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"Dollars and Sense"
The Contest for the Aviation Trust Funds in the Congressional Arena 1998-2000

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DEDICATION

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To those who failed to scale street dreams on the curb's edge

To those who brandished encouragement, wore sacrifice and were plated with faith

To where gifts are born and love resides

Opportunity knocked, I listened, but you opened the door

Thank you Mom, Dad, Wuba, Papa Laney, Uncles Coy, Claude and Nay

ABSTRACT

This dissertation will examine why Congress uses special purpose trust funds for other purposes. The research project employed the case study and participant observation approaches in examining the problem. The research project looks at how Congress authorized and appropriated funds contained in the Aviation Trust Fund from 1998-2000 and what role interest groups played in determining how Congress distributed the aviation trust funds.

The Airport and Airway Development Act of 1970 provided grants for airport planning and development from the Planning Grant Program and the Airport Development Aid Program. In an effort to address the public and private demand for aviation services, Congress established a governmental funding mechanism specifically for airports. The act created the Airport and Airway Trust Fund, based on user taxes on air fares, fuel and air cargo. Yet, Congress has utilized these funds for purposes of their own and not the intent of the legislation, to that end, the study examines the vehicles used by Congress to distribute these expenditures.

The Aviation Trust Fund policy was chosen not only for its impact on social groups, but also to characterize legislators' goals and preferences. The policy demonstrates macro and micro conceptualizations of the policy process. The macro level is illustrated through an examination of the interest group liberalism theory. The interest group liberalism theory was chosen above other theories of public policy formulation because it best describes the behavioral interaction between groups and policy makers within the public policy formulation arena. The micro level is illustrated through an examination of the chaos theory. The chaos theory was chosen above other theories of

congressional decision making because it belongs to the rational and “individual” actor theories.

This study provides explanations as to why when Congress is confronted with the problem of deciding whether to use special purpose trust funds for other purposes; Congress provides some form of tangible or symbolic assurances to all in order to attempt to protect all interests.

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CHAPTER I: INTRODUCTION

One of the most significant features of the U.S. Constitution is that it institutionalizes the method of compromise as a political process of orderly government. The framers of the Constitution were not especially interested in developing a democratic government, but they were vitally concerned with establishing a balanced government.[1] They believed that all political power rested ultimately within the people, but they did not believe that the people made up a homogeneous group of like political persuasions. The people were a composite mixture of different economic interests, social ties, religious views and regional loyalties. Political action was made possible by alignments of these various interest groups, at the same time, a republic existed in which people acted through representatives rather than directly.

The U.S. republic provided an opportunity for refining the various views on political questions. There was an opportunity, in other words, for the representatives to distill the sentiments of various factions rather than succumb directly to any one group or special interest. The Founding Fathers, including John Adams believed that the public good could be achieved by balancing these competing interests in the legislature; and James Madison believed that competing interests would tend to check each other's machinations on a national scale. Neither man believed that under a system of simple majority rule the rights of the minority would be protected.[2] Consequently, the framers crafted the Constitution to accommodate various and diverse interests.

The Constitution provides the means whereby unity, though not necessarily uniformity might be built upon a diversity of interests, of states, and sections of the

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[1] Alan Grimes. *American Political Thought* (New York: University Press, 1983).
[2] Ibid.

country. While the country has grown, several issues have tested compromise in lieu of obtaining the national interests. One of those issues has been how to distribute efficiently and equally goods and services amongst competing interests. Madison believed that the major source of factions was the unequal distribution of economic interests. "Landed interests, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views."[3] For instance, the unequal distribution of economic interests has placed constant pressure on the legislative and executive branches.

The competition amongst interest groups for scarce resources has created constant pressure on Congress and the President. This dynamic has in recent times impelled Congress and the President to create budgetary mechanisms that would ensure specific funds are used for specific purposes, and in turn, protect specific interests from groups who are competing for those funds. Inherent in the formulation of these budgetary mechanisms were compromises between the competing groups, Congress and the President. This case study of the Aviation Trust Fund shows how the Federal Government, specifically Congress, deals with ensuring that specific funds are used for specific purposes, while, at a minimum, protected competing interest that place demands on those specific funds. The chaos theory is used to explain this theory.

The chaos theory[4] comes from the rational actor theories. All of these theories[5] assume that people have wants or goals of various kinds and that they can generally be

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[3] Ibid.
[4] Richard McKelvey. "Intransitivities in Multidimensional Voting Models And Some Implications for Agenda Control." Journal of Economic Theory 12:472-82.

expected to act in ways they believe will lead to attainment of them. This does not mean, however, that people always get what they want. It may be physically or logically impossible for them to attain some of their goals, or they may lack relevant information about the options among which they are choosing, or they may fail to process the information efficiently or effectively they do have. Rationality, in other words, is not concerned about the end results. Rationality is concerned with the process by which individuals try to attain the goals they set for themselves. More importantly, it does not necessarily question whether the individual is insane or imbalanced. At times, one may think that someone is pursuing an unattainable or a morally objectionable goal. One may think also that such people are misguided or ill informed or seeking reprisals, but they would be considered irrational only if their actions bore no relationship to the goal they had set. Why people want what they do is not part of the theory of rational action, only how they go about trying to attain their wants is. In developing the chaos theory, the term wants is replaced by preference.

The goal of the chaos theory is to identify the interrelationships among the preferences of legislators, the strategies these legislators adopt for attaining these preferences, the legislative rules under which these strategic choices are made and the final legislative outcome. The bargaining process may or may not allow them to reach satisfactory outcomes from the legislators' point of view. The chaos theory deals with what we expect to see when legislators involved in bargaining process fail to reach an agreement.

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[5] For a general discussion of rational actor theories, see Buchanan and Tulock (1962) or Riker and Ordershook (1973).

The chaos theory was developed to study the problem of aggregating individual preferences into social choices via general elections and the daily work of legislative bodies. In the framework of the chaos theory, possible outcomes are represented as points in space. Each vital aspect of the choice environment is represented as a dimension in a multi-dimensional space. The utility that a legislator derives from an outcome is assumed to be a function of the distance between a certain outcome and the most preferred outcome or ideal point. The chaos theory shows that in policy spaces in two dimensions or more, simple majority cores rarely exist, and if a core does not exist, agendas can lead to almost any outcome. The theory does not imply that cycling will be observed, however, it does imply that there is no single point, or even a small set of centrally located points that will attract the majority. Until the system settles on another more-or-less stable one-dimensional issue in terms of which legislative competition can be defined, winning platforms will be hard to predict, legislators will experiment with different outcomes.

Statement of the Problem

Over the last century, Congress has developed several budgetary mechanisms to ensure that specific funds are used for a specific purpose. The most popular of these artificial budgetary mechanisms is the special purpose trust fund. Special purpose trust funds were developed by Congress to ensure that funds raised for a specific purpose are housed in an account where they can be used exclusively for a specific project or use. Examples of special-purpose trust funds are Social Security, Medicare and Aviation and Highway. These trust funds are financed through taxes collected for either the use of services employed by the trust funds or taxes collected for future use of these services.

The Federal Government's growth has stimulated the demand for funds for new and larger government programs and services. During the 1960s, the growth in social programs and the need to finance the war in Vietnam created demands on the federal budget that could not be supported without tapping into the various special purpose trust funds. More importantly, the proliferation of the number of interests increased the demands on the federal budget.

The demands on funds contained in the trust funds expanded the number of competing interests who sought to repair the financial deficiencies in their preferred programs. The government responding to the demands of major interest groups accommodated the groups by appropriating funds authorized for specific purposes to budget accounts that serve general interests. For example, for fiscal year 1998, within the unified budget's $70 billion surplus, a federal funds deficit of $83 billion was offset by a Social Security Trust Funds surplus of $99 billion and other trust fund surpluses of $54 billion.[6] Besides special purpose trust funds, there are other funds within the federal budget.

The federal budget consists of several types of funds: the general fund, special funds, public enterprise funds, intergovernmental funds and trust funds. All of these except trust funds are considered to be "federal funds." The term "trust fund" as used in the federal budget is neither the same as a private trust fund nor does it have unique characteristics within the federal budget. The manager of a private trust has a fiduciary obligation to the beneficiary and must manage the trust's assets on behalf of that beneficiary according to the stipulations of the trust. The manager cannot unilaterally alter the terms of the trust. In contrast, the federal government owns the assets of most

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6 General Accounting Office Report. *Budget Issues: Trust Funds in the Budget* (March 9, 1999).

trust funds and can, through legislation, raise or lower the fund's collections or payments, or alter the purposes of the trust fund.[7] Consequently, interest group pressure can influence Congress to alter the purposes of the trust funds, creating an indecisive appropriation of funds.

The incertitude of the appropriation of trust funds is apparent when Congress is continually presented with multi-dimensional interest group preferences during deliberations of how and where trust funds would be appropriated. These various choices regularly cause Congress to constantly seek to accommodate all active-participating interests by supplying funds from trust funds to each interest group preference. This dissertation examines why Congress uses special purpose trust funds for other purposes. Most important, the thesis explains why the original intent of special purpose trust funds has been ignored in order to accommodate other budgetary programs?

Congress has legally, through parliamentary procedures, utilized special purpose funds for purposes of their own and not the intent of the legislation. The results of the study could illustrate whether creating special purpose trust funds in the budget protects that activity from competition with other areas for scarce resources. The study's results also illustrate that the design of any guarantee does have implications for other federal activities and for federal resources. Various programs demand more resources than others do, while some programs are self-sustaining due to user fees and taxes.

The findings of this study illustrate a clear rationale as to why there is a need to strike a balance between self-sustaining programs, like the Aviation Trust Fund and those that need additional resources. While most non self-sustaining programs are funded out

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[7] This is based on the Congressional Research Service report. *Federal Trust Funds: How many, How Big and What Are They For?* (June 30, 1998).

of the federal government's general revenue fund, aviation programs are funded out of the Aviation Trust Fund with the Federal Aviation Administration as its custodian. To understand the budgetary workings of the Aviation Trust Fund, the research will first explain how the Federal Aviation Administration—the custodian of the Trust Fund—administers and manages the fund.

Theoretical Framework

The interest group liberalism theory[8] states that interest groups succeed in their goals of influencing government—to the point that government itself, in one form or another provides a measure of protection to almost all societal interests. In this dissertation, it is argued that the interest group liberalism theory is present in Congress' decision to use the Aviation Trust Funds for other purposes. Interest groups, representing the special purpose trust fund, in this case the Aviation Trust Fund, succeeded in influencing Congress to partially protect their exclusive funds; however, Congress, in one form or another, provides a measure of protection to all of the competing interests. This proposition will be illustrated through the chaos theory.

The chaos theory assumes that no majority can dominate all other possible majorities in most distributions with two or more dimensions that are close to a legislator's policy preference. In this dynamic, there is inherent instability of majority rule when there are two or more dimensions close to a legislator's policy preference. As long as legislators are presented with policy preferences that are close to their own, legislators will be unable to choose one specific preference.

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[8] Lowi, Theodore. The End of Liberalism. New York: W.W. Norton & Company, 1979.

The purpose of this theory is to identify the interrelationships among the preferences of legislators, the strategies of these legislators adopted for attaining these preferences, the legislative rules under which these strategic choices are made, and the final legislative outcomes that result. The main actors are legislators, and the rules and procedures of the legislative process give the context in which they seek to attain their preferences. Excluded from consideration are such non-legislative actors as voters and members of the bureaucracy that form the interest groups.

Although no one familiar with the legislative process in Congress would deny that such non-legislative actors can often have a significant influence on both legislative processes and the policy outcomes of these processes, their influence in the theory presented here is assumed to operate by affecting the preferences of legislators. Thus, for example, an interest group will be influential to the extent to which it can persuade various legislators to pursue its policy goals. Consequently, the policy choice becomes a measure of utility for the Congressmen. This study asserts that when Congress is confronted with the problem of deciding whether to use special purpose trust funds for other purposes the chaos theory forces Congress to provide some form of tangible or symbolic assurances to all in order to protect all interests and ensure an outcome.

Furthermore, the necessity of passing a bill helps force compromises among members who fear the consequences of stopping or even disrupting the flow of payments to non-aviation and aviation projects. Diagram 2 illustrates that no majority can dominate all other possible majorities in most distributions with two or more dimensions. This principle is knows as the chaos theorem.[9] If the three legislators start with policy a, L1 and L3 would be willed to vote for b because it is somewhat closer to their more

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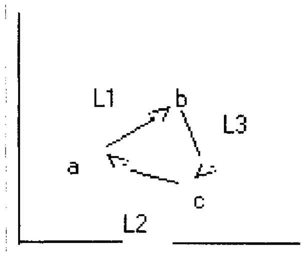
[9] Strom, Gerald. *The Logic of Lawmaking* (Baltimore: Johns Hopkins University Press, 1990).

preferred outcomes than a. But L2 and L3 will support c over b, and then L1 and L2 would support a over c and they are back where they started. As long as the legislators are free to offer an alternative, no natural stopping point or outcome can be predicted. An example of this dynamic can be found in the chaos theory.



Start a: L1 and L3 vote for b, L2 and L3 vote for c, and L1 and L2 vote for a.

Figure 1 The Chaos Theorem

For the managers of the bill to protect to the Aviation Trust Funds, the distribution of preferences meant that the bill they fashioned was quite fragile. The bill could easily unravel on the House or Senate Floor as members would fashion amendments that appealed to one mix of members and then another. To keep this from happening, the managers of the bill would have to craft a compromise, which would protect all interests. Consequently, a combination of interest group liberalism and the chaos theory could explain why Congress appropriates and authorizes the use of special purpose trust funds for other uses.

As a result, if you were a member of Congress and could choose between voting for or against Aviation Trust Fund legislation as it emerged from the committees, only one of the three possible conditions logically must characterize your preferences for these two options: you can prefer the bill to the status quo of no bill; you can prefer the status quo to the bill; or you can prefer them equally (in which case, you are said to be indifferent between the bill and the status quo.) The fact that only one of these relations must hold between the two preferences is referred to as the connectedness axiom.[10] In requiring connectedness, rational actor theories are requiring that an actor's preferences concerning a given set of outcomes are connected or related to each other so they can be compared.

More importantly, there are transitive preferences when a legislator is presented with a choice between three alternatives. A legislator could prefer the status quo to the bill and prefers the bill to a combination of the two. If so, this legislator would be said to have transitive preferences. Without transitive preferences, a legislator cannot develop a strategy to pursue his or her preferences effectively. If the legislator thought about voting for the bill, he or she would strategize his choice based on his transitive preferences.

The connectedness and transitivity axioms are the core of all theories of rational action. They imply that a rational actor has a consistent and non-contradictory set of preferences over any set of alternatives. It is thus assumed that the choices a rational actor makes as a consequence of these preferences will also be consistent. This consistency, in turn, implies that the behavior of a rational actor is predictable from knowledge of his or her preferences. Therefore, this research will seek to obtain the House and Senate member preferences.

The dissertation seeks to outline three policy preferences A=Protecting Aviation Trust Funds, B=Protecting but with Exceptions, and C=Remain Same. The dissertation determined which preference is preferred. For example, a member who would be for protecting the Aviation Trust Funds would have a preference resembling sign A>B>C. A member who would be for protections with exceptions would resemble sign A<B>C. A member who would be for everything remaining the same would resemble sign C>B>A.

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[10] Ibid.

The dissertation determined the preference sign for every member. The strength of this approach is the ability to acquire actual votes and testimony from the Congressional Record and Committee Testimony Transcripts. The weakness of this approach will be in determining how to quantify members' policy preferences based on speeches and testimony. Since their preferences are abstract, a diagram will be drawn to conceptualize the member's preferences.

