the North line of Third Street intersects the West line of Maple Street and running thence along the North line of Third Street North eighty-six degrees thirty-eight minutes thirty seconds West three hundred and twenty-two and sixty-six one hundredths feet to a point in the West line of Cypress Street thence South three degrees fifty-one minutes

Boundary lines of said property.

Sec. 4. This Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 18th day of May, 1955.

H. B. 1807

CHAPTER 1096

AN ACT TO AMEND CHAPTER 168 PUBLIC-LOCAL LAWS 1939, AS AMENDED BY CHAPTER 292, PUBLIC-LOCAL LAWS OF 1941, AS AMENDED BY CHAPTER 79, SESSION LAWS OF 1945, RELATING TO THE ACQUISITION, ESTABLISHMENT AND OPERATION OF THE RALEIGH-DURHAM AIRPORT.

The General Assembly of North Carolina do enact:

Section 1. That Chapter 168 Public-Local Laws of 1939, as amended by Chapter 292, Public-Local Laws of 1941, as amended by Chapter 79, Session Laws of 1945, is hereby amended by striking out Section 7 thereof and substituting in lieu thereof the following:

"Sec. 7. The board appointed as herein provided by the governing bodies of said municipalities and counties shall act in an administrative capacity and shall be vested with the following authorities and powers; and it is hereby authorized and empowered:

"(a) To establish, construct, control, lease, maintain, improve, operate and regulate joint airports and landing fields; to have complete authority over any airport or landing field jointly acquired, established, or constructed by said municipalities and counties represented on said board.

"(b) To adopt, repeal, amend, and re-adopt rules, regulations, laws and ordinances not inconsistent with this Act, as amended, for its own government, management and operation, and for the government, control, administration, management and operation of the Raleigh-Durham Airport, and the users thereof, including persons, firms and corporations using the said airport, or any of its facilities, as tenants, licensees, invitees or as members of the general public.

"(c) To lease (without the joinder in the lease agreements of the owning municipalities, to wit, the Counties of Wake and Durham, and the Cities of Raleigh and Durham) for a term not to exceed 15 years, and for purposes not inconsistent with the grants and agreements under which the said airport is held by said owning municipalities, real or personal property under the supervision of or administered by the said Authority.

"(d) To contract with persons, firms or corporations for terms not to exceed 15 years, for the operation of airline-scheduled passenger and freight flights, non-scheduled flights, and any other airplane activities, not inconsistent with said grant agreements under which the airport property is held by the owning municipal corporations, and to charge and collect reasonable and adequate fees, charges and rents for the use of such property or for services rendered in the operation thereof.

"(e) To operate, own, control, regulate, lease or grant to others the right to operate any airport premises, restaurants, apartments, hotels, motels, agricultural fairs, tracks, motion picture shows, cafes, soda foun-

tains, or other businesses, amusements or concessions for a term not exceeding 15 years, as may appear to said Authority advantageous or conducive to the development of said airport.

"(f) To erect and construct buildings, hangars, shops and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease the same for a term or terms not to exceed 15 years; to borrow money for use in making or paying for such improvements and facilities, secured by and on the credit only of the lease agreements in respect thereto, to pledge and assign such leases and lease agreements as security for loans herein authorized.

"(g) In addition to the power to borrow money hereinbefore authorized, to borrow money for operating expenses, to become due, not in excess of 12 months from the date of such loan, repayable solely from operating revenues only; provided the gross amount of such loans at any one time outstanding shall not exceed the sum of ten thousand dollars (\$10,000.00); and provided further, that this paragraph shall not be interpreted to exclude loans contemplated in the paragraph next above utilized for the erection of permanent improvements to the property.

"(h) To expend funds appropriated from time to time by said municipalities and counties, jointly or severally, for joint airport purposes, and to appropriate and expend for airport purposes funds received by it from fees, charges, rents and dues arising out of the operation of said airport, the facilities, improvements and concessions located thereat or operated thereon.

"(i) To enter into contracts and to pledge the credit of the said Airport Authority to the extent herein authorized; provided, however, that neither said Airport Authority nor the individual members thereof shall have authority to pledge the credit of or contract for the City of Raleigh, the City of Durham, the County of Wake, the County of Durham, or either of them.

"(j) To contract and deal with the Civil Aeronautics Authority of the United States Government and any other representative or agency of said government relating to the grading, constructing, equipping, improving, maintaining and operating of airports and landing fields acquired under the authority of this Act.

"Sec. 8. A majority of the Raleigh-Durham Airport Authority shall control its decisions. Each member of the board, including the chairman, shall have one vote. The board shall elect annually in April, from among its members, a chairman, a vice chairman, a secretary and treasurer. In the absence of rules of the board in respect thereof, the board shall meet at such places and times as the chairman shall designate. Each member of said board shall take an oath of office to faithfully perform his duties.

"All members of said board who are full-time officials or full-time employees of either of the municipalities or counties shall serve without compensation. Members of said board who are not full-time officials or full-time employees of either said municipality or county shall be paid a per diem of ten dollars (\$10.00) for each day served in attending the meeting

of said board, and in addition thereto shall be reimbursed for actual necessary expenses incurred in attending the meetings, including actual traveling expenses or in allowance of five cents (5c) per mile where such member uses his personally-owned automobile.

The board is hereby authorized and empowered in its discretion to fix a reasonable salary for the secretary of said board whether or not such secretary is an official or full-time employee of said municipalities or counties.

Sec. 3. The Raleigh-Durham Airport Authority shall in no case be liable for damages for injuries to persons or property caused by or growing out of fueling, refueling or servicing any airplanes at said airport.

Sec. 2. That all laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 3. That this Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 18th day of May, 1955.

S. B. 60

CHAPTER 1097

AN ACT TO MAKE IT UNLAWFUL FOR ANY PERSON TO DRINK OR HAVE IN HIS OR HER POSSESSION ANY BEER, WINE, OR WHISKEY, OR OTHER INTOXICATING BEVERAGE IN OR UPON CHURCH, CEMETERY OR SCHOOL PROPERTY.

The General Assembly of North Carolina do enact:

Section 1. It shall be unlawful for any person to drink, or have in his or her possession, any beer, wine, whiskey, or other intoxicating beverage, in or upon any property or premises customarily used or held for church, cemetery or school purposes. Provided, this Act shall not apply to wine held or used for sacrament purposes.

Sec. 2. All persons violating any of the provisions of this Act shall be guilty of a misdemeanor, and shall be fined not more than fifty dollars (\$50.00) or imprisoned not more than thirty days.

Sec. 2½. Provided that the provisions of this Act shall apply only to Mecklenburg County.

Sec. 3. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 4. This Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 18th day of May, 1955.

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H. B. 641 CHAPTER 453

AN ACT APPOINTING CERTAIN MEMBERS OF THE FAIRMONT CITY BOARD OF EDUCATION.

The General Assembly of North Carolina do enact:

Section 1. That pursuant to the provisions of Chapter 307, Session Laws of 1955, D. M. Britt and A. D. Lewis be and they are hereby appointed members of the Fairmont City Board of Education, formerly designated as the Board of Trustees of the Fairmont City Administrative School Unit, for terms of four years each from and after July 1, 1957 and until their successors are duly appointed and qualified.

Sec. 2. All laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

Sec. 3. This Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 24th day of April, 1957.

H. B. 642 CHAPTER 454

AN ACT AMENDING CHAPTER 1043, SESSION LAWS OF 1955 SO AS TO EXEMPT ROBESON COUNTY FROM THE PROVISIONS OF SAID ACT.

The General Assembly of North Carolina do enact:

Section 1. That §8½, Chapter 1043, Session Laws of 1955, amending G. S. 110-22 and G. S. 110-23, be and the same is hereby amended by inserting the word Robeson between the words Lenoir and Transylvania in the fourth line of said Section.

Sec. 2. All laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

Sec. 3. This Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 24th day of April, 1957.

H. B. 644 CHAPTER 455

AN ACT TO AMEND CHAPTER 168, PUBLIC-LOCAL LAWS OF 1939, AS AMENDED BY CHAPTER 292, PUBLIC-LOCAL LAWS OF 1941, AS AMENDED BY CHAPTER 79, SESSION LAWS OF 1945, AS AMENDED BY CHAPTER 1086, SESSION LAWS OF 1955, RELATING TO THE ACQUISITION, ESTABLISHMENT AND OPERATION OF THE RALEIGH-DURHAM AIRPORT.

The General Assembly of North Carolina do enact:

Section 1. Chapter 168, Public-Local Laws of 1939, as amended by Chapter 292, Public-Local Laws of 1941, as amended by Chapter 79, Session

Laws of 1945, as amended by Chapter 1096, Session Laws of 1955, is hereby amended by striking out Section 7 (b) thereof and substituting in lieu thereof the following:

"(b) (1) To adopt, repeal, amend and readopt rules, regulations, laws and ordinances not inconsistent with this Act as amended, for its own government, management and operation; and

"(b) (2) To adopt, repeal, amend and readopt rules, regulations and ordinances with respect to traffic on and use of streets, alleys, driveways, roadways, parking areas, cross-walks, and safety areas (not included in the public road system of the State of North Carolina) located within the territorial limits of the lands comprising the Raleigh-Durham Airport, including by way of illustration but not in limitation of the authority herein granted, the establishment of routes of traffic, the regulation of speed, the location of parking areas, the regulation and prohibition of parking and standing in designated areas and on said streets, driveways, alleys and roadways, the prohibition of obstruction thereof, the prohibition of vehicles and pedestrians on the aprons, ramps, taxiways, runways and other designated parts of the Airport.