An illustration was drawn illustrating the policy preference dimensions vs. the legislators' preference signs in order to create a utility diagram along an X and Y-axis. The utility diagram attempts to explain how close a member's preference is to policy preference dimensions. If it is determined that the member's policy preference are close to each policy preference alternative, in turn creating the chaos theorem, then a compromise policy would be the only result that would ensure passage of the bill. The strength of this approach is creating a visual diagram along an X and Y-axis, which shows where members' preference lie vs. interest group preferences. The weakness of this approach is due to voting rules instituted by Congress, which limits the number of votes taken and hence does not allow for all preferences to be voted on. Congressional rules could artificially limit the number of preferences a member has, making it difficult for members to actually find the preference they prefer. Nevertheless, the dissertation describes whether interest group activity and pressures created multi-policy preference dimensions close to the legislators' preferences, which in turn forced Congress to authorize and appropriate funds in the Aviation Trust Fund that would protect the Aviation Trust Fund while supplying funds to other competing interests.

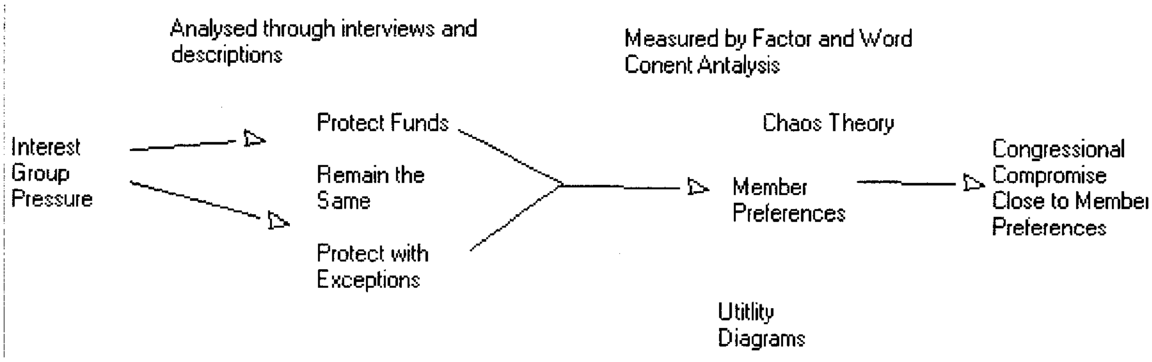

Figure 2
Dissertation Model
Note: Interest group liberalism impels Congress to provide all groups with some benefits

Central Hypothesis

Did the inability of congressional leaders to identify a most-preferred outcome or policy —force Congress to provide some form of tangible or symbolic assurances to all interests competing for funds held within special purpose trust funds in order to protect all interests and ensure an outcome?

Research Questions

The dissertation will examine the following questions:

1) How do bill managers decide how to formulate a bill that will satisfy a majority of member preferences?
2) Why does Congress use special purpose trust funds for other purposes?
3) What factors contribute to Congress using trust funds for other purposes?
4) What techniques does Congress use to ensure that a majority of member preferences, as it relates to trust funds, are satisfied?
5) Why does Congress use the Aviation Trust Fund for other purposes?
6) How do bill-managers craft this bill under the pressure of competing interest, while still maintaining a majority in favor of the bill?
7) How can interest groups and members use this process to understand how to obtain consensus for a particular public policy agenda, particularly special purpose trust fund policies?
8) What will be the impact of the events of September 11 on the Aviation Trust Fund, and the groups who are dependent on the fund?

Organization of the Study

The dissertation employed multiple methods. The study described interest group activity and pressures in order to determine the positions of the interest groups and what policies were communicated to the legislators. The dissertation examined individuals who represented interest groups on the Aviation Trust Fund issue in order to determine policy positions and pressures. The dissertation also used participant observation of policy statements, notes and memos in order to determine interest group tactics and strategies.

The dissertation describes House and Senate votes and member speeches and testimony from 1998-2000 in order to determine member policy preferences regarding the use of Aviation Trust Funds. An illustration was drawn outlining the policy preference dimensions vs. the legislator's preference in order to create utility diagrams. The dissertation describes whether interest group activity and pressures from 1998-2000 created multi-policy preference dimensions close to the legislators' preferences, which in turn forced Congress to authorize and appropriate funds in the Aviation Trust Fund that would protect the funds while supplying money to other competing interests. The thesis of this research is that the chaos theory forces Congress to provide some form of tangible or symbolic assurances to all interests competing for funds held within special purpose trust funds in order to protect all interests and ensure an outcome. This thesis will be examined through six chapters.

The first chapter contains the Introduction, Theoretical Framework and Literature Review, including the statement of the problem and the research questions. The second chapter provides the history and use of special purpose trust funds. The third chapter will include the methodology.

The fourth chapter provides the political environment that existed from 1998-2000. This chapter includes a description of interest group pressures; examinations of interest group and congressional actors; participant observation of interest group policy preference and pressures and descriptions of House and Senate member preferences through the introduction of utility diagrams for the House and Senate members.

The fifth chapter will provide the conclusions through describing the findings from the utility diagrams. The fifth chapter also will measure through displays, Interest Group and House and Senate members' Aviation Trust Fund issue preferences. The chapter outlines the interest group pressure applied on Congress, and outlines their policy preferences. The fifth chapter also describes and diagrams the members' issue preferences vs. the interest group preferences through the creation of utility diagrams. Finally the chapter, provides the conclusions drawn from the study, and provides commentary on the role of Congress, Interest Groups and federal funding in the public policy formulation process of the Aviation Trust Funds.

Literature Review

Political scientists have utilized many theoretical approaches in their analysis of policy making. Stella Theodoulou[11] breaks these approaches into two groups: the first group has in common the concept of cycle and process, where the social and economic environment affects new or adopted policy. The second group concerns itself with who dominates, controls, and benefits from policy.

Who Dominates Policy

The most familiar theory that is associated with the "who dominates" approach is the group theory or pluralist theory. The group theory was first proposed by Arthur Bentley[12] and developed by David Truman.[13] The group theory provides a deeper understanding of how the interaction between groups and other power centers in the political system affects the ability of an interest group to obtain its goals. As Philip

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[11] Theodoulou, Stella Z., and Matthew A. Cahn, *Public Policy: The Essential Readings* (Englewood Cliffs: Prentice-Hall, Inc., 1995).
[12] Bentely, Arthur. *The Process of Government* (Evanston Cliffs, New Jersey: Prentice-Hall, 1964).
[13] Truman, David. *The Governmental Process: Political Interests and Public Opinion* (New York: Alfred Knopf, 1962).

Monypenny has expressed the study of politics is the identification of the groups at work, and the tracing out of the relationships between them as they pursue their objectives, distinguishing, if possible, the elements of associated with success or failure in securing their political objectives.[14]

According to Kay Schlozman and John Tierney,[15] a pluralist explanation of the policy-making process composes several basic components. It must show that access to the policy process is relatively open. Open access is indicated when competing sides in the controversy are able to have their views taken into account during the policy process. Frequently, this access will be achieved by having different politicians or bureaucrats willing to represent the interests of the various petitioning, competing groups in society. The diversity of the policy process is further accentuated by the fragmentation of the government. Government policies will be chosen not only for their impact on external social groups, but also for their impact on the balance of intergovernmental power. These turf battles provide additional leverage points in the process for a variety of interest groups. Another component of the group process is its "central argument".

The group theory's central argument is that societies consist of a large number of social, ethnic, or economic groups, who are more or less well organized. According to Burdett Loomis and Allan Cigler,[16] these groups, in political competition with each other, put pressure on the government to produce policies favorable to them. The public interest thus tends to emerge out of the struggle of competing individual-group claims. Specific policies reflect the relative influence of the different interests of any given issue.

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[14] Monypenny, Phillip. "Political Science and the Study of Groups", *Western Political Quarterly, VII (June, 1954).*
[15] Kay Schlozman and John Tierney, *Organized Interests and American Democracy* (New York: Harper & Row, 1985).
[16] Burdett Loomis and Allan Cigler, *Interest Group Politics* (Washington, D.C.: CQ Press, 1986).

Therefore, each policy area involves a distinctive set of problems and separate sets of political agents and forces. Public policy is the result of a unique process of interaction. The basic elements of the group theory are multiple centers of power and optimum policy developments through competing interests.

Robert Dahl[17] writes that the fundamental axiom in the theory and practice of American pluralism is, instead of a single center of sovereign power there must be multiple centers of power, none of which is or can be wholly sovereign. The belief is that the existence of multiple centers of power, none of which sovereign will help to tame power, such as a majority, ought to be absolutely sovereign. Because one center of power is set against another, power itself will be tamed, civilized, controlled, and limited to decent human purposes, while coercion, the most evil form of power, will be reduced to a minimum.

David Truman[18] asserts that a vital component of the group theory is the bargaining component. The constant negotiations among different centers of power are necessary in order to make decisions. The results would be citizens and leaders will perfect the precious art of dealing with their conflicts and not merely to the benefit of one partisan but to the mutual benefit of all the parties to a conflict.

Eric Moskowitz[19] talks about the bargaining component of the group theory while studying the Home Mortgage Disclosure Act. Moskowitz points out that not only were there competing-interest groups—community groups versus financial trade associations—but there was further interest differentiation within the major blocs. The

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[17] Robert Dahl, *Who Governs* (New Haven: Yale Press, 1961).
[18] David Truman, *The Governmental Process* (New York: Alfred Knopf, 1971).
[19] Eric Moskowitz, Pluralism, Elitism and the Home Mortgage Disclosure Act, *Political Science Quarterly*, Vol. 102, No. 1. (1987), pp. 93-112.

fragmentation in the private sector was matched by fragmentation within the governmental sector. Moskowitz points out first, each competing group in the private sector found spokespersons within the government. In addition, competing governmental institutions seeking to protect not only their clientele but also their own organizational interests further differentiated policy making in the government. The result of interactions between a diffused private sector and a diffuse governmental sector was a pluralistic policy process. Political strategies and public polices were shaped by a series of bargains and concessions among the competing interest groups and governmental institutions.

Terry Moe[20] explains that the extent to which a group achieves effective access to the institutions of government is the resultant of a complex of interdependent factors: 1) factors relating to a group's strategic position in society, such as affecting the ease with which it commands deference from those outside its bounds; 2) factors associated with internal characteristics of the group; the degree and appropriateness of the group's organization and the degree of cohesion it can achieve in a given situation; and 3) factors peculiar to governmental institutions themselves, the operating structures of the government institutions.

Burdett Loomis and Allan Cigler further contend that in the first place, some interests systematically lose in the policy process, while others habitually win. Loomis and Cigler state that without making any elite-theory contentions that a small number of interest and individuals conspire together to dominate societal policies, one can make a strong case that those interests with more resources (money, access, information, etc.) usually will obtain better results than those who possess fewer assets and employ them less effectively.

[20] Terry Moe, *The Organization of Interests* (Chicago: University of Chicago Press, 1980).

William Browne's[21] research challenges the view that a proliferation of organizations leads to actual competition and bargaining between interest groups. Browne argues that organized interests cultivate specific and recognizable identities. From these identities, they come to occupy issue niches where they only infrequently ally themselves with or become adversaries of other interests. Rather than do so, most interests accommodate one another by concentrating on very narrow issues. Only a few organizations, usually the least influential, focus on encompassing or sector-wide issues or become large-scale coalition players. That is, most interest groups avoid conflict situations.

Steven Smith[22] states that interest groups' role in Congress is to build support through bargaining, providing assistance to legislatures, and even providing timely campaign contributions. Lester Milbraith's[23] research of the Washington lobbyist reveals that interest groups' main formidable tactic is to provide information. Interests groups provide new information, reinforce current information, and review old information. The act of lobbying then becomes the total of all communicated acts on a legislature.

Aaron Wildavsky[24] contends that the presence of interest group activity within Congress has an effect on how quickly a bill, specifically a spending bill, becomes law. Charles Lindbloom[25] asserts that the constant interaction and competition of various fiscal priorities creates an atmosphere where policy formulation becomes incremental. The legislator then either becomes a host and advocate of the interest groups' policies or

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[21] William Browne, Organized Interests and Their Issue Niches: A Search for Pluralism in a Policy Domain, *The Journal of Politics*, Vol. 52, No. 2. (May, 1990), pp. 477-509.
[22] Steven Smith, *The American Congress* (Boston: Houghton Mifflin Company, 1995).
[23] Lester Milbraith, *The Washington Lobbyist* (Chicago: Rand-McNally, 1963).
[24] Aaron Wildavsky, "A Theory of the Budgetary Process," *American Political Science Review* 60 (September 1966).
[25] Charles Lindbloom, *A Strategy of Decision* (New York: Free Press, 1963).

he becomes a patron for the interest group to sell its views. Whether or not the group theory is effective in Congress is still a source of controversy.

James Wilson's[26] research reveals that legislators dislike nasty disagreements, particularly ones that may occur during budget standoffs. Raymond Bauer stated that most legislators tend to hear what they want to hear and to deal with interest groups that agree with them. So it is difficult to gauge whether interest group activity actually has an impact on Congress.

The other spectrum of the "who dominates" approach is the elite theory. According to Harold Lasswell,[27] policy is not the product of group conflict and demands but rather as determined by the preferences of the power elite or ruling class. Lasswell's theory is based on the assumption that organized interests do not compete on the same playing field. Business enjoys a massive superiority outside and inside the state system because it is able to exercise stronger pressures in pursuit of its purposes. Governments are not completely helpless in the face of business power, however the larger the concerns they run, the more easily they can control and defy the state's command.

C. Wright Mills[28] defines the power elite as men whose positions enable them to transcend the ordinary environments of ordinary men and women. They are in positions to make decisions having major consequences. Thomas Dye[29] identifies a national institutional "elite" in America. Dye outlines the two major national institutional elite: corporate and governmental. In the corporate sector the operational definition of the

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[26] James Wilson, *American Government: Institutions and Policies* (Lexington: D.C. Heath Company, 1986).
[27] Harold Lasswell, *The Comparative Study of Elites* (Stanford, Calif: Stanford University Press, 1952).
[28] C. Wright Mills, *The Power Elite* (New York: Oxford University Press, 1959).
[29] Thomas Dye, "Governmental and Corporate Elites: Convergence and Differentiation, " *The Journal of Political Science*, Vol. 36, No. 4. (1974), pp. 900-925.

institutional elite is those individuals who occupy formal positions of authority in institutions which control in the aggregate roughly over half of the nation's total corporate assets. In the governmental sector the operational definition of the institutional elite is those individuals who occupy formal positions of authority in the major civilian and military bureaucracies of the national government, which includes congressional leaders.

Robert Peabody[30] contends that to become a committee chair propels you to elite status in Congress. Christopher Deering and Steven Smith[31] write that the impact of full committee chairs is one of the most important barometers of committee power in the House and Senate. Committee chairs attain their posts solely on the basis of seniority. The rules permit those chairs virtually complete control over their panels' budgets, agendas, staff, subcommittee structure and memberships, and all other elements of committee activity, including serving as the spokesperson for the committee and the party on issues that fall within the committee's jurisdiction. Deering and Smith contend that the support of the committee chair can be critical to bill sponsors. Committee chairs have the tools to either block or pass legislation. Although scholars agree that elite, like committee chairmen, does exist in the political systems, some scholars question whether they are all controlling.

Harold Lasswell was the first one to study the political elite in order to gain an understanding of the perspectives held by persons occupying positions of political influence and to learn about the ways in which they influence public policy. Robert

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[30] Robert Peabody, "Leadership in Legislatures: Evolution, Selection, and Functions," *The Handbook of Legislative Research* (Cambridge, Mass.: Harvard Press, 1985).
[31] Christopher Deering and Steven Smith, *Committees in Congress* (Washington, D.C.: CQ Press, 1997).

Agger, Daniel Goldrich and Bert Swanson[32] have shown, the content and level of public services provided by a political system is often highly dependent on the viewpoints and attributes of political elite entirely apart from the pattern of the distribution of pluralist influence which happens to be found in a political system.