"(b) (3) To adopt, repeal, amend and readopt rules, regulations, and ordinances with respect to the use of the Airport and its facilities by the public, including by way of illustration but not in limitation of the authority granted, the Terminal Building, the ramps, aprons, hangars, taxiways, runways, water plants and shops, and to prohibit the use of, occupation of, or trespass upon any part thereof.

"(b) (4) All rules, regulations and ordinances adopted pursuant to the authority of this Section 7 shall be recorded in the proceedings of the Raleigh-Durham Airport Authority and a true copy of all such rules, regulations and ordinances, certified under the hand of the secretary and the seal of the authority, shall be filed with the Board of County Commissioners of Wake County, the Board of Commissioners of Durham County, the City Council of the City of Raleigh, and the City Council of Durham.

"(b) (5) The Raleigh-Durham Airport Authority shall cause to be posted at appropriate places on the Raleigh-Durham Airport, notice to the public of applicable rules, regulations and ordinances pertaining to the Raleigh-Durham Airport.

"(b) (6) To prescribe penalties for the violation of any rule, regulation or ordinance adopted pursuant to the provisions of this Section.

"(b) (7) Any person violating any rule, regulation or ordinance adopted pursuant to Section 7 (b) (2) through (b) (6) inclusive shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of not exceeding fifty dollars (\$50.00) or imprisonment for not exceeding thirty days."

Sec. 2. A new subsection be added to Section 7 as follows:

"(k). In addition to all other rights and powers herein conferred, the Raleigh-Durham Airport Authority is authorized and empowered to exercise the powers granted political subdivisions under the Model Airport Zoning Act contained in Article 4, Chapter 68, of the General Statutes of North Carolina, and is authorized and empowered to exercise the powers

granted to municipalities by the terms of Article 6, Chapter 63, of the General Statutes of North Carolina concerning public airports and related facilities."

Sec. 3. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 4. This Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 24th day of April, 1957.

H. B. 650 CHAPTER 456

AN ACT TO AMEND CHAPTER 984 OF THE SESSION LAWS OF 1953 SO AS TO AUTHORIZE THE EMPLOYMENT OF A PLUMBING INSPECTOR IN UNINCORPORATED AREAS IN MONTGOMERY COUNTY.

The General Assembly of North Carolina do enact:

Section 1. Section 2 of Chapter 984 of the Session Laws of 1953 is amended by adding at the end thereof a new sentence to read as follows: "This Act shall also apply to Montgomery County."

Sec. 2. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 3. This Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 24th day of April, 1957.

H. B. 659 CHAPTER 457

AN ACT RELATING TO THE ELECTION OF THE MAYOR AND THE BOARD OF COMMISSIONERS OF THE TOWN OF RED SPRINGS.

The General Assembly of North Carolina do enact:

Section 1. At the regular municipal election held in the Town of Red Springs in 1957, the Mayor of the town shall be elected for a term of two years, and shall serve for a period of two years and until his successor is elected and qualified. Each mayor elected biennially thereafter shall serve for a term of two years.

Sec. 2. At the regular municipal election to be held for the year 1957 there shall be elected six commissioners to succeed those whose term expires at that time. The three commissioners who receive the highest number of votes in the election to be held for the year 1957 shall serve for terms of four years, and the three commissioners who receive the next highest number of votes shall serve for terms of two years.

Sec. 3. At the regular municipal election for the year 1959 and biennially thereafter there shall be elected three commissioners who shall serve for terms of four years and until their successors are elected and qualified.

NORTH CAROLINA GENERAL ASSEMBLY
1959 SESSION

CHAPTER 755
HOUSE BILL 878

AN ACT TO AMEND CHAPTER 168 OF PUBLIC-LOCAL LAWS 1939, AS AMENDED BY CHAPTER 292 OF PUBLIC-LOCAL LAWS 1941, AS AMENDED BY CHAPTER 79, SESSION LAWS OF 1945, AS AMENDED BY CHAPTER 1096, SESSION LAWS OF 1955, AS AMENDED BY CHAPTER 455, SESSION LAWS OF 1957, RELATING TO THE RALEIGH-DURHAM AIRPORT.