Neal Gross[33] pioneered in the study of elite influence on public school policy. He found that in Massachusetts's school districts expectations concerning budget recommendations operated independently of the local school tax rate and were most probably the result of differential elite perspectives. Gross concludes that in analyzing the impact of elite on public policy formulation one has to look at the interests, motives, and values of policy-makers rather than to focus upon the economic and social conditions of communities at large.

Eric Moskowitz in his studies concludes that elite theorists are hard pressed to explain policy failures of elite. The elite theory does not speak to the influence of groups or social and economic conditions. Robert Dahl[34] states that a theory, like the elite theory, that cannot be contested by empirical evidence is not a scientific theory. Dahl states that the problem with the elite theory is the way it cannot be properly refuted. For example, if the overt leaders of a community do not appear to constitute ruling elite, then one can argue that behind the overt leaders there is a set of covert leaders who do. If subsequent evidence shows that this covert group does not make a ruling elite, then the theory can be saved by arguing that behind the first covert group there is another, and so on.

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[32] Robert Agger, Daniel Goldrich and Bert Swanson, *The Rulers and the Ruled* (New York: John Wiley & Sons, 1964).
[33] Neal Gross, *Who Runs Our Schools?* (New York: John Wiley & Sons, 1958).
[34] Robert Dahl, "A Critique of the Ruling Elite Model," *American Political Science Review*, Vol. 52, No. 2. (1958), pp. 463-469.

Dahl contends that to know whether or not we have a ruling elite, we must have a political system in which there is a set of individuals whose preferences always prevail. This would be a minority group. However, in a democratic political system a majority always prevails. Dahl contends that ruling elite cannot exist under democratic rules because ruling elite is a controlling group less than a majority in size. Dahl's assertion leaves the door open for other factors that may influence public policy.

Cycle Processes Approach

There is one major criticism of the interest group and elite model and that is it does not speak towards the social and economic environment that may have affected the policy process. David Easton[35] writes about a system analysis approach to public policy. He views public policy, as a political system response to demands arising from the environment. The political system is thus a mechanism by which popular demands and support for the state are combined to produce those policy outputs that best ensure the long-term stability of the political system. Policy outputs may produce new demands that lead to further outputs, and so on in a never-ending flow of public policy. The basic idea is that political systems should be seen as analogues to operating mechanical systems with feedback loops and clear goals.

John F. Manley[36] states that pluralism or the group theory fails to account for the reality of political and economic inequality. Manley's theory contends that the class structure applies pressure to the policy process. The class structure ensures that public policies do not damage the political system where by disrupting the class arrangement.

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[35] David Easton, *A Framework for Political Analysis* (Englewood Cliffs, NJ: Prentice Hall, 1965).
[36] John Manley, "Neo-Pluralism: A Class Analysis of Pluralism I and Pluralism II," *American Political Science Review,* Vol. 77, No. 2. (Jun., 1983), pp. 368-383.

Eric Moskowitz contends that the linkage political economy framework better explains how policies are implemented. The linkage political economy speaks on the linkage between the socio-economic structures and public policy. The socio-economic structures encourage private economic growth and preserve social harmony. Moskowitz asserts that if the group theory holds true, then a wide spectrum of interests should be able to be heard through multiple channels, leading to competition and policies that are favorable to everyone. However, Moskowitz states that the group theory does not adequately explain why policies that have been historically deficient are left unchanged by the interest that is most negatively affected by it. He also contends that the elite theory fails in its approach because it does not explain why policies that are preferred by powerful politicians and businesses often time falls short.

Moskowitz contends that unlike pluralism or elite theory, the linkage political economy approach does not treat government action as primarily the result of instrumental pressure by societal groups or individuals. Instead, this approach emphasizes the important role played by policy maps of legislators and bureaucrats. The maps as whole and certain of their prominent images and causal paths provide policy makers with a simple navigation tool for an often-complex policy terrain. The policy maps of these policy makers contain guides to what policy goals are desirable and what policy means is feasible. Government officials seek to institute policies partially on the basis of their policy maps and not simply because of political pressure. This approach focuses on the effect of socio-economic structures by looking for common images within these policy maps that are congruent with important structural relationships in the environment.

According to Moskowitz, these crucial core images act as commonly accepted landmarks used by most policy makers to orient themselves in their quest to understand and respond to policy problems. Although Moskowitz, Easton and Manley do not speak specifically of Congress in their analyses, many scholars have attempted to rationalize other factors besides elite and interest group activity in explaining how public policy is developed in Congress.

David Mayhew[37] writes that irrespective of the influence of interest groups and the political elite, a congressman's principal motivation is reelection. In developing this conclusion, Mayhew contends that policies and behaviors will be based on a members need to satisfy his constituency, thus furthering his efforts to get reelected. The weight of importance of the policy will be measured by the Congressman's belief that the policy will have a direct affect on his constituency.

Jerrold Schneider[38] discovered that there is a very high ideological consistency among all policy dimensions, or better stated, members vote and create policy along ideological lines. Schneider contends that the group and elite theory is based on the grouping of member factions around a single vote or interest. On the other side the ideological theory, which seeks to explain patterns of voting behavior based on ideology. The differences between these theories are the presence or absence of diverse voting patterns and voting decisions. The group theory offers openness and diversity in voting decisions, while the ideological theory links beliefs to behavior and a member's beliefs create a measurable pattern of voting and policy decisions.

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[37] David Mayhew, *Congress: The Electoral Connection* (New Haven: Yale University Press, 1974).
[38] Jerrold Schneider, *Ideological Coalitions in Congress* (London: Greenwood Press, 1979).

V.O. Key[39] contends that elections are an echo chamber, and understanding party conflict or congressional conflict requires a consideration of the environmental contexts within which parties act. John Coleman[40] contends that macroeconomic management and economic conditions provide a significant context for the decline and resurgence of party conflict. Nicolas Spulber[41] contends automatic stabilizers; entitlement expenditures and indexation often defuse and remove from the agenda key issues of economic activity. These economic policy characteristics worked to reduce aggregate party conflict in roll call voting by creating non-decisions, especially during economic downturns when these areas might conceivably be most plastic. Robert Collins[42] concludes from his research that Keynesianism encouraged both party memberships to rally around the Keynesian flag during difficult economic times. However, once the Keynesian model was abandoned in the 1970's, party conflict reemerged as both parties sought new macroeconomic philosophies.

Gary Cox and Mathew McCubbins[43] also points to the power of partisanship. Cox and McCubbins view parties as legislative cartels. These cartels usurp power to make rules and governing the structure and process of legislation. Possession of this rule-making power leads to two main consequences. First, the legislative process in general is stacked in favor of majority party interests. Second, because the majority party has all the structural advantages, the key players in most legislative deals are members of that party,

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[39] V.O. Key. *Politics, Parties and Pressure Groups* (New York: Thomas Cromwell Company, 1942).
[40] John Coleman. "The Decline and Resurgence of Congressional Party Conflict," The Journal of Politics, 59 (1997), pp. 165-184.
[41] Nicolas Spulber. *Managing the American Economy from Roosevelt to Reagan.* (Bloomington: Indiana University Press, 1989)
[42] Robert Collins. The Business Response to Keynes, 1929-1964. (New York: Columbia University Press, 1981)
[43] Gary Cox and Mathew McCubbins, *Legislative Leviathan* (Berkeley: University of California Press, 1993).

and the majority party's central agreements are facilitated by cartel rules and policed by reducing party conflict.

CHAPTER II: THE CUSTODIAN OF THE AVIATION TRUST FUND

The Role of OMB, CBO, the DOT and the FAA

The Federal Government operates on a fiscal year that starts October 1. For example, fiscal year 2002 begins on October 1, 2001. The FAA's budget process starts when it begins internal deliberations on funding levels, about 18 months prior to the start of the given fiscal year. The FAA formulates its budget request and submits it to the Office of the Secretary of Transportation (OST) approximately 15 months prior to the start of the fiscal year. After several rounds of negotiations, OST settles on its budget proposal (which includes funding for the FAA and other modes of transportation) and submits it to the Office of Management and Budget (OMB) 12 to 13 months prior to the start of the fiscal year. OMB must negotiate and develop the President's entire budget based on the requests of every department and agency; this is completed when the President's budget is submitted to Congress 8 months prior to the start of the fiscal year.[44]

The President's budget is simply a request or proposal to Congress. Although many requests that the President makes are ultimately included in the final budget, Congress passes its own budget proposals. The congressional budget process begins with a budget resolution. This is an overall congressional framework on what funds should be raised and how they should be spent. Various assumptions are made as part of the budget resolution (e.g., the aviation taxes are assumed to raise a specific amount during each fiscal year), but Congress does not have to adhere to the specifics of the budget resolution. Most of the specifics are determined through the appropriations process or budget reconciliation (which is legislation used to bring existing revenue and spending law into conformity with policies in a budget resolution).

[44] A Citizens Guide to Federal Budgeting, Executive Office of the President (February 2, 2002).

The budget resolution tells each committee how much money it will need to raise and how much money can be spent. Revenue raising is almost exclusively within the jurisdiction of the tax-writing committees -- the House Ways and Means Committee and the Senate Finance Committee. However, the collection of monies in the form of user fees is primarily within the jurisdiction of authorizing committees, such as the House Transportation and Infrastructure Committee and the Senate Commerce, Science, and Transportation Committee. As discussed in more detail below, federal spending is divided into two budgetary categories: discretionary and mandatory.

Discretionary Spending

The Budget Enforcement Act (BEA) of 1990 divides non-defense Federal Government spending into mandatory spending (also called direct spending) and discretionary spending.[45] Mandatory spending (e.g., entitlements such as Social Security old age benefits) requires authorization, not appropriations action. Discretionary spending may occur only when funds are appropriated. There are two different budget rules to control these two types of spending: mandatory spending is controlled by "pay as you go" rules, and spending caps controls discretionary spending.

Most of the discretionary spending assumed in the budget resolution (e.g., defense, national parks, and transportation) will be in the jurisdiction of the appropriations committees. Mandatory spending (e.g., Social Security, Medicare, and food stamps), which accounts for approximately 68 percent[46] of Federal Government spending, is under the jurisdiction of the authorizing committees, usually primarily the House Ways and Means Committee and the Senate Finance Committee. The

[45] James Saturno, The Budget Enforcement Act: Its Operation Under a Budget Surplus (Congressional Research Service, 1998).
[46] Schick, Allen, The Federal Budget (Washington, D.C.: The Brookings Institution, 1995).

discretionary spending assumed in the budget resolution is allocated to the committees in a two-step process: first, the spending levels are distributed to the committees (primarily the appropriations committees), and, second, each committee divides the amount allocated to it among its programs or subcommittees.

The Federal Government's discretionary spending is implemented through appropriation bills. There are 13 major appropriation bills; each must eventually pass the House and the Senate in an identical form and be signed by the President. If the President does not sign an appropriations bill by October 1, those agencies funded by that bill will have to shut down non-critical operations until Congress and the President approve some form of funding for its operations. A reconciliation bill includes changes in Federal Government revenues. During the entire congressional budget process, there are restrictions on spending and revenue raising to control or reduce the federal deficit.

Mandatory Spending

Mandatory spending is usually included in bills authorizing various federal programs. Once in place, a mandatory program receives annual funding sufficient to provide the benefits specified in law without any additional congressional action. Laws providing mandatory spending often do not include expiration dates. Therefore, to stop, lower, or increase the funding level of a mandatory program, Congress must pass, and the President must sign, another bill. This is in contrast to discretionary spending, which is usually limited to one year.

As already mentioned, to control mandatory spending, Congress must abide by the "pay as you go" (or PAYGO) rules.[47] In its simplest form, PAYGO means that any

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[47] Airport Development Needs and Financing Options, National Civil Aviation Commission Review Commission (Washington, D.C.: 1997) p. 4.

new mandatory spending must be offset by changes in mandatory revenues (i.e., virtually all taxes) or mandatory spending. For instance, if Congress decided that the FAA should become a mandatory program, Congress would have to implement mandatory revenues (taxes), or cuts in mandatory spending (not discretionary), that are equal to the proposed mandatory spending. However, the FAA is actually a discretionary program, so a bill that included a reduction in aviation taxes could not offer a reduction in FAA spending as a PAYGO offset because the taxes are mandatory and the FAA's spending is classified as discretionary. If a bill including new mandatory spending is considered for passage and there is no PAYGO offset (i.e., mandatory revenue increase or mandatory spending decrease), the bill can be struck down in the House or Senate by a parliamentary point of order because it would increase the federal deficit; however, budget points of order can be waived in the Senate, usually by a three-fifths majority vote, and in the House by a protective Rule or unanimous consent. [48]

Discretionary spending is controlled with budget caps. As discussed above, the budget resolution develops overall spending levels, which are allocated to each committee (with virtually all discretionary spending allocated to the appropriations committees). Each appropriations committee then decides how much each of its subcommittees will be allowed to spend for a fiscal year.

The FAA belongs to a group of agencies that for budgetary purposes is called Function 400. Function 400 includes the FAA, most other DOT agencies and programs, the National Transportation Safety Board, and a few other small agencies. A spending limitation is decided each year for Function 400. Within that spending limitation, the appropriation committees (through their subcommittees) must decide what funding level

[48] Schick, Allen, The Federal Budget (Washington, D.C.: The Brookings Institution, 1995).

each agency will receive. Therefore, if the FAA needs a 12-percent raise to pay for its operations, other transportation modes (e.g., Coast Guard, highways, and transit) may have to suffer reductions. Likewise, if other modes of transportation need additional funding, the FAA's funding level might be reduced to a point that would not support all of the FAA's current needs.[49]

The FAA's budget is divided into four accounts: (1) Operations, which supports FAA air traffic controllers, aircraft and airline inspectors, security specialists, and headquarters staff; (2) Facilities and Equipment (F&E), which supports capital equipment expenses such as new radar, air traffic control towers, and the new air traffic controller equipment; (3) Airport Improvement Program (AIP) Grants, which supports capital needs at airports such as new runways and taxiways; and (4) Research, Engineering, and Development (RE&D), which supports various research projects including developing improved explosive detection equipment and lighter and stronger material for aircraft manufacturing.

The FAA's funding has increased and decreased over the last decade, but overall the funding level has been about $8.5 billion, with, on an account-by-account basis, Operations receiving the largest increase. However, there has been a fairly steady decline in FAA investments over this period. This decline is very apparent in the operations of the Aviation Trust Funds.

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[49] Airport Development Needs and Financing Options, National Civil Aviation Commission Review Commission (Washington, D.C.: 1997) p. 5.

The Aviation Trust Fund

The Aviation Trust Fund is used almost entirely to support aviation programs. In recent years the receipts collected from the trust fund have exceeded the outlays.[50] The unused receipts have been used to fund other programs like the Coast Guard, Amtrak and FAA salaries. The trade off has been that as the demand for additional aviation services has grown, the receipts that could be used to supply that demand have been used for non-aviation purposes. The origin of the Aviation Trust Fund must be examined prior to any trade off between aviation and non-aviation programs.

Government funding for the nation's system of airports began when the Federal Airport Act of 1946 established the Federal-Aid Airport Program. Under this program, airports received funding for airport improvements from the general fund of the U.S. Treasury. As aviation use and demand increased, there was a need for additional funding for aviation programs. The Airport and Airway Development Act of 1970 (Aviation Trust Fund) provided grants for airport planning and development from the Planning Grant Program and the Airport Development Aid Program. In an effort to address the public and private demand for aviation services, Congress established a governmental funding mechanism specifically for airports. The act created the Airport and Airway Trust Fund, based on user taxes on airfares, fuel and air cargo.[51] The act expired on September 30, 1981, but over 8,800 grants totaling $4.5 billion were approved during its 11-year existence. While the U.S. population and economy has grown so to have aviation services and the demand for increased aviation expenditures.

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[50] General Accounting Office Report. *Budget Issues: Trust Funds in the Budget* (March 9, 1999).
[51] General Accounting Office Report. *Airport and Airway Trust Fund: Issues Related to Determined How Best to Finance FAA* (February 5, 1997).

Through the 1980s, the uncommitted balance (surplus) in the Trust Fund grew from approximately $2 billion to approximately $7 billion. In spite of the existence of the Trust Fund, the programs funded by the Trust Fund were subjected to federal budgetary pressures to limit the growth in spending while the revenue from the excise taxes grew automatically due to increased aviation system usage. The large Trust Fund balance reduced the overall federal deficit. Whether purposeful or not, much of the aviation community believes that spending is being restrained and taxes maintained so that the federal deficit appears smaller. The large uncommitted balances indicated that the Trust Fund was "broken."[52]There was no better indication of the fragileness of the Trust Fund then in 1995.

The aviation taxes, which periodically approach an expiration date but are typically reauthorized before they expire, actually did lapse at the end of 1995. This was in the midst of the budget showdown between the President and the Congress. While there were insurmountable differences at that time between the President and the Congress on how to balance the budget, one aspect of all budget plans at the end of 1995 was a continuation of the aviation excise taxes. When budget negotiations halted in early 1996, the taxes had lapsed and there was no effort to re-institute them on a stand-alone basis until late in the year, and then they were only reauthorized for the last four months of 1996. This caused the Trust Fund's uncommitted balance to drop from $5 billion in fiscal year 1995 to $2.4 billion in fiscal year 1996.

The taxes again lapsed at the end of 1996, and again the Trust Fund balance began a precipitous decline since there were no replenishing revenues. In February 1997, it was discovered that most of the anticipated revenues from the fall of 1996 had actually

[52] National Civil Aviation Commission White Paper (1997) p. 6.

not been remitted by most of the airlines through a legal deferral.[53] This deferral had not been assumed in Trust Fund balance calculations, and when this was learned it became readily apparent that the portion of the FAA funded by the Trust Fund would not have a source of funding in a matter of weeks. In the face of this, Congress passed legislation extending the taxes through the end of the current fiscal year (September 30). It is estimated that the balance at the end of fiscal year 1997 was $2.5 billion.

In fiscal year 1997, the Trust Fund supported 62 percent of the FAA's budget. General Fund revenues (i.e., general taxes) supported the remaining 38 percent. Although the Trust Fund was created primarily to support the FAA's capital investments, the FAA's Operations account has, over the years, received an increasing level of Trust Fund support. The amount of Trust Fund monies available to support FAA Operations is determined by the lower of two statutorily-defined calculations: (1) 50 percent of the appropriations for the FAA's capital accounts (F&E, RE&D, and AIP); or (2) 72.5 percent of the FAA's entire budget minus the amount of the FAA's appropriations for all the capital accounts. General Fund revenues support the remainder of the Operations account budget.[54]

Previous Administrations, including the Carter and Reagan Administrations, believe that the FAA should be 100 percent supported by the Trust Fund. Aviation users would have to pay approximately $2 billion more each year to fully support the FAA's existing level of expenses. Other people believe that FAA services provide benefits to all U.S. taxpayers and therefore should be partially supported with General Fund revenues.

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[53] Ibid.
[54] Ibid.

In a 1999 hearing before the Subcommittee on Aviation of the House Committee on Transportation and Infrastructure, several witnesses testified that the FAA should be partially funded by general tax revenues because aviation system benefits our society as a whole, not just system users.[55] The general consensus was that non-aviation users benefit economically and socially from a safe, efficient, and effective air transportation system. Examples of this benefit included the following: increased property values and employment levels in areas, which have adequate, access to air transportation; and people who benefit from the air transportation system.

While acknowledging the general benefits that the aviation system provides to non-system users, some would dispute the logic of requiring a General Fund contribution be made to the FAA in recognition of those benefits. These observers point out that the interstate freeway system also provides many general societal benefits, and yet it is entirely user funded. If the users entirely fund the aviation system, the costs of that system are ultimately distributed to the broader society as a component of such things as the price of shipping a package by air. The Federal Government's support of the system means that the money supposedly representing the general benefit to society will flow inefficiently through a bureaucratic and political system rather than the marketplace.

In addition to the general benefit to society, there are other government users of the aviation system that are not charged aviation taxes, specifically the U.S. military and other government aircraft. Military aircraft use the FAA air traffic control system every day. Some aviation users argue that the General Fund contribution reflects the amount the U.S. military and other government agencies use FAA's air traffic control system and,

[55] House Committee of Transportation and Infrastructure, Subcommittee on Aviation Hearing, The Financial Commitment Needed to Enhance the Safety of Our Airports and Air Traffic Control Systems (February 4, 10 and 11, 1999).

therefore, should continue. Today, government funding for airports is provided primarily through the Airport Improvement Program (AIP) within the Federal Aviation Administration (FAA) of the U.S. Department of Transportation (DOT). The AIP program is considered the heart of the Aviation Trust Funds.

Airport Improvement Program

The Airport and Airway Improvement Act of 1982 established the AIP. Its funds are used for four general purposes: airport planning, airport development, airport capacity enhancement, and noise compatibility programs. The AIP is still funded by the Airport and Airway Trust Fund. The Trust Fund relies on user fees and taxes[56] assessed on those who benefit from the services made possible by the AIP grants, such as:

- 7.5% ticket tax;
- $2.75 flight segment tax (rising gradually to $3.00 as of January 1, 2002);
- 6.25% tax on cargo waybills;
- 4.3 cents per gallon on commercial aviation fuel;
- 19.3 cents per gallon on general aviation gasoline;
- 21.8 cents per gallon on general aviation jet fuel;
- $12.80 international arrival tax;
- $12.80 international departure tax;
- 7.5% tax on second party sales of miles (normally "frequent flyer" awards);
- 7.5% ticket tax at rural airports.

Over 3,000 public-use airports around the country are eligible for AIP funding. The Airport and Airway Improvement Act of 1982 specifies five major categories of eligible airports: commercial service, primary, cargo service, reliever, and general aviation airports.[57] Each of the airport types is defined differently.

A commercial service airport is defined as a publicly owned airport that enplanes 2,500 or more passengers per year. Primary airports are essentially the largest

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[56] Government Transportation Financial Statistics, 2001 Discussion of Trust Funds, Bureau of Transportation Statistics. www.bts.gov

[57] *Introduction to the Airport Improvement Program*, U.S. Department of Transportation, Federal Aviation Administration, Office of Airport Planning and Programming (June 1993) pp.4-5.

commercial service airports and are defined as commercial service airports with annual enplanements in excess of 10,000 passengers. According to the FAA, there were over 400 primary airports eligible for AIP funds. Large primary airports account for at least 0.25% of the total annual U.S. enplanements. Approximately 70 of the over 400 primary airports are included in this category. The AIP funds are also used for cargo, reliever, and general aviation airports.[58]

Cargo service airports are defined as airports responsible for transportation of goods (including mail) that have a total aggregate landed weight in excess of 100 million pounds per year. These airports generally do not enplane any passengers or provide scheduled commercial service. Reliever airports function to relieve congestion at commercial service airports and provide increased general aviation access to the local community. According to the FAA, there were nearly 300 designated reliever airports eligible for AIP funds in 1994.[59] Although general aviation airports are not technically described as such in the Airport Airway Improvement Act of 1982, all airports not encompassed by the previous categories are considered general aviation airports. In addition to satisfying the airport criteria, the airport, or recipient of the AIP grant, must also meet several legal, financial and miscellaneous requirements. These requirements are necessary to ensure that the sponsor is capable of fulfilling the provisions stipulated in the grant obligations.

In addition to establishing recipient eligibility, the airport must meet specific project categories for the project activities for which the AIP funds are intended. The categories of projects eligible for AIP funding are: airport planning, airport development,

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[58] FAA Airports Division, Airport Improvement Program Examples of Eligible and Ineligible Projects. 2221.faa.gov/arp/ace/aip.htm.
[59] Ibid.

airport capacity enhancement and preservation, and noise compatibility programs. Eligible airport planning projects can be conducted on either an area wide or individual airport basis. Area wide planning includes preparation of integrated airport system plans for states, regions, or metropolitan areas. Grants for integrated airport system planning are made to the planning agency with jurisdiction over the entire region under study. Airport system planning addresses the current and future air transportation needs of the region as a whole. Individual airport planning addresses the current and future needs of an individual airport through the airport master planning process, aviation requirements, facility requirements and potential compatibility with environmental and community goals. Individual airport planning also includes the preparation of noise compatibility plans. The AIP funds are not only applied to airport planning projects, but also airport development projects.

Eligible airport development projects may include the construction, improvement, and repair (excluding routine maintenance) of an airport. These projects may include land acquisition, site preparation, navigational aids, or the construction of terminal buildings, roadways, runways and taxiways. For AIP funding purposes, airport development grants cannot be used for construction of hangars, automobile-parking areas, buildings not related to the safety of persons on the airport and art objects or decorative landscaping.[60]As airport needs have grown, the AIP programs have been used for other issues.

As airport demand has grown and environmental noise issues arose, the AIP funds have been used to improve capacity and reduce noise pollution. The Airport and Airways

[60] Introduction to the Airport Improvement Program, p. 10.

Safety and Capacity Expansion Act of 1987[61] allows for AIP funding of projects that significantly enhance or preserve airport capacity. Increasing airport capacity allows the national system to better accommodate its service demand and also reduces airport delays, particularly at the largest primary airports. Considerations for airport capacity funding include the project's cost and benefit, the project's effect on overall national air transportation system capacity, and the financial commitment of the airport sponsor to preserver or enhance airport capacity. In addition to capacity enhancements, the Federal Aviation Regulation Part 150 outlines the eligibility criteria for an airport noise compatibility program. Airports receiving noise compatibility related grants could include the owners and operators of a public-use airport or local governments surrounding the airport. Once the airport identifies the eligible use of the AIP funds, there are several funding categories.

The monies granted to airports by the AIP are provided in three different categories: apportionment, set-aside and discretionary funds.[62] Apportionment funds represent the largest funding category, making up approximately half of all AIP funding. Apportionments to primary airports are based on those airports' annual enplanements. In addition, apportionment funds for cargo operations at these airports and at cargo service airports are appropriated based on aggregate landed weight of all cargo aircraft. Set-aside funds are available to any eligible airport sponsor and are allocated according to congressionally mandated requirements for a number of different set-aside subcategories. Set-aside distributions include: allocation to all 50 states, and the District of Columbia,

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[61] The Airport and Airways Safety and Capacity Act of 1987 amended the Airport and Airway Improvement Act of 1982 for the purpose of extending authorizations of appropriations for airport and airway improvements from Fiscal Years 1987 through 1990.
[62] FAA Airports Division, Airport Improvement Program Examples of Eligible and Ineligible Projects. 2221.faa.gov/arp/ace/aip.htm.

and the insular areas based on land area and population; funds specifically for the insular areas; and minimum funding levels for Alaska for purposes such as reliever airports, non-primary commercial service airports, airport noise compatibility programs, integrated airport system plans and the Military Airport Program. The monies that supply the

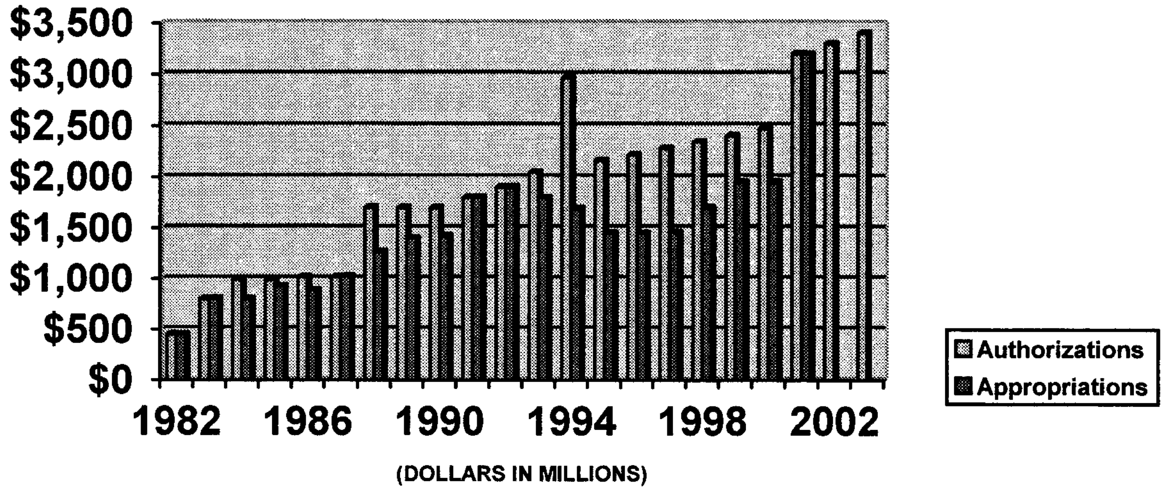

Figure 3 AIP FUNDING 1982-2003 (Source: Air Transport Association)

funding types are supplied by congressional authorizations.

The graph above presents AIP funding since it began in 1982. As shown, the amounts authorized for the AIP rose from $450 million in FY 1982 to $2,970 million in FY 1994 and declined to $2,160 million in FY 1996.[63] However, Congress generally limits annual obligations to less than that authorized. Thus, the amounts available for obligation rose from $450 million in FY 1982 to $1,900 million in FY 1992 then fell to $1,800 million in FY 1993, to $1,690 million in FY 1994, $1,450 million in FY 1995, $1,450 million in FY 1996, and $1,460 million in FY 1997. According to the Office of Management and Budget, the total amount authorized in fiscal year 1994 was $2.96

[63] Federal Aviation Administration, Airports Division

billion, even though it appeared that $2.161 billion was the amount authorized. This was due to the combination of the lapse of authority of AIP after fiscal year 1993 and the amendments extending the program in May 1994 and August 1994.

The AIP has provided over $17 billion to airports and local, regional and state planning agencies over the last 14 years. Total authorization levels have been increasingly steadily over time; however, appropriation levels have been falling since 1993. The amounts available for obligation fall into two basic categories: apportioned funds and discretionary funds. Funds apportioned to airports may generally be used for any eligible airport planning or development. The funds can also be used for other projects after FAA consideration of project priority and other selection criteria. The appropriation levels represent limitations on obligations mandated each fiscal year. The recent trend of declining AIP funding presents problems when contrasted with estimates of the capital needs of the national airport system. Declining funding availability may discourage repair and maintenance of existing infrastructure in favor of building new, revenue-generating infrastructure. The funding levels will become problematic if airports have to delay needed repairs and maintenance due to lack of funding, thus raising concerns about efficiency and safety.

The AIP program has been an invaluable source of funding for airports. The infrastructure and capital requirements of the U.S. airport system have been dependent on the receipt of over $17 billion in AIP disbursements since 1982.[64]These disbursements have allowed the system's capacity to grow, airport services to expand and improve, and safe, reliable aviation services to continue to be provided. The capital requirements for the airport system are not diminishing, however. As funding levels continue their recent

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[64] Ibid.

decline, discussions within the airport community have centered on the adequacy of the AIP as the primary source of airport funding. Since the AIP program represents a clear component of the Aviation Trust Fund, the decline of airport funding spurred calls to address the entire trust fund.

Several present and future issues have spurred a call for increasing the funds and programs provided under the Aviation Trust Funds. In the past decade demand and sustained economic prosperity, has forced airlines to increase the number of flights, and widen flight schedules. Although these increases are occurring, there has not been an increase in available funds for airport construction and maintenance. This dynamic has caused congestion and delays at the major airports across the country. While it may be difficult for increased funding to immediately impact current aviation problems, there is a concern that without adequate funding there will be future problems. Current and future passenger data points to potential problems.

In 1998, there were close to 640 million enplanements or passengers on airplanes in the United States. Future enplanement data has indicated that there will be close to 1 billion passengers by the year 2010.[65] Under current financial conditions, the FAA and the national airports will not be able to accommodate the current passenger growth rate. Most airport improvements are paid out of the Aviation Trust Fund, which is funded by aviation taxes charged to passengers and businesses.[66] As passenger enplanements have increased, so has the contribution of those users of the system. An increase in demand has not been the only contributor to the recent interest in the use of the Trust Funds. The

[65] Department of Transportation Strategic Plan 2000-2005 (July 2000).
[66] Ibid.

terrorist attacks of September 11, 2001, applied more pressure on Congress to use the Aviation Trust Funds for aviation security improvements.