The General Assembly of North Carolina do enact:

Section 1. That Chapter 168 of Public-Local Laws 1939, as amended by Chapter 292 of Public-Local Laws 1941, as amended by Chapter 79, Session Laws of 1945, as amended by Chapter 1096, Session Laws of 1955, as amended by Chapter 455, Session Laws of 1957, is hereby amended in the following particulars:

1. By striking out Section 7 (c) thereof and substituting in lieu thereof the following:

"(c) To lease (without the joinder in the lease agreements of the owning municipalities, to wit, the Counties of Wake and Durham, and the Cities of Raleigh and Durham) for a term not to exceed 40 years, and for purposes not inconsistent with the grants and agreements under which the said airport is held by said owning municipalities, real or personal property under the supervision of or administered by the said Authority."

2. By striking out Section 7 (d) thereof and substituting in lieu thereof the following:

"(d) To contract with persons, firms or corporations for terms not to exceed 40 years, for the operation of airline-scheduled passenger and freight flights, non-scheduled flights, and any other airplane activities, not inconsistent with said grant agreements under which the airport property is held by the owning municipal corporations, and to charge and collect reasonable and adequate fees, charges and rents for the use of such property or for services rendered in the operation thereof."

3. By striking out Section 7 (e) thereof and substituting in lieu thereof the following:

"(e) To operate, own, control, regulate, lease or grant to others the right to operate any airport premises, restaurants, apartments, hotels, motels, agriculture fairs, tracks, motion picture shows, cafes, soda fountains, or other businesses, amusements or concessions for a term not exceeding 40 years, as may appear to said Authority advantageous or conducive to the development of said airport."

4. By striking out Section 7 (f) thereof and substituting in lieu thereof the following:

"(f) To erect and construct buildings, hangars, shops and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease the same for a term or terms not to exceed 40 years; to borrow money for use in making or paying for such improvements and facilities, secured by and on the credit only of the lease agreements in respect thereto, to pledge and assign such leases and lease agreements as security for loans herein authorized."

5. By striking out Section 7 (g) thereof and substituting in lieu thereof the following:

"(g) To issue bonds or other securities and obligations for the purpose of providing funds for the construction, maintenance, purchase, improvement and operation of the said airport, landing fields, runways thereon, or other facilities. The said bonds, if and when so issued, shall be denominated 'Raleigh-Durham Airport Authority Revenue Bonds' and shall be issued in such form and denomination and shall mature at such time or times, not exceeding 35 years after their date, and shall bear such rate of interest, not exceeding six per cent (6%) per annum, payable annually or semiannually, as the said Raleigh-Durham Airport Authority may determine. The bonds shall be signed by the Chairman of said Airport Authority and the corporate seal affixed or impressed upon each bond and attested by the Secretary of said Authority. The coupons to be attached to said bonds shall bear the facsimile signature of the Treasurer of the Authority. Such bonds, notes or securities issued for the purpose, or purposes above set out, shall be sold under the supervision and with the approval of the Local Government Commission.

"Bonds and notes issued under this Act shall be exempt from all State, Federal, county or municipal taxes or assessments, direct or indirect, general or special, and the interest paid on said bonds or notes shall not be subject to taxation as income. The said bonds, notes or other security shall not be obligations of the County of Wake, the County of Durham, the City of Durham or the City of Raleigh, but the said Airport Authority is authorized and empowered to pledge the revenues, rents, income and tolls arising out of the use of any airport property or any specific part of said airport property until such time as the sums borrowed therefor are fully amortized and repaid. The said bonds or other securities which the said Airport Authority may incur shall be issued and incurred upon such other terms, covenants and conditions as the said Airport Authority may deem proper.

"The said bonds or other securities shall be issued and secured as provided for similar bonds by the Revenue Bond Act of One Thousand Nine Hundred and Thirty-Eight, which Act is made applicable to the Raleigh-Durham Airport Authority."

6. By striking out Section 7 (h) thereof and substituting in lieu thereof the following:

"(h) To expend funds appropriated from time to time by said municipalities and counties, jointly or severally, for joint airport purposes and to appropriate and expend for airport purposes funds received by it from fees, charges, rents and dues arising out

of the operation of said airport, the facilities, improvements and concessions located thereat or operated thereon and from the sale of bonds or other securities herein authorized."

7. By adding another Section as follows:

"Sec. 10. The Raleigh-Durham Airport Authority is authorized and empowered to adopt and use a seal."

Sec. 2. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 3. This Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 4th day of June, 1959.

NORTH CAROLINA GENERAL ASSEMBLY
1967 SESSION

CHAPTER 781
HOUSE BILL 888

AN ACT TO AMEND CHAPTER 168 OF PUBLIC-LOCAL LAWS 1939, AS
AMENDED RELATING TO THE RALEIGH-DURHAM AIRPORT.