Events of September 11

September 11, 2001 (9-11), created tremendous unease among the traveling public, and more importantly applied more pressure on Congress to use the Aviation Trust Funds for aviation security improvements. In response to this uncertainty, many businesses and leisure travelers dramatically curtailed travel. At the end of 2001, the Air Transport Association reported that passenger enplanements were down by 20%.[67] It is clear that the travel industry has been severely hurt by the decisions. The direct value of air transportation to the U.S. economy today had been estimated to be on the order of $120 billion. Further, if the additional transportation links, which are facilitated by air, are included, the value rises to between $300 and $400 billion.[68] Before the September 11 attacks, the trends for airline passenger and freight were already indicating a slowing economy, thus regardless of the impact the attacks may have had, it is clear that the health of the airlines is directly related to the health of the economy.

The airlines are particularly affected by economic downturns because the majority of their revenues come from a small fraction of their customers - frequent business travelers - who average 20 to 30 flights per year and pay full fare.[69] Thus a small reduction in patronage by business travelers can destroy an airline's profitability.

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[67] Air Transport Association Press Release, "Passenger Traffic Down 20 Percent" (Washington, D.C.: December 2001)

[68] A study by Wilbur Smith Associates (The Economic Impact of Civil Aviation on the U.S. Economy—2000, Wilbur Smith Associates, March 2000) concluded that commercial air transportation contributed $150 billion directly and $976 billion in total to the U.S. economy in 1998. In 2001, that figure was estimated to be $1.4 trillion in total impact.

[69] Daryl Jenkins stated that for United Airlines, 40 percent of their revenue comes from 9 percent of their passengers.

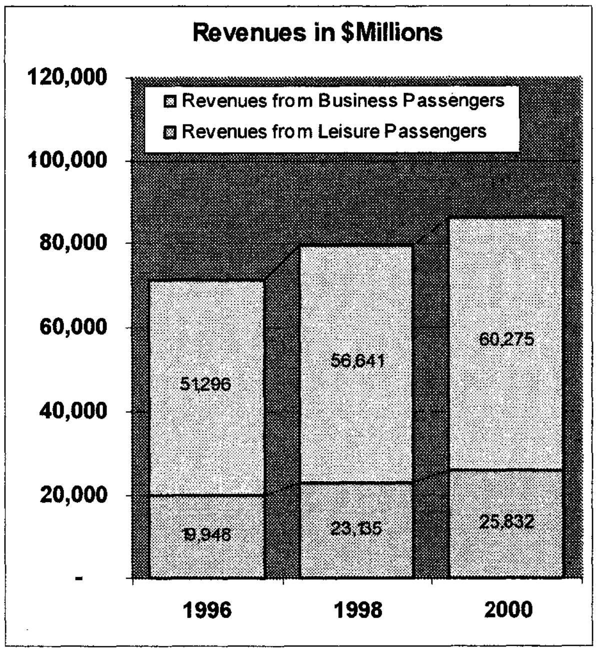

Figure 4 U.S. Commercial Airline Passenger Revenue: Leisure and Business Travelers (Sources: Air Transport Association, USDOT, and Andersen)

A multibillion-dollar airline-bailout package signed by President Bush averted an insurance crisis that threatened to ground carriers and kept them aloft through a costly travel downturn (See below for airline potential losses). The Air Transportation Safety and System Stabilization Act,[70] the first major federal bailout of an industry since the savings-and-loan crisis of the late 1980s, gave the airlines and their shareholders a huge lift. The bill provided $5 billion in cash infusions through 2001, apportioned to airlines based on their size, plus $10 billion in federal loan guarantees. It also made the government a major insurer both for the attacks and for future terrorism-related airline

[70] The Air Transportation Safety and System Stabilization Act directed the president to take certain actions to compensate air carriers for losses they incurred as a result of the terrorist actions that occurred on September 11, 2001.

attacks, at least for the 180 days after 9-11.[71] Given the large fraction of the US economic output which is tied to air transportation, there seems little doubt that the Congress' $15 billion in assistance was appropriate. [72] The bill not only provided assistance to the airport, but also allowed the airlines to defer payment of collected AIP funds until January. This meant, like 1994, the trust funds would not be funded for an extended time period.

Table 1 Airline Loss Estimates (Source: Air Transport Association)

Airline Loss Estimates				
	ATA	GAO		
		75% of revenue	65% of revenue	55% of revenue
Sept. 11-14	$1,320	$988.2	$988.2	$988.2
Sept. 15-30	$2,904	$1,729.7	$1,729.7	$1,729.7
Fourth Quarter	$5,903	$3,762.4	$5,758.3	$7,754.0
Total	$10,127	$6,480.3	$8,476.2	$10,471.9

(pretax, dollar amounts in millions)

In the wake of the terrorist attacks of September 11, travel first stopped all together, and then slowly and hesitantly resumed in lower volumes. Congress immediately recognized the need for reforming security on airplanes and in airports. The Department of Transportation immediately implemented short-terms security revisions, including restricting curb check-in, restricting access to gate areas to ticketed passengers and employing more federal air marshals on more flights. However, Congress and the traveling public agreed that the security issues had less to do with infrastructure problems and more to do with consumer confidence.

[71] "U.S. Bailout of Airlines Will Keep Industry Flying Amid Downturn," *Wall Street Journal* (September 24, 2001).
[72] Air Transportation Safety and System Stabilization Act

Central to the issue of returning traveler confidence are an individual's perceptions of risk and their behavior in light of those perceptions. The first of these is the availability heuristic, which results in people judging an event to be more probable if instances of it are fresh in their memory.[73] Thus while the true likelihood of a terrorist attack on an aircraft may well be unchanged or even slightly reduced, we perceive it to be greatly increased because of the recent events.[74]

The second is the tendency of people to adjust their estimate of individual risk in inverse proportion to their perceived level of control. For example, a gambler will insist on throwing the dice herself, when assuming the dice are fair, her chance of winning is unchanged regardless of who throws because she perceives her chances are improved if she does the throwing. This helps explain why, in the face of statistics to the contrary, individuals feel safer in their personal car than on a commercial aircraft.[75] These two combine to create natural impediments to a rapid return of traveler confidence, and applied pressure of government to provide some form of security assurances, which quickly moved the debate from a psychological issue to a public policy or infrastructure improvement issue.

In September, the public and several travel industry groups called on President George Bush, the Department of Transportation (DOT) and the Federal Aviation Administration (FAA) to federalize the airport security process; impose a single standard that defines the maximum size of carry-on baggage; and instituted new technology to better manage the passenger screening process. These calls carried new aviation

[73] Tversky and Kahneman (1986)
[74] Naturally, televised threats of renewed terrorist attacks do nothing to dissuade one of these perceptions.
[75] National Safety Council statistics based upon 1996 data give an individual life time odds of accidental death by automobile accident as 1 in 80 while the odds of death by aviation accident were 1 in 3286, or 41 times less likely.

infrastructure costs that hovered above $2.5 billion. The immediate question became who should assume these costs? While all Airports feel the effects of the decrease in AIP apportionment, they will also feel the effect of the events of September 11.

Airports, the main beneficiaries of the Aviation Trust Fund, believe the total costs and revenue foregone will reach an estimated $3 billion by 2003. The airport executives believe that since these costs were incurred because of the terrorist attacks; assistance should come from the general funds in the Treasury. Other options noted include the institution of a security fee on ticketed passengers, using of passenger facility charges (PFC) and using the Aviation Trust Fund to pay for increased security requirements.

Congress decided to avoid further withdrawals from the Aviation Trust Fund and impose a $2.50 per segment security charge on passengers. This was the preferable technique because many members of Congress were concerned that if demand remained low than there could be a future shortfall in the demand driven Aviation Trust Fund accounts.

Prior to September 11, aviation users were expected to pay about $10 billion into the Aviation Trust Fund. The FAA has predicted that September 11 will not change this number. Of the $10 billion, only $8 billion will be spent on aviation programs. The rest will be used to fund other programs within the federal budget. In Fiscal Year 1999, only about $4 billion of the $8 billion will be spent on sustaining runways, and taxiways, the rest will be spent on new runways, and air traffic control modernization. The cash balance in the Trust Fund is expected to grow to $63 billion in 10 years. [76] The table below shows the reported Airport and Airway Trust Fund cash flow and balance fiscal years 1971 through estimated 2002.

[76] Ibid.

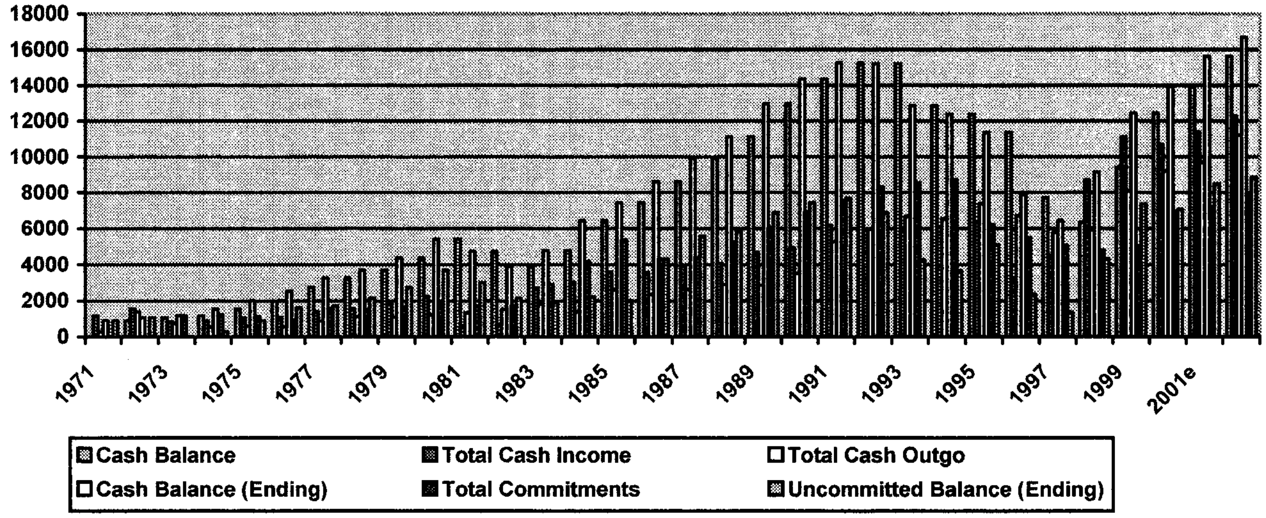

Figure 5 Airport and Airway Trust Fund Cash Flow and Balance FY 1971-2002e (Source: General Accounting Office)

As the table below shows, the outlays from the trust fund have exceeded the receipts collected, excluding the years 1993 and 1996 when the aviation taxes expired.[77]

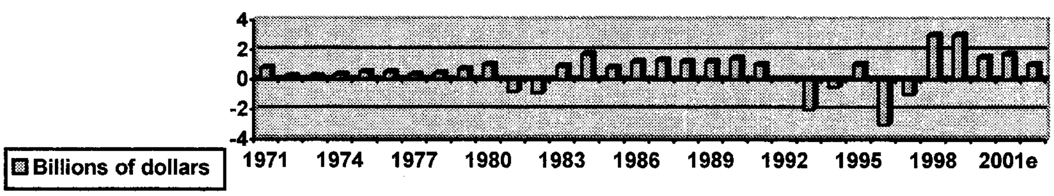

Figure 6 Fiscal Years Aviation Trust Fund, Tax Receipts minus Outlays (Source: General Accounting Office)

Note: Positive amounts indicate years when taxes exceeded spending. Negative amounts indicate years when spending exceeded taxes.

Although revenue has exceeded spending, federal deficits have affected the application of the funds and both the custodians of the Aviation Trust Fund and the fund itself.

The Congressional Budget Office (CBO) demonstrated a $67 billion federal deficit (borrowing that takes place over one fiscal year) by the end of fiscal year 1997. In

[77] General Accounting Office Report. *Budget Issues, Trust Funds in the Budget* (March 9, 1999).

1997, the federal debt (the accumulated total of previous federal borrowing) was expected to be $3.8 trillion, and the net interest on the debt would cost taxpayers $248 billion. The public's general consensus was that these deficit figures needed to be reduced or eliminated. Tight controls have been placed on federal spending and revenues in an attempt to minimize these deficit figures.

As mentioned above, federal revenues and spending, including that of the FAA, are controlled in part by the Budget Enforcement Act (BEA). In its simplest form, the BEA requires that changes in taxes or spending cannot increase the expected federal deficit. What many members of the aviation industry want are fair aviation user charges that are used to support FAA programs. The question is will these proposals to change the user charges and/or allow the FAA to spend more money comply with BEA requirements? And if not, can those requirements be changed?

There are two budget rules or assumptions that significantly affect FAA revenues and spending:[78] (1) the assumption that aviation excise taxes are permanent, even if statutorily they are scheduled to expire; and (2) the classification of FAA spending as discretionary spending subject to annual budget caps while the revenue is mandatory.

Congressional Budget Office (CBO): Aviation Taxes Are Assumed to be Permanent

Historically, aviation taxes have been assumed to be a permanent revenue stream. Therefore, when the budget resolution is negotiated each spring or summer, Congress depends on a certain amount in annual aviation tax revenues. This creates a problem if a member proposes to change the taxes. Taxes are considered mandatory revenue, while user fees are usually considered discretionary revenue (e.g., offsetting collections).

[78] National Civil Aviation Review Commission, 1997.

Therefore, under normal circumstances, if Congress wanted to adopt aviation user fees in place of aviation taxes, the BEA would require an offset of mandatory spending or mandatory revenues (PAYGO offset) because the mandatory aviation taxes would be eliminated.

In 1997, the aviation taxes expired. Because they did not appear in the "snapshot" of the federal budget taken by CBO each January for its baseline calculations, the taxes were no longer considered permanent.[79] This situation created an unusual budget rule loophole -- any reinstatement of the aviation taxes would be considered new revenue for budget resolution and reconciliation purposes. That means that if Congress wanted to establish an aviation user fee instead of reinstating the existing taxes, a PAYGO offset would not be needed (because the aviation taxes were not assumed to be in existence). That also means that any new aviation user tax (including reinstating the 10 percent ticket tax) would provide an offset for new mandatory spending or mandatory revenue cuts. For example, reinstating the aviation taxes could be used as a PAYGO offset to a middle-class tax cut or to an increase in Medicare benefits. This budget rule loophole transformed passing the aviation taxes from an uneventful reinstatement process to a potential fight over which programs will benefit from the aviation taxes' PAYGO offset. Although not all of the information about the budget agreement was public, a commission created by the President caught wind of the budget changes.

The National Civil Aviation Review Commission was created by the President and charged with developing two distinct reports — one on funding the nation's civil aviation programs and another on aviation safety. The National Civil Aviation Review Commission staff was informed that the budget resolution assumed that there would be

[79] Ibid.

revenue equivalent to reinstating the aviation taxes for 5 years. Therefore, any proposal to adopt a true user fee system would require a PAYGO offset. Because true user fees are usually considered discretionary revenue, either an increase in taxes or a decrease in mandatory spending would be necessary to pass a true user fee proposal with a simple majority in each house of Congress. As mentioned above, the PAYGO restrictions can essentially be waived with 60 votes in the Senate, and with unanimous consent or a special Rule in the House.