The General Assembly of North Carolina do enact:

Section 1. That Chapter 168 of the Public-Local Laws of 1939, as amended by Chapter 292 of Public-Local Laws of 1941, as amended by Chapter 79 of Session Laws of 1945, as amended by Chapter 1096 of Session Laws of 1955, as amended by Chapter 455 of Session Laws of 1957, as amended by Chapter 755 of Session Laws of 1959, is hereby amended in the following particulars:

A. By adding the following two paragraphs at the end of Section 3:

"Said cities and counties shall each hold and be vested with an undivided interest in and to lands so acquired, owned, controlled and occupied in proportion to the respective payments made by the several cities and counties to the acquisition and improvement of said lands and to the maintenance of the said Airport established thereon.

"The County of Wake, the City of Raleigh, the County of Durham, and the City of Durham, with the approval of the Raleigh-Durham Airport Authority, are authorized to convey to the State of North Carolina, or to any public board, municipality or authority, by deed or other instrument, upon such terms and conditions as may be agreed upon, without the necessity of complying with the provisions of G. S. 160-59, any real properties vested in the said counties and cities and comprising a part of lands held for airport purposes, in exchange for a conveyance of lands vested in the State of North Carolina or in any other public board, municipality or authority."

B. By adding at the end of Section 4 the following:

"For the purpose of aiding the Raleigh-Durham Airport Authority in the financing of improvements at the Raleigh-Durham Airport, the County of Wake and the County of Durham are each hereby authorized to issue bonds, under and pursuant to The County Finance Act, for airport purposes as provided in Section 153-77 of said Act the same as if such bonds were to be issued to finance improvements at an airport owned and operated by such County, and notwithstanding that the Raleigh-Durham Airport is located outside the corporate limits of the County of Durham. The proceeds of the sale of any such bonds may be expended by the County issuing such bonds or by the Raleigh-Durham Airport Authority, as may be determined by the Board of Commissioners of the County issuing such bonds."

C. By changing the period after the word "board" at the end of the second paragraph of Section 6 to a semicolon and adding the following:

"provided, however, that the representation of a municipality on said Board shall not be changed or affected in the event either the County of Wake or the County of Durham, or both, issue bonds for the purpose of aiding the Raleigh-Durham Airport Authority in the financing of improvements at the Raleigh-Durham Airport."

Sec. 2. The provisions of this Act are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

Sec. 3. That all laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 4. That this Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 14th day of June, 1967.

NORTH CAROLINA GENERAL ASSEMBLY
1971 SESSION

CHAPTER 287
SENATE BILL 410

AN ACT TO AMEND CHAPTER 168 OF THE PUBLIC-LOCAL LAWS OF 1939, AS AMENDED, RELATING TO THE RALEIGH-DURHAM AIRPORT AND AUTHORIZING THE ISSUANCE OF REVENUE BONDS BY THE RALEIGH-DURHAM AIRPORT AUTHORITY.

The General Assembly of North Carolina do enact:

Section 1. That Chapter 168 of the Public-Local Laws of 1939, as amended by Chapter 292 of the Public-Local Laws of 1941, as amended by Chapter 79 of the Session Laws of 1945, as amended by Chapter 1096 of Session Laws of 1955, as amended by Chapter 455 of Session Laws of 1957, as amended by Chapter 755 of Session Laws of 1959, as amended by Chapter 781 of Session Laws of 1967, is hereby amended in the following particulars:

A. By adding the following paragraph to Section 7 of said act as amended, as follows:

"Section 7(L). To issue bonds, notes or other securities and obligations for the purpose of providing funds for the construction, maintenance, improvement and operation of the Raleigh-Durham Airport landing fields, runways, buildings, water, sewer, and electrical systems, and facilities incidental thereto and for the purchase of equipment, machinery, furniture and furnishings and other personal property used or useful in connection therewith, for the purpose of refunding outstanding bonds, with interest and premiums thereon, other obligations of the Raleigh-Durham Airport Authority, and notes issued in anticipation of an issue of bonds thereafter to be made. The said bonds, if and when so issued, shall be denominated 'Raleigh-Durham Airport Authority Revenue Bonds', with such additional description as may be deemed appropriate to distinguish each issue; and shall be issued in such form and denomination and shall mature at such time or times, not exceeding thirty-five years after their date, and shall bear such rate of interest, payable annually or semiannually, as the Raleigh-Durham Airport Authority may determine. The bonds shall be signed by the Chairman of said Airport Authority and the corporate seal affixed or impressed upon each bond and attested by the Secretary of said Authority. The coupons to be attached to said bonds shall bear the facsimile signature of the Treasurer of the Authority. Such bonds, notes or securities issued for the purpose or purposes set out, shall be sold under the supervision and with the approval of the Local Government Commission. Bonds and notes issued under this act shall be exempt from all State, federal, county or municipal taxes or assessments, direct or indirect, general or special, and the interest paid on said bonds or notes shall not be subject to taxation as income. The said bonds, notes or other

securities shall not be the obligation of the County of Wake, the County of Durham, the City of Durham, or the City of Raleigh, but the Airport Authority is authorized and empowered to pledge the revenues, rents, income and tolls arising out of the use of any Airport property or any specific part of said Airport property until such time as the sums borrowed therefor are fully amortized and repaid. The said bonds or other securities which the said Airport Authority may incur shall be issued and incurred upon such other terms, covenants and conditions as the said Airport Authority may deem proper.

In addition to the power hereby conferred the Authority shall have such additional powers as may be conferred upon a municipality by the Revenue Bond Act of 1938 and such act is made applicable to the Authority. The bonds, notes or other securities which the Authority is authorized to issue shall be issued and secured in the same manner as bonds issued by a municipality pursuant to said Revenue Bond Act of 1938."

Sec. 2. All laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 3. This act shall be effective upon its ratification.

In the General Assembly read three times and ratified, this the 4th day of May, 1971.

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 221
HOUSE BILL 680

AN ACT TO AMEND CHAPTER 168 OF THE PUBLIC-LOCAL LAWS OF 1939, AS AMENDED, RELATING TO THE RALEIGH-DURHAM AIRPORT AND AUTHORIZING AGREEMENTS BETWEEN THE RALEIGH-DURHAM AIRPORT AUTHORITY AND THE COUNTIES OF WAKE AND DURHAM PROVIDING FOR THE LEVY OF TAXES TO SECURE THE PAYMENT OF REVENUE BONDS ISSUED BY THE RALEIGH-DURHAM AIRPORT AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. That Chapter 168 of Public-Local Laws of 1939, as amended by Chapter 292 of the Public-Local Laws of 1941, as amended by Chapter 79 of the Session Laws of 1945, as amended by Chapter 1096 of the Session Laws of 1955, as amended by Chapter 455 of the Session Laws of 1957, as amended by Chapter 755 of the Session Laws of 1959, as amended by Chapter 781, of the Session Laws of 1967, and as amended by Chapter 287 of the Session Laws of 1971, is hereby amended in the following particulars:

A. By adding the following paragraph to Section 7 of said act as amended, as follows:

"Section 7.(M) The County of Wake and the County of Durham are authorized to aid the Raleigh-Durham Airport Authority in the financing of improvements at the Raleigh-Durham Airport by entering into and performing contracts and agreements with said Authority to pay the principal of and interest on bonds, notes or other securities and obligations issued by said Authority to the extent that revenues of said Authority may not be sufficient to pay such principal or interest. Such contracts or agreements may be pledged by said Authority to the holders of bonds of said Authority or to a trustee for such holders as security for the payment of principal of and interest on such bonds, notes or other securities and obligations. Such contracts or agreements may provide that the County of Wake and the County of Durham shall levy taxes in any fiscal year for the purpose of providing moneys with which to pay principal of and interest on bonds of said Authority and the amounts of such taxes may be based upon an estimate of a deficiency in revenues of said Authority for a forthcoming fiscal year or years. Such contracts or agreements may also provide that the County of Wake and the County of Durham shall levy a tax in any fiscal year or years for the purpose of providing moneys with which to replenish any reserve fund of said Authority established to further secure the payment of the principal and interest on its bonds, notes or other securities and

obligations to the extent moneys in such fund have been withdrawn and applied to the payment of such principal and interest.

Such contracts or agreements, before becoming effective, shall be authorized by resolution adopted by the Board of Commissioners of the affected County and shall be approved by a favorable vote of the majority of the qualified voters of such County voting at a general election or at a special election; provided, however, that no such contract shall be entered into unless each County has authorized their respective contracts and such contract has been approved by the voters of the respective County as provided herein. Upon the approval of the qualified voters and the authorization by the Board of Commissioners and proper execution of such contracts or agreements, each County shall thereafter be authorized to levy a tax in each of the fiscal years covered by such contracts in an amount necessary to provide for the payment of principal and interest on bonds, notes or other securities and obligations of the Raleigh-Durham Airport Authority to the extent that the revenues of said Authority are not sufficient for such purpose and in accordance with terms of and as provided by such contracts."

Sec. 2. All laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 3. This act shall be effective upon ratification.

In the General Assembly read three times and ratified, this the 17th day of April, 1973.

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 28
SENATE BILL 30

AN ACT TO AMEND THE CHARTER OF RALEIGH-DURHAM AIRPORT
AUTHORITY TO RAISE THE RATE OF COMPENSATION OF MEMBERS.