Classification of Trust Fund Spending as Discretionary Spending

Even though the FAA has a Trust Fund that is fully supported with revenues from aviation users, the FAA is funded through the appropriations process and must compete with other modes of transportation. The budget cap that is placed on the Department of Transportation and related agencies does not take into consideration that the FAA has a seemingly dedicated revenue stream derived from its users. Although the FAA's spending is considered discretionary, the revenue supporting the Trust Fund is considered mandatory. Therefore, there is very little relationship between the revenues flowing into the Trust Fund and the level of the FAA funding. For instance, in 1995, there was a $5 billion uncommitted balance in the Trust Fund; however, the FAA's appropriations were reduced 4 percent from the 1994 level. On the other hand, at the beginning of fiscal year 1997, the aviation taxes had not been extended through the entire fiscal year and there was a question as to whether the Trust Fund balance could support the FAA. Regardless of this uncertainty, the FAA was appropriated $8.6 billion for 1997, a 5 percent increase from 1996.

This budget classification also means that if the FAA proposes a program that would significantly reduce its costs, there would not be a corresponding reduction in aviation taxes. Since the FAA's spending is discretionary, any cost savings could only benefit other discretionary programs. This dilemma has created problems for Congress.

In 1999, Congress concluded its debate on the aviation trust fund by modifying its treatment in the budget. The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21)[80] contains a so called "guarantee" that uses House and Senate point-of-order rules to ensure that all aviation trust fund receipts (including interest) are spent for aviation purposes on an annual basis. This provision represents a compromise in what had become a contentious debate. When the legislation was first considered in the House in 1999 it contained two separate budget options for the trust fund. The first, taking the trust fund off budget, was contained in the passed House version of the bill. The second option, which would have created a "firewall" around aviation programs, was dropped during later committee consideration.[81]

Changing the budget treatment of the trust fund was opposed by the Clinton Administration and by some members of the House and Senate Budget and Appropriations Committees. Reauthorization legislation passed by the Senate contained no budget treatment provisions. The budget treatment provisions in AIR21 were not challenged during the FY2001 appropriations process. These philosophical differences point to the problems with trust funds.

[80] Wendell H. Ford Aviation Investment and Reform Act for the 21st Century amended federal aviation law to reauthorize through FY 2003 the Airport Improvement Program (AIP).
[81] Fischer, John. Transportation Trust Funds: Budget Treatment. Congressional Research Service 98-63E.

Aviation Trust Fund vs. Other Trust Funds

To understand the nature of the Aviation Trust Fund, it is best to begin by ignoring the words trust and fund. They do not accurately describe the underlying financial and accounting practices being employed. The Federal government acknowledges this starting fact. In its words: "The term trust fund as used in Federal budget accounting is frequently misunderstood. In the private sector, "trust" refers to funds of one party held by a second party (the trustee) in a fiduciary capacity. In the Federal budget, the term "trust fund" means only the law requires that the funds must be accounted for separately and used only for specified purposes and that the account in which the funds are deposited is designated as being a "trust fund."[82]

There are two important points that need to be stressed. By this statement the government is acknowledging that the U.S. government as "trustee" does not hold the funds paid to the Aviation Trust Fund. The government has access to this money to be employed as it sees fit, in accordance with the law. But because it makes law by which Aviation Trust Funds are governed, the government has determined that it can employ those funds as it chooses.

Second, there is no "trust fund" in the sense of what that term normally implies. There are no "trustees" as that term is used for a fiduciary in the private sector, and there is no existent "fund" as such. As the government defines the term, "trust fund" is a type of checking account separately established for Aviation Trust Fund transactions. The taxes and fees that are obtained from aviation users are paid into a segregated U.S. government

[82] Budget of the United States Government, Fiscal Years 1993, Supplement, US Government Printing Office, Washington, D.C. (February 1992).

checking account that is dedicated exclusively to aviation programs. Also, the money disbursed by the U.S. government to the airports is paid from this account.

If more money is deposited into the account each year from the collection of payroll taxes than is paid out each year in airport programs, the account has an annual surplus. If the annual surpluses are large, a substantial amount of money can accumulate, and in fact, large annual surpluses have been accruing in the Aviation Trust Fund since aviation demand increased in the early 1990's. More money is being paid into the Aviation Trust Fund than is being paid out in benefits. These are the surpluses that according to the government will continue to accrue until well into the next century. But, what happens to this surplus?

When trust fund carriers a surplus, the cash is invested. The U.S. government borrows the cash and records this transfer as a debt now owing. In other words, the Aviation Trust Fund has "invested" the surplus money in U.S. government debt instruments. The Aviation Trust Fund account receives a special issue of U.S. government debt instruments in acknowledgement that the government has borrowed the surplus. Through this process, the trust funds and the national debt are intimately interconnected.

Two philosophical views about how trust funds relate to the U.S. budget frame the current debate about the context of the trust fund as part of the federal unified budget. According to those seeking to change the budget status of the aviation trust fund the fund mechanism represents a contract with the taxpayers to spend revenues on the specific activities identified as the purpose of the trust fund. In the view of those who support the unified budget approach, on the other hand, a dollar of federal revenue is a dollar of federal revenue. Spending decisions, therefore, need to be in the context of national rather than programmatic requirements. These competing views can be examined in the context of the two specific issues, balance and appropriate use.

The balance issue is usually the more visible of the two and drives the budget treatment debate to a large extent. By far the most contentious disagreement over trust fund spending arises because actual federal spending for trust fund programs often does not match program spending levels set in authorizing legislation, and is often below annual revenue collections for the fund. The disagreement over spending levels usually reflects the differing priorities that congressional committee's face. For example, the authorizing committees with authority over transportation programs often support full funding for these programs. Budget and appropriations committees, by contrast, often view transportation spending as competing with other federal needs within a broader context of fiscal policy.

A related issue is the question of the accumulation of unexpended funds in the trust fund over time. During most of its life, as can be seen for a recent period in the table below, the trust fund has had a large unexpended balance.

Table 2 Preliminary Estimates of Airport and Airway Trust Fund Revenue Collection (in millions), FY 1998-2002 based on current FAA funding policy (Source: FAA)

	FY1998	FY1999	FY2000	FY2001	FY2002
Ticket Tax	$5,567	$5,277	$5,171	$5,413	$5,759
Segment Charge	$598	$1,239	$1,600	$1,827	$2,072
Cargo Waybill Tax	$426	$462	$501	$543	$590
Commercial Fuel Tax	$595	$621	$648	$672	$696
GA Fuel Tax	$182	$195	$199	$203	$207
International Depart/Arriv Tax	$884	$1,055	$1,121	$1,186	$1,258
Frequent Flyer Tax	$135	$139	$143	$147	$151
Sub Total	$8,387	$8,988	$9,383	$9,991	$10,733
Trust Fund Interest	$499	$604	$740	$826	$941
Total Trust Fund Revenue	$8,886	$9,592	$10,123	$10,817	$11,674

There are commitments against the unexpended balances, so not all of the funds shown as unexpended are actually available at any given time. Nonetheless, the unexpended and uncommitted balances have often been quite large relative to the size of the annual federal aviation program. There are numerous additional reasons for these balances, other than a lack of spending. And many of these, such as the payment of interest on trust fund investments and the use of general funds to pay for a portion of the FAA's operating expenses are very controversial.

A temporary expiration of the trust fund in 1996 eliminated a significant portion of the unexpended balance. By all predictions, however, including the Congressional Budget Office's February 1999 baseline estimate, the trust fund's unexpended balance was expected to grow dramatically in the next few years unless there was additional spending over current levels. Recent legislation has dramatically raised spending levels, but projections still indicate that a significant unexpended balance in the fund will continue to exist.

Another long-standing issue surrounding the trust fund is the appropriateness of spending trust fund revenues for FAA Operational and Management (O&M) expenses. The trust fund was established as a means of paying for federal aviation needs, which were viewed by many, but not all, of its authors as being primarily capital needs. Every presidential Administration since the trust fund was established, however, has sought additional O&M funding from the trust fund. The general fund share of FAA spending has varied over time. Over the last 12 years, for example, the share has ranged from a low of 0% to a high of 47%.

Legislation considered in the 1st session of the 106th Congress was predicated on the maintenance of a large general fund contribution to FAA expenses. This contribution is justified on the basis of the public benefits accruing to the population in general from aviation activities. The public contribution philosophy was a part of the original trust fund concept. At issue, has been the size of the public contribution, and the more recently proposed notion that the FAA should be funded entirely by user fees.

The FAA has sponsored numerous cost-allocation studies that have provided an economic rationale for the general fund contribution by detailing a FAA cost component related to provision of services to other government agencies, such as DOD, and to the public at large.[83] These periodic assessments have always been somewhat controversial because there have been numerous questions about the ability of these studies to attribute

[83] GRA, Incorporated. A Cost Allocation Study of FAA's FY1995 Costs. Final Report (March 19, 1997). Prepared for: FAA Office of Aviation Policy and Plans

specific FAA costs to specific system users and to the "public use" component identified in these studies. The public use component identified by these studies has been dropping over the three-decade history of this program. The most recent of these studies shows that the public sector costs are now well below 10% of total FAA costs while the general fund contribution has remained at the higher levels.

Concern about the appropriate use and balance issues has led several members of Congress to the position that aviation is unlikely to get the support it needs as long as the trust fund is just another part of the unified federal budget. For most of the last decade attempts to change the budget treatment of the trust fund have focused on moving it off budget. Although often discussed, and sometimes considered, the off-budget concept has never received approval in both the House and the Senate during the same Congress.

Early in the 106th Congress, aviation spending proponents turned their attention to the firewall concept in the development of H.R. 1000. In 1998, during the debate leading to passage of Transportation Equity Act for the 21st Century (TEA21),[84] which authorized appropriations for the highway trust funds, trust fund proponents developed a new budgetary device, the spending guarantee, better known as firewalls, to guarantee spending for highways and transit. This device was seen by many as having essentially the same effect as taking the programs off budget. Subsequent action on H.R. 1000 (which became AIR21), however, dropped the firewall approach and substituted off-budget provisions. Other budgetary devices intended to adjust aviation program spending to levels corresponding to annual trust fund revenues complimented these provisions.

[84] Transportation Equity Act for the 21st Century authorized appropriations for the highway trust funds by setting specified obligation ceilings, and formulas for distribution of obligation authority and redistribution of unused obligation authority of federal aid-highway programs.

H.R. 1000 as passed by the House on June 15, 1999, would, according to Congressional Budget Office (CBO) "take the trust fund off-budget and exempt airport and airway trust fund spending from discretionary spending caps, pay-as-you-go procedures and congressional budget controls." [85]The bill also contained additional budget provisions that would further affect the annual aviation funding process. Most significant among these are provisions that "cap" the annual general fund contribution and a mechanism that provides additional funding for AIP based on trust fund revenues and aviation program spending. The "cap" which could be viewed, as somewhat of a guarantee, except in FY2000, has the effect of setting the general fund contribution at a level that equates to the contribution in FY1998 ($3.351 billion).

From the perspective of the promoters of AIR21 the off-budget provisions made full funding of aviation programs more likely in the context of the annual budget and appropriations process. AIR21 programs remain subject to appropriations. For the Appropriations and Budget Committees, however, there would appear to be little incentive to change any AIR21 funding authorizations because these changes would have no effect on the annual congressional budget. The promoters of this legislation also contended that it was not a threat to other federal transportation programs and that, "Any budget increase would be outside the caps and would be fully paid for by the aviation taxes deposited into the Aviation Trust Fund. For this reason, passage of AIR 21 will not cause reductions in any other programs."[86]

Opponents of the bill believed that H.R. 1000 could lead to a "balkanization" of the unified budget process as each programmatic interest seeks special budget provisions

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[85] Congressional Budget Office. Cost Estimate. HR1000. May 28, 1999.
[86] House Transportation Committee Press Release 1999.

for its activities.[87] There was also concern that the annual FAA program oversight by the appropriations process would be somewhat limited. In this regard, opponents specifically point to the FAA as an agency that has had a lot of difficulty getting projects accomplished on time and on budget.

AIR21 contains neither an off-budget provision nor a TEA21 style-spending guarantee. Instead, the agreement substituted a spending "guarantees" that requires spending the total budget resources of the aviation trust fund for aviation purposes on an annual basis. Enforcement of the guarantee relies on changes to House and Senate point-of-order rules. The Agreement uses a two-step process to facilitate the guarantee. First, Title 1, Section 106 (c)(1) makes it out-of-order for either Body to consider legislation that first does not spend all aviation trust fund revenues for the aviation purposes authorized by the Agreement. Second, Title 1, Section 106 (c) (2) makes it out-of-order for either body to consider legislation providing sums for Research and Development, and Operations, if spending for AIP and F&E are below the levels authorized by AIR21.

These guarantees do not appear to be as strident as those created by TEA21, which created new budget categories for the highway, and transit accounts of the highway trust fund. Although there has been unanimous agreement in Congress and the White House that the FAA and the nation's airports are inadequately funded, the Aviation Trust Funds have been used to finance the U.S. Coast Guard, Amtrak, FAA salaries and the National Transportation Safety Board. The point-of-order changes, none-the-less, give those seeking full funding of aviation programs a tool to preclude redistribution of aviation trust fund revenues to other budget categories.

[87] House Transportation Committee Hearing, February 4, 1999.

The lobbying efforts of other transportation interest groups, which were craving for financial support, left Congress with the dilemma of how to accommodate non-aviation interest with the aviation trust fund surplus. While Congress has debated the warrants of protecting the aviation funds from other uses, they have accommodated the wishes of outside interests and provided aviation funds for non-aviation purposes. An example of Congress' use of aviation funds for non-aviation purposes appeared in 1999.

President Bill Clinton signed the $50.2 billion fiscal 2000 transportation bill into law October 9, 1999. The bill provided $3 billion more than in fiscal 1999 and nearly matched Clinton's budget request. The measure included $10 billion for the Aviation Trust Fund with some of the funds going to the Coast Guard and Amtrak.[88] The House and Senate sent the President this bill with the assurances that the bill would take care of other transportation programs with the surplus receipts from the Aviation Trust Fund. Before one can look at the final funding requests that are sent to the President, one must first look at who determines how the Aviation Trust Funds are used.

The House and Senate Transportation Committees determine how the Aviation Trust Funds are used. Traditionally, the House and Senate bill's provisions have mirrored the policy priorities of the committee chairmen of the authorizing committees (i.e. the House and Senate Transportation committees). Since all spending bills are born in the House, the House Transportation Committee Chairman wields a lot of power.

In the past decade, Rep. Bud Shuster, R-Pa. has been at the center of the debate regarding the use of the Aviation Trust Funds. Shuster is known for his influence and unwavering leadership style. The House Transportation and Infrastructure Chairman Bud

[88] Congressional Quarterly Staff. "Legislative Summary: Appropriations-Transportation," *Congressional Quarterly Weekly Report* (November 27, 1999).

Shuster's powerful leadership style falls closer to the powerful Democratic chairmen who ruled Congress for four decades: Dan Rostenkowski of Illinois (1959-95) on Ways and Means, John Dingell of Michigan on Commerce and--perhaps most of all--the late Jamie Whitten of Mississippi (1941-95) on Agriculture Appropriations.[89] Like the powerful Democratic chairmen of the past, Shuster was a dealmaker. Colleagues concerned about transportation problems in their districts and cities had to deal with Shuster. Besides being a powerful dealmaker, Shuster controlled a unified committee.

Shuster controls one of the biggest blocs of potential rebels, meaning 40 loyal GOP members of his committee whom have a history of resisting firm GOP leadership policy positions. Because of the bipartisan tradition of the committee, Shuster is aligned with the ranking member of the committee James L. Oberstar, D-Minn. As a result, the committee often votes out major bills unanimously, going to the floor as a united voting bloc. Most committee chairmen want their panels to be as small as they can possibly be. Shuster has taken the opposite view; the House Transportation Committee is one of the largest in the history of the U.S. Congress. Shuster uses the committee as a battering ram to get his way--the reliable votes of 41 Republicans and 34 Democrats that leaders of neither party can ignore in a House where the balance of power is counted on two hands. For instance, Shuster has used the legislative tactic of earmarking to get his programs through the committee.

Shuster perfected earmarking as a tool for gathering long-term support. In the five-year, $88 billion highway authorization bill passed in 1987, before he became chairman, there were 120 earmarks amounting to $890 million--including a $72 million

[89] Jeff Plungis, "The Driving Force of Bud Shuster," *Congressional Quarterly Weekly Report* (Aug. 7, 1999).

project for Shuster's district, the bill's costliest. In Shuster's first major legislation as chairman of the committee, in the $218 billion six-year 1998 highway bill, there were about $9 billion in special projects.[90] While Shuster has been very successful in using earmarking for highway programs, he has also used this tool for aviation programs.

Shuster has used earmarks in his pursuit to ensure the Aviation Trust Funds are used exclusively for aviation purposes. Shuster knows that every lawmaker has constituents who fly. Since members of Congress themselves are frequent fliers, they are as aware of problems of the nation's airports as anyone is. The chairman's strategy was to make sure all members knew how the trust funds would benefit their districts. Staff members issued a detailed airport-by-airport breakdown of where the new funds would go. Every commercial airport in the country would get a substantial boost, tripling their basic grant under the Airport Improvement Program. While Shuster has been successful in using his influence over committee issues, he has also been very successful in organizing interest groups around his policy objectives. For example, in 1997 Shuster unleashed a storm of interest groups on Capitol Hill when he needed votes to pass his Highway Trust Fund bill. Senate Budget Chairman Pete Domenici, R-N.M., acknowledged that Shuster's interest groups proponents were the key contributors to the passage of his Highway Trust bill.[91]

Interest Groups, Congress, the President and the Budget Process

Much of the literature on budgeting has aggregated executive and legislative policy processes. Policy outcomes have been described as if they resulted from the

[90] Ibid.

[91] Jeff Plungis, "Airport Improvement Funds Stall Shuster, McCain Square Off," *Congressional Quarterly Weekly Report* (Aug. 7, 1999).

actions of a single actor, usually assumed to be the president. Mark Kamlet[92] contends that the aggregation of executive and congressional branches ignores the interplay of political and institutional factors that determine budgetary outcomes. William Niskanen[93]has suggested that the institutional structure of Congress limits interdependence in budgetary decisions and supports spending growth, implicitly contrasting congressional with executive budgetary behavior.

Alexander Hicks[94]believes the deficit or total spending restricts the tradeoffs among competing policy objectives. However, Hicks does not provide an explanation of spending patterns in specific programs. Gerald Auten[95]contends multiple policy objectives are pursued simultaneously throughout the budget. Auten goes on to say commitments to individual programs may restrict the freedom of congressional or executive branch policy makers to pursue economic policy goals.

Aaron Wildavsky[96], coming from the incrementalist perspective, contends that the budgets of individual programs are independent. Wildavsky goes on to indicate that consensual politics lead to incremental budget results and that dissensual politics result in large and rapid budget changes. Bryan Jones[97]contends that budgeting is less volatile than in the past but is more volatile in periods of divided government, thus decreasing budget volatility is due to consensus on the general direction of government policy. Jones goes on to contend that during periods of divided control, it seems, programs are affected

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[92] Mark Kamle., "Influences on Executive and Congressional Budgetary Priorities," 1955-1981, *The American Political Science Review*, Volume 81, Issue 1 (March 1987), 155-178.
[93] William Niskanen. *Bureaucracy and Representative Government* (Chicago: Aldine, 1971).
[94] Alexander Hicks. "Elections, Keynes, Bureaucracy, and Class," *American Sociology Review*, 49 (1984), pp. 165-82.
[95] Gerald Auten. "A Sequential Model of Congressional Appropriations," *American Journal of Political Science*, 28 (1984), pp. 503-524.
[96] Aaron Wildavsky, The New Politics of the Budgetary Process. (Boston: Little, Brown1992).
[97] Bryan Jones, "Does Incrementalism Stem from Political Consensus or from Institutional Gridlock," *American Journal of Political Science*, 41 (1997), pp. 1319-1339.

differently, with some increases and some decreases. In periods of unified control, funding increments or decrements tend to be more uniform.

Allen Schick[98] contends that the Budget Enforcement Act has had an impact on spending bills. It has made the enactment of new direct spending measures much more difficult. Congress is most frugal when it comes to considering policies that may impact direct spending. Although groups and individuals attempt to influence legislators crafting and consideration of new policy, congressional procedures endorse the principle that direct spending should be constrained. These procedures are part of strenuous efforts to limit the growth of expenditure in future federal budgets. John Gist[99] contends that by comparing the annual increments in federal budget authority and budget "uncontrollables," the annual budget increment, while it has been the locus of budgetary strategies, has been largely or entirely absorbed by disproportionate increases in uncontrollables. Gist goes on to point out that as a consequence, controllable items in the budget base have become a necessary target for budget reductions, particularly in times of economic stringency. During poor economic times, Congress' strategy is to look for programs to target for reductions.

Randall Strahan[100] proposes that coalition building (member coalitions) strategies employed by congressional leaders may provide empirical evidence bearing on member's policy goals. Strahan analyzes the committee coalition-building strategy employed by House Ways and Means Committee Chairman Dan Rostenkowski, D-Ill., on the issue of tax reform in 1985. Strahan's findings on the importance of prestige and policy goals for

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[98] Allen Schick, *The Federal Budget* (Washington, D.C.: The Brookings Institution, 1995).
[99] John Gist. "Increment and Base in the Congressional Appropriation Process," American Journal of Political Science, 21 (1977), pp. 341-352.
[100] Randall Strahan, "Members' Goals and Coalition-Building Strategies in the U.S. House: The Case of Tax Reform," *The Journal of Politics*, Vol. 51, No. 2, (1989), pp. 373-384.

members of this committee provide some additional empirical grounding for a conceptualization of member's goals of the type advanced by Richard Fenno. Richard Fenno argued that a more complex set of motivational assumptions is required to explain decision-making and policy outcomes in Congress. Strahan noted that Fenno highlighted the importance of looking at a member's concern with prestige or influence in Washington and with advancing good public policy. More importantly, interest group activity, particularly from competing programs might shed light into the member's goals.

Lawrence Longely[101]contends that the interaction between groups indicates that groups that are quite active in forging ties and aligning themselves with other groups may derive considerable strength from the ongoing cooperative relations. Earl Latham[102]contends that the legislative vote on any issue tends to represent the composition of strength, i.e., the balance of power among contending groups at the moment of voting. Latham states that what may be called public policy is actually the equilibrium reached in the group struggle at any given moment, and it represents a balance which the contending factions of groups constantly strive to weigh in their favor. In essence, the competition and cooperation of groups can lead to dissensual politics. A look at the literature that depicted the competing forces within the Aviation Trust Fund public policy formulation reveals this dynamic.

Amtrak, NASA and the Coast Guard benefited from the excess funds within the Aviation Trust Fund, and from Congress' not restricting the funds for aviation purposes. Since 1971, the federal government has provided the National Railroad Passenger

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[101] Lawrence Longely. "Interest Group Interaction in a Legislative System," *The Journal of Politics*, 29 (1967), pp. 637-658.
[102] Earl Latham. "The Group Basis of Politics: Notes for a Theory," American Political Science Review, 46 (1952), pp. 390-391.

Corporation (Amtrak) with $23 billion in financial support. This includes funds that were earmarked for other purposes but were used on acquiring capital improvements and maintaining existing equipment in intercity passenger rail service, among other things.[103]This has occurred because Amtrak has not had a capital plan since 1997. Yet it has important capital needs that must be met and has identified a few of them. For example, Amtrak has stated that about $12 billion (in 2000 dollars) through 2025 will be needed to modernize the infrastructure between Washington, D.C., and New York City. In addition, in recent years, it needed about $300 million annually in capital funds to replace facilities and equipment that were wearing out.

Second, Amtrak has made only modest progress in reducing its need for federal operating subsidies and meeting the requirement established by the Congress to be free of operating subsidies by the end of 2002. From 1995 through 1999, Amtrak reduced its need for operating subsides by $78 million. From 2000 through 2002, it made further reductions totaling $291 million—nearly 4 times as much as it achieved in the past 5 years. Finally, the administration has requested $468 million in funding for fiscal year 2001 for a proposed expanded intercity rail passenger service program that could benefit Amtrak. Aviation and Highway Trust Fund would support the program.

The National Association of Railroad Passenger (NARP) conducting research on the Amtrak funding issues. In a survey funded by NARP and conducted by Bruskin Goldering Research, 63% of the respondents supported a proposal that one penny of the fuel tax be used to create a trust fund to pay for long-term Amtrak improvements. According to NARP, this would not result in the public paying any additional taxes, but would reallocate a small percentage of the total funds to Amtrak. In addition, NARP

[103]General Accounting Office Report to Congress "Intercity Passenger Rail," (March 15, 2000).

asked if the public would oppose states utilizing federal funds designated for highways, mass transit and recreational rails for intercity rail passenger service. 63% of the respondents to the NARP survey supported this proposal.[104] While it is not clear how many people were targeted by the survey or how many responded, the NARP was definitely attempting to gain support for more funding for Amtrak, specifically funding from other trust funds. NASA has also benefited from funds from the Aviation Trust Fund.

During Congress' push to balance the federal budget, it was discovered that NASA was not utilizing funds appropriated by Congress. While assessing NASA's request for new budget authority and determining what adjustments, if any, to make to that request, the General Accounting Office (GAO)[105] focused on the total resources NASA has available for their next fiscal year, not just the amount requested. Carryover balances, which represent available budgetary resources from prior years, along with new budget authority, provide the total budget resources available to a program. Some level of carryover balance is appropriate for government programs; however, the GAO discovered that NASA had a large number of carryover balances.

Carryover balances consist of uncosted obligations and unobligated funds. Uncosted obligations represent the portion of its authority that NASA has obligated for goods and services but for which it has not yet incurred costs. Funding provided for NASA's Human Space Flight and Science, Aeronautics, and Technology programs is available for obligation over a 2-year period. In such circumstances, some funds are expected to be obligated during the second year of availability. NASA officials pointed

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[104] National Association of Railroad Passengers Amtrak Funding Survey (January 2003).
[105] General Accounting Office Report to Congress. "NASA Budget," (July 18, 1996).

out that funds carried over would eventually be expended to cover program costs. Congress viewed this budget technique as wasteful spending, which immediately spurred Congress to reduce NASA's funding.

The GAO examined NASA's fiscal year 1998 budget request and prior years' appropriations for selected programs.[106] The GAO objective was to identify potential reductions in the fiscal year 1998 budget request and potential rescissions in prior years' appropriations. The GAO identified opportunities to reduce NASA' s fiscal year 1998 budget request by about $108 million. These opportunities are primarily in the human space flight ($54.4 million) and mission support ($53 million) areas. They also identified another $24 million in potential excess funding in the science, aeronautics, and technology area. Since these reductions were directed towards current programs, NASA proponents had to look for some place to make up for the reductions, which was the Aviation Trust Fund's excess fund. NASA and Amtrak are not the only agencies to use the trust funds to alleviate budget cuts and improve programs; the Coast Guard has used trust funds for improvement programs.

A GAO report[107] discussed the fiscal constraints that the U.S. Coast Guard is facing and the efforts that the agency is making to adjust to constrained budgets. Since fiscal year 1992, the Coast Guard has assumed increased responsibilities while shrinking its workforce by nearly 10 percent and operating with a budget that has risen about 1 percent a year in actual dollars. The Commandant of the Coast Guard told the Congress in 1996 that funding was no longer sufficient to sustain the normal pace of operations over time. Yet the Coast Guard, like the federal government as a whole, faces the

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[106] General Accounting Office Report to Congress. "1998 NASA Budget," (September 20, 1997).
[107] General Accounting Office Report to Congress. "Coast Guard: Challenges for Addressing Budget Shortfalls," (May 1997).

prospect of further budget cuts to meet deficit reduction targets over the next several years.

The Coast Guard's funds come mainly from three sources—the Department of the Treasury's General Fund, trust funds, and transfers from the Department of Defense (DOD). Most of the Coast Guard's funding is appropriated from the general fund, but since 1982, significant amounts—ranging from $6 million to $490 million—have also been transferred from DOD appropriations. The purpose of these transfers has been to fund national security functions, AC&I projects, and military pay raises. The Coast Guard also receives moneys from various trust funds, one of which has been the Aviation Trust Fund. If Amtrak, NASA and the Coast Guard are using Aviation Trust Funds, how is this possible?

A GAO report[108] noted that the vast majority of earmarked funds take in more than their current needs. The accumulated surpluses result in these funds having a "balance." The balances of earmarked funds are assets of the funds in that they provide a claim on the general fund of the Treasury for future spending. However, the GAO reports that these balances are really bookkeeping credits to the fund with the actual cash commingled with other collections. The accumulation of large balances does not by itself affect the government's ability to meet long-term commitments or make a program more sustainable in the future.

In other words, accumulated balances do not increase the government's ability to acquire future resources to meet long-term commitments. Nor do they necessarily represent the full future cost of existing commitments. From a macro perspective, the

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[108] General Accounting Office Report to Congress. "Federal Trust and Other Earmarked Funds," (January 2001).

critical question is not how much a trust fund has in assets; but whether the government as a whole has the economic capacity to finance the claims on the trust funds for benefits now and in the future and at the cost of other competing claims for scarce resources. Through this process the government has used trust fund balances to finance other starving programs or other public policies. This dynamic begins the debate of the use and purpose of special purpose trust funds.

Chairman Shuster and Interest Groups Influence on Trust Fund Appropriations

Shuster has developed interest group coalitions in order to create organized pressure on policy makers. This strategy is very evident in his attempt to protect the trust funds. Shuster has been successful in developing coalitions that have included the airlines, airports, trade associations, and consumer advocates.[109] The coalition's roles are to put pressure on those legislators who are either opposed to the protecting the funds or who are undecided. Although each interest group within the coalition has personal preferences and goals, the coalition has been successful in rallying around one central theme, and that is passage of Shuster's preference. His preference in this case is to increase funding for aviation programs. While Shuster is in favor of increasing funding for aviation programs, there are some legislators opposed to increasing spending on aviation programs.

Although most legislators are in favor of increasing funding for airport programs, several members, particularly those who control Budget and Appropriations committees, were very much opposed to Shuster's idea.[110] These legislators and many other groups

[109] Ibid.
[110] Jeff Plungis, "Airport Improvement Funds Stall Shuster, McCain Square Off," *Congressional Quarterly Weekly Report* (Aug. 7, 1999).

representing other public financed interests were concerned that any preferential treatment for the airport funds would affect other federal programs like the Coast Guard and Amtrak, which have benefited from the surpluses in the Aviation Trust Fund. The struggle between those in favor of increasing funding and those opposed has traditionally been played out during the House and Senate Conference Committee consideration of aviation programs.

For example, in 2000, the House and Senate were involved in a conference to resolve differences between aviation funding protection proponents and non-aviation interests. Confronted with the demands of non-aviation interests and the calls for protecting the Aviation Trust Funds, Congress sought to accommodate the competing interests. Congress crafted a compromise, which ensured that all funds deposited into the trust fund would be used for aviation purposes; however, when there was a need outside of aviation, there would be mechanisms available to ensure that the aviation funds could be used for non-aviation purposes. Consequently, Congress employed a compromising method to ensure all interests were accommodated.

In Theory--Compromise--How Congress Uses Special Purpose Trust Funds

The accommodating measure employed by Congress in 2000 illustrates a macro and micro conceptualization of how Congress uses special purpose trust funds for other purposes. The macro level is illustrated through the interest group liberalism theory. The interest group liberalism theory states that interest groups succeed in their goals of influencing government—to the point that government itself, in one form or another provides a measure of protection to almost all societal interests.[111] In this dissertation, it is argued that the interest group liberalism theory is present in Congress' decision to use

[111] Theodore Lowi, *The End of Liberalism* (New York: W.W. Norton & Company, 1979).

the Aviation Trust Funds for other purposes. Interest groups, representing the special purpose trust fund, in this case the Aviation Trust Fund, succeeded in influencing Congress to extend some form of protection to their exclusive funds; however, Congress, in one form or another, provides a measure of protection to all of the competing interests.

The interest group liberalism theory was selected out of the behaviorist approach. The dissertation is attempting to study how Congress acts when it is presented with competing interests fighting over funds contained in a special purpose trust fund. The dissertation is attempting to study how Congress acts under the conditions of a democratic/majority rule arena. The alternative behaviorist approach, elitism, was not selected because ruling elite can not exist under democratic rules because ruling elite is a controlling group less than a majority in size.[112] A majority is needed in Congress in order to pass any initiatives. While the interest group liberalism theory attempts to explain—in a broad view—congressional use of special purpose trust funds, the chaos theory attempts to explain how—on an individual basis—legislative decisions are made regarding the formulation of policies involving special purpose trust funds.

The micro level will be illustrated through an examination of the chaos theory.[113] The chaos theory assumes that no majority can dominate all other possible majorities in most distributions with two or more dimensions that are close to a legislator's policy preference. In this dynamic, there is inherent instability of majority rule when there are two or more dimensions close to a legislator's policy preference. As long as legislators are presented with policy preferences that are close to their own, legislators will be

[112] Robert Dahl, "A Critique of the Ruling Elite Model," *American Political Science Review*, Vol. 52, No. 2. (1958), pp. 463-469.
[113] Gerald Strom, *The Logic of Lawmaking: A Spatial Theory Approach* (Baltimore: John Hopkins University Press, 1990), Chapter 1.

unable to choose one specific preference. This dissertation asserts that when Congress is confronted with the problem of deciding whether to use special purpose trust funds for other purposes the chaos theory forces Congress to provide some form of tangible or symbolic assurances to all in order to protect all interests and ensure an outcome. Most important, the chaos theory describes how legislators deal with policy preferences.

The chaos theory was selected from the literature because it best describes how legislators deal with multi-policy dimensions close a legislator's policy preferences. Multi-policy dimensions are unique; thus they present quite a dilemma for democracy and the art of compromise. Unlike social issues, where there are clear two-sided dimensions, issues dealing with revenue and spending create multi-policy dimensions that require extreme legislative compromises. For example, an issue like late-term abortions provides a two-sided dimension. Either you are for it or against it. However, an issue like whether you spend an additional billion dollars on a program has a multi-dimensional component. You can reduce, increase, maintain, or eliminate spending. In the former case, compromise is difficult due to the strict two-sided dimensional policy preferences; and in the latter, compromise is possible because the multi-dimensional component allows Congress to strike some from of balance between the multi-dimensional preferences. While policy preferences are one component of congressional decision-making and compromise building, this dissertation does not assert it is the only component.

Congressional decision making theories supported by David Mayhew[114], Gary Cox[115] and Jerrold Schneider[116] attempt to look at constituency, ideological and party

[114] David Mayhew, *Congress: The Electoral Connection* (New Haven: Yale University Press, 1974).

coalitions as measurable patterns of voting and policy decisions. The dissertation does not suggest these variables--forwarded through these theories--do not have a measurable affect on voting and policy decisions. The dissertation does assert that these theories do not adequately explain how these variables or preferences are addressed when a legislator is presented with preferences that cut across each variable. Further more, the dissertation presents variables that could impact preferences.

For example, the Aviation Trust Fund debate from 1998-2000 presents ideological preferences, i.e. fiscal conservatives vs. liberals, constituency issues, i.e. airport improvements, and party coalitions, i.e. committee participation. The chaos theory attempts to explain how a legislator uses these preferences in order to make his decision. The chaos theory contends that the legislators will choose the position that appears closer to his preferences. In the case of the Aviation Trust Fund, pressure between various interest groups on the legislators created multi-dimensional distributions of ideological preferences. Congress was unable to find a majority of legislators who were able to choose one definite preference. The result has been that Congress found a compromise point that accommodated all interests.

Satisfying A Majority

House Transportation Chairman Bud Shuster, R-Pa., was able to develop interest group coalitions in order to create organized pressure on policy makers. This dynamic is very evident in his attempt to protect the trust funds. Shuster was successful in developing coalitions that included the airlines, airports, trade associations, and consumer advocates. The coalition's roles were to put pressure on those legislators who are either

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[115] Gary Cox and Mathew McCubbins, *Legislative Leviathan* (Berkeley: University of California Press, 1993).
[116] Jerrold Schneider, *Ideological Coalitions in Congress* (London: Greenwood Press, 1979).

opposed to the protecting the funds or who are undecided. Although each interest group within the coalition had personal preferences and goals, the coalition was successful in rallying around one central theme, and that is passage of Shuster's preference. His preference in this case was to increase funding for aviation programs. While Shuster is in favor of increasing funding for aviation programs, there were some legislators opposed to increasing spending on aviation programs.

Although most legislators were in favor of increasing funding for airport programs, several members, particularly those who controlled Budget and Appropriations committees, were very much opposed to Shuster's idea. These legislators and many other groups representing other public financed interests, like Amtrak and the Coast Guard, were concerned that any preferential treatment for the airport funds would affect other federal programs, which would have benefited from the surpluses in the Aviation Trust Fund. The struggle between those in favor of increasing funding and those opposed was played out during the two-year public policy formulation process of the final bill. The final compromise bill revealed how Congress finally crafted a bill that would satisfy all interests.

When the House and Senate were involved in a conference to resolve differences between aviation funding protection proponents and non-aviation interests and confronted with the demands of non-aviation interests and the calls for protecting the Aviation Trust Funds, Congress sought to accommodate the competing interests. Congress crafted a compromise, which ensured that all funds deposited into the trust fund would be used for aviation purposes; however, when there was a need outside of aviation, there would be mechanisms available to ensure that the aviation funds could be used for non-aviation purposes. Consequently, Congress employed a compromising method to ensure all interests were accommodated.

The compromising method employed by the bill managers provided an appetizing solution to both the proponents and opponents of the bill. By “splitting the difference”, the bill managers were able to get both the supporters and opponents of the bill on the same side, and all but assured the bill’s passage.

Why Does Congress Use Special Purpose Trust Funds for Other Purposes?

In most federal budgetary issues, it is assumed by most that policy outcomes have been described as if they resulted from the actions of a single actor, usually assumed to be the president. The public policy formulation of the Aviation Trust Funds seems to discount the aggregation of executive and congressional branches and even ignores the interplay of political and institutional factors that determine budgetary outcomes. What the Aviation Trust Fund public policy formulation does appear to illustrate is the interplay of interest groups and the impact of economic conditions on budgetary outcomes, particularly these factors impact on Congress.

The institutional structure of Congress limited the interdependence in budgetary decisions and supported spending growth, implicitly contrasting congressional with executive budgetary behavior. In this case, Congress supported spending growth in the area of aviation spending; however, the executive branch had concerns with providing additional funding towards aviation at the expense of other federal programs.

What might have warranted this distinction between the executive and legislative branches might be the direct impact interests groups had on the considerations and direction of the Congress’ spending plans. While economic consideration have been traditionally felt by the executive branch, in this case, Chairman Shuster embraced and promoted the economic dire position of aviation infrastructure as a congressional issue rather than an executive branch problem. This embracement paved the way for Congress to take the lead on this issue. Since interest groups directly lobbied Congress rather than the Administration on this issue, multiple policy considerations were forced upon the Congress.

As was noted in previous chapters,[117] multiple policy objectives are pursued simultaneously throughout the budget process. Commitments to individual programs may restrict the freedom of congressional or executive branch policy makers to pursue economic policy goals. Although the statutory intention of the Aviation Trust Funds were to provide funding for aviation programs, commitments to individual programs, particularly those with transportation roles, restricted congressional policy makers from utilizing the statutory intent of the Aviation Trust Funds.

Although some would say the budgets of individual programs are independent,[118] in the case of the Aviation Trust Funds, annual spending levels were authorized with the notion that funds from the program would be used for non-aviation programs. During the growth of the Aviation Trust Funds from 1990-2000, aviation-spending levels were authorized at levels well below the total amount of funds available for expenditures. The additional funds were either used to support other transportation programs or for other federal programs.

Although groups and individuals attempted to influence legislators crafting and consideration of new policy, congressional procedures endorse the principle that direct

[117] Gerald Auten. "A Sequential Model of Congressional Appropriations," *American Journal of Political Science*, 28 (1984), pp. 503-524.
[118] Aaron Wildavsky, The New Politics of the Budgetary Process. (Boston: Little Brown 1992)

spending should be constrained. These procedures are part of strenuous efforts to limit the growth of expenditure in future federal budgets. In the case of the Aviation Trust Funds, constraint was used to control authorized spending for aviation programs in an effort to leave just enough in the aviation account for other federal programs, particularly "uncontrollables" like the national debt and security.

The annual increments in federal budget authority and budget "uncontrollables," while the locus of budgetary strategies; have been largely or entirely absorbed by disproportionate increases in uncontrollables. [119] Controllable items, like aviation spending, in the budget base have become a necessary target for budget reductions, particularly in times of economic stringency. During poor economic times, Congress' strategy is to look for programs to target for reductions. During poor economic times and high airline passenger growth rates, Congress' strategy has been to use funds from the Aviation Trust Fund for other federal programs. This strategy seems to provide the best explanation of why congress utilized the Aviation Trust Funds for other purposes.

Amtrak, NASA and the Coast Guard benefited from the excess funds within the Aviation Trust Fund, and from Congress not restricting the funds for aviation purposes. Congress' push to balance the federal budget created spending constraints for Amtrak, NASA and the Coast Guards. These constraints could only be illusionary given the important role of Amtrak, NASA and the Coast Guard to national security and transportation functions. Instead of providing additional financial support to these programs, Congress used other more viable funding resources, i.e. the Aviation Trust

[119] John Gist. "Increment and Base in the Congressional Appropriation Process," American Journal of Political Science, 21 (1977), pp. 341-352.

Funds, to supplement the three agencies budget reductions. The use of funds with surpluses seems to be a traditional practices rather than an unusual budgetary mechanism.

A General Accounting Office (GAO) report[120] noted that the vast majority of earmarked funds take in more than their current needs. The accumulated surpluses result in these funds having a "balance." The balances of earmarked funds are assets of the funds in that they provide a claim on the general fund of the Treasury for future spending. However, the GAO reports that these balances are really bookkeeping credits to the fund with the actual cash commingled with other collections. The commingling of these funds seems to provide the bookkeeping mechanism that allows Congress to utilize special purpose trust funds, like the Aviation Trust Funds, for other purposes.

The accumulation of large balances does not by itself affect the government's ability to meet long-term commitments or make a program more sustainable in the future. In other words, accumulated balances do not increase the government's ability to acquire future resources to meet long-term commitments. Nor do they necessarily represent the full future cost of existing commitments. However, in the case of the Aviation Trust Funds, the perception that funds were being used for non-aviation purposes created the crisis tone that House Transportation Chairman Bud Shuster needed to attempt solidify aviation funding.

From a macro perspective, the critical question is not how much a trust fund has in assets, but whether the government as a whole has the economic capacity to finance the claims on the trust funds for benefits now and in the future and at the cost of other competing claims for scarce resources. Through this process the government has used

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[120] General Accounting Office Report to Congress. "Federal Trust and Other Earmarked Funds," January 2001.

trust fund balances to finance other starving programs or other public policies. It is the economic capacity to finance claims on the Aviation Trust Funds for benefits that will need to be addressed under the additional need to finance aviation security requirements.

What will be The Impact of the Events of September 11, 2001, on The Aviation Trust Fund?

Two key funding and accountability challenges will be paying for increased aviation security and ensuring that these costs are controlled. The costs associated with acquiring equipment and personnel for improving aviation security alone are huge. Although the TSA estimates that it will need about $4.8 billion for aviation security in fiscal year 2003, it estimates that revenues from the new passenger security fee will pay for only around one-third ($1.7 billion) of that amount. As a result, the TSA will need a major cash infusion at a time when federal budget deficits are growing.

In considering the federal government's role in meeting long-term funding challenges, several issues will need to be addressed beyond determining who should pay for the security enhancements and to what extent the agencies functions should be funded. An important consideration is which criteria are most appropriate for distributing federal funds? The chief criteria considered have been ridership level, population, identified vulnerabilities, and critical assets. Another important consideration is which federal policy instruments—grants, loan guarantees, tax incentives, or partnerships—are most appropriate to motivate or mandate other levels of government or the private sector to help address security concerns? Finally, it will be important to consider how to allocate funds between competing needs and to measure whether the government is achieving the increased security benefits envisioned.

Although the government made record investments in aviation security in 2002, the Chairman of the House Transportation Committee Don Young, R-Alaska, warned that costly delays and congestion would return unless money also is plowed into aviation infrastructure. Many people in Washington are still familiar with the congestion and delays that plagued the nation's aviation system in 1999-2000.

Chairman Young pointed to an analysis released by the General Accounting Office (GAO) on Oct. 25, 2002. The report found that 17 percent of Airport Improvement Program (AIP) funding in fiscal 2002 went to improve security, up from an average of 2 percent. Young said the government must be cautious that such spending does not undercut other needs, such as improving equipment safety and enhancing capacity to relieve congestion.

"While the committee is pleased that security needs have been met without compromising safety, we remain concerned that future safety and capacity needs of the aviation system not be shortchanged in the drive to improve aviation security," he said. "As the country climbs out of the recession and fears of terrorism subside, air traffic is likely to increase. We do not want to again see the sort of congestion and delays that plagued the airlines and their passengers in previous years."[121] This will be a major issue when Congress reauthorizes the aviation programs.

Some $3.3 billion was available for AIP grants in fiscal year 2002. Of this, GAO reports that $561 million, or 17 percent, was used to fund security projects at airports. This $561 million was a dramatic increase over spending. For example, only $2 million was spent on security projects in 1982. Prior to fiscal year 2002, the high point for

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[121] House Transportation Committee Press Release, GAO Reports Record Levels of Investment in Aviation Security Spending in 2002 (October 25, 2002).

security projects spending was $122 million in fiscal 1991, shortly after the bombing of Pan Am 103 and the passage of the Security Act of 1990. In fiscal 2001, $57 million was spent for security projects.[122]

According to Young, the Federal Aviation Administration (FAA) was able to spend more money for security without short-changing projects to enhance safety or reduce noise. It was able to do this for two reasons: 1) A large number of airports entitled to AIP grants as a result of the formula in the law decided to forego those grants in 2002 and carry over the rights to that money for future years, leaving FAA with some additional money; and 2) The FAA provided less money than it had in the past for projects to bring airports up to standards and for reconstruction of deteriorating airport facilities. However, Young emphasizes that as air transportation returns to pre-Sept. 11 levels, the safety and capacity concerns that existed before the attacks will continue to trouble the aviation community.

GAO noted that the $561 million FAA awarded to airports for security projects in fiscal year 2002 represents more than an 800 percent increase over the $57 million awarded in fiscal year 2001.[123] The Aviation & Transportation Security Act (ATSA), passed in November 2001, amended legislation governing AIP eligibility to permit funding for fiscal year 2002 of any security-related activity required by law or the Secretary of Transportation after Sept. 11, 2001, and before Oct. 1, 2002. This legislation also permits FAA to use AIP funds to replace airport baggage systems and reconfigure terminal baggage areas for explosives detection systems.

[122] According to Don Samuels, AIP staffer, security concerns have had a tremendous impact on AIP funding goals and programs (personal communications, November 11, 2002).
[123] House Transportation Committee Press Release, GAO Reports Record Levels of Investment in Aviation Security Spending in 2002 (October 25, 2002).

When comparing grant award amounts for fiscal years 2001 and 2002, the increase in AIP grant funds for security projects contributed to a decrease in the amount of funding available for non-security development projects, according to GAO. One large spending reduction occurred in reconstruction, which decreased by $148 million – from almost 23 percent of AIP funding in fiscal year 2