The General Assembly of North Carolina enacts:

Section 1. Section 8 of the Charter of Raleigh-Durham Airport Authority is hereby amended by rewriting the second sentence of the second paragraph, as the same appears in Section 1 of Chapter 1096 of the Session Laws of 1955 to read as follows: "Members of said board who are not full-time officials or full-time employees of either said municipality or county shall be paid a per diem of thirty-five dollars (\$35.00) for each day served in attending the meeting of said board. The members of the Airport Authority shall be reimbursed for actual necessary expenses incurred in attending meetings, including actual traveling expenses or an allowance of a sum for each mile traveled where such member uses his personally owned automobile equalled to the amount of the mileage sum paid generally to State of North Carolina employees who are reimbursed on a similar basis from time to time as provided by the General Statutes of North Carolina."

Sec. 2. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 25th day of February, 1977.

NORTH CAROLINA GENERAL ASSEMBLY
1979 SESSION

CHAPTER 666
SENATE BILL 737

AN ACT TO AMEND CHAPTER 168 OF PUBLIC-LOCAL LAWS 1939, AS
AMENDED, RELATING TO THE RALEIGH-DURHAM AIRPORT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 168 of Public-Local Laws 1939, as amended, is hereby further amended as follows:

(1) The second sentence of Section 7(g), as it appears in Chapter 755 of the Session Laws of North Carolina 1959, is hereby amended to read as follows:

"The said bonds, if and when so issued, shall be denominated 'Raleigh-Durham Airport Authority Revenue Bonds' and shall be issued in such form and denomination and shall mature at such time or times, not exceeding 35 years after their date, and shall bear such rate of interest, payable annually or semiannually, as the said Raleigh-Durham Airport Authority may determine."

Sec. 2. Section 7 of Chapter 168 of Public-Local Laws 1939, as amended, is hereby further amended by adding a new subsection (l) immediately following Section 7(k) and immediately prior to Section 8, said subsection 7(l) to read as follows:

"(l) Private property needed for airport purposes may be acquired by the Raleigh-Durham Airport Authority by gift or devise or by purchase if the Raleigh-Durham Airport Authority is able to agree with the owners on the terms thereof. In case the Raleigh-Durham Airport Authority shall determine that condemnation of real property is necessary for airport purposes, it shall have the right to acquire such property within Wake County or Durham County by condemnation proceedings brought in its own name and without the joinder of the City of Raleigh, the City of Durham, the County of Durham or the County of Wake. The condemnation procedure to be followed shall be the procedure set out and contained in Article 9 of Chapter 136 of the General Statutes of North Carolina. In such case, the Raleigh-Durham Airport Authority shall have the same powers, and shall follow the same statutory procedures, in the condemnation of land within Wake County or Durham County for airport purposes as the Board of Transportation does in the condemnation of land under Article 9 of Chapter 136 of the General Statutes of North Carolina for highway purposes. Any pleadings or documents necessary to be served on the Raleigh-Durham Airport Authority in such action may be served upon the Chairman or Secretary of the Raleigh-Durham Airport Authority or the Airport Director. Title to property so acquired by condemnation shall vest in the Raleigh-Durham Airport Authority; provided, however, that no such real property shall be sold or conveyed by the Raleigh-Durham Airport Authority without the prior

approval of the County of Durham, the County of Wake, the City of Durham and the City of Raleigh."

Sec. 3. Chapter 168 of the Public-Local Laws of 1939, as amended, is further amended by inserting a new Section 8 immediately following Section 7, as amended and immediately prior to the present Section 8, as amended, and by renumbering all succeeding sections of said Chapter 168 as amended, the new Section 8 to read as follows:

"Sec. 8. In the event the Raleigh-Durham Airport Authority shall at any time hereafter cease to exist, all assets and properties of any kind then owned or held by the Raleigh-Durham Airport Authority shall revert to and become the property of the City of Durham, the City of Raleigh, the County of Durham and the County of Wake, subject to any and all debts, obligations and contractual undertakings applicable thereto."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 29th day of May, 1979.

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 1192
HOUSE BILL 1537

AN ACT RELATING TO THE CONDEMNATION OF LAND IN WAKE AND
DURHAM COUNTIES BY THE RALEIGH-DURHAM AIRPORT AUTHORITY.

Whereas, Chapter 666 of the Session Laws of 1979, authorized and empowered the Raleigh-Durham Airport Authority to acquire by condemnation land in Wake and Durham Counties for airport purposes by procedures under which title to and the right of immediate possession of said land vested in the Raleigh-Durham Airport Authority upon the filing of the complaint; and

Whereas, by inadvertance, Chapter 40A of the General Statutes, enacted in 1981, repealed the aforesaid provisions of Chapter 666 of the Session Laws of 1979 without including therein any provision by which title to or the right of immediate possession of the land being condemned would vest in the Raleigh-Durham Airport Authority upon the filing of the complaint for condemnation; and

Whereas, it is the intent and purpose of this act to restore to the Raleigh-Durham Airport Authority in actions for condemnation the vesting of title and the immediate right of possession upon the filing of the action for condemnation; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Section 7 of Chapter 168 of Public-Local Laws 1939, as amended, is further amended by adding a new subsection (1) to read:

"(1) Private property needed for airport purposes may be acquired by the Raleigh-Durham Airport Authority by gift or devise or by purchase if the Raleigh-Durham Airport Authority is able to agree with the owners on the terms thereof. In case the Raleigh-Durham Airport Authority shall determine that condemnation of real property is necessary for airport purposes, it shall have the right to acquire such property within Wake County or Durham County by condemnation proceedings brought in its own name and without the joinder of the City of Raleigh, the City of Durham, the County of Durham or the County of Wake. The condemnation procedure to be followed shall be the procedure set out and contained in Article 9 of Chapter 136 of the General Statutes. In such case, the Raleigh-Durham Airport Authority shall have the same powers, and shall follow the same statutory procedures, in the condemnation of land within Wake County or Durham County for airport purposes as the Board of Transportation does in the condemnation of land under Article 9 of Chapter 136 of the General Statutes for highway purposes. Any pleadings or documents necessary to be served on the Raleigh-Durham Airport Authority in such action may be served upon the Chairman or

Secretary of the Raleigh-Durham Airport Authority or the Airport Director. Title to property so acquired by condemnation shall vest in the Raleigh-Durham Airport Authority; provided, however, that no such real property shall be sold or conveyed by the Raleigh-Durham Airport Authority without the prior approval of the County of Durham, the County of Wake, the City of Durham and the City of Raleigh."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 17th day of June, 1982.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

SESSION LAW 1998-141
SENATE BILL 1398

X AN ACT TO AMEND CHAPTER 168 OF THE 1939 PUBLIC-LOCAL LAWS, AS PREVIOUSLY AMENDED, WHICH ENABLED THE ESTABLISHMENT OF THE RALEIGH-DURHAM AIRPORT AUTHORITY, TO ALLOW THE AUTHORITY TO CONTRACT WITH PRIVATE PARTIES FOR THE DEVELOPMENT, CONSTRUCTION, AND OCCUPANCY OF SPECIAL USER PROJECTS WITHOUT COMPLYING WITH ARTICLE 8 OF CHAPTER 143 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Subsection (f) of Section 7 of Chapter 168 of the Public-Local Laws of 1939, as amended by Chapter 1096 of the 1955 Session Laws, and Chapter 755 of the Session Laws of 1959, is further amended by adding a new subdivision to read:

"(1) Special User Projects. To contract with persons, firms, or corporations for special user projects as defined and described in this subdivision.

Special user projects are projects that are undertaken for the use and benefit of one or more private entities who will lease the facilities from the Authority upon terms and conditions that will make the private entities solely responsible for the repayment of all notes, bonds, debts, or other costs incurred in the financing, acquisition, development, or construction of the project.

A special user project shall include all of the following:

- a. The acquisition of equipment, the development of land belonging to the Authority, the construction of buildings or other structures belonging to the Authority on land belonging to the Authority.
- b. The issuance of the Authority's special facility revenue bonds or other debt instruments, as authorized in Article 5 of Chapter 159 of the General Statutes, in an amount not less than four million dollars (\$4,000,000) by the Local Government Commission, the proceeds of which shall be used to pay the costs of the special user project and which bonds or other debt instruments shall be repayable solely from the rents, fees, charges, payments, or other revenues payable to the Authority by the special user or from the funds, collateral, and

undertakings of private parties that are either assigned or pledged by those parties.

- c. The use of the property acquired, developed, or constructed shall be limited to airline, aircraft, aviation support, air passenger, aircraft maintenance and repair, other airport related purposes, but may include appurtenances and incidental facilities such as driveways, sidewalks, parking facilities, utilities, warehouses, loading facilities, administrative and other office facilities, and other improvements necessary or convenient for the operation of these facilities.

Notwithstanding any other provision of law, the Authority may agree that all contracts relating to the acquisition, design, construction, installation, or equipping of the special user project shall be solicited, negotiated, awarded, and executed by the private parties for which the Authority is financing the special user project or any agents of the private parties subject only to approval by the Authority, as the Authority may require. The Authority may, out of the proceeds of bonds or other debt instruments, make advances to or reimburse the private parties or their agents for all or a portion of the costs incurred in connection with the contracts. For all contracts related to special user projects, the Authority shall be exempt from the requirements of Article 8 of Chapter 143 of the General Statutes."

Section 2. This act is effective when it becomes law and expires on January 1, 2003. All contracts executed under the authority of this act and any bonds or other debt instruments issued pursuant to this act prior to the expiration date of this act shall remain effective until the contracts are completed or the bonds or other debt instruments are retired.

In the General Assembly read three times and ratified this the 14th day of September, 1998.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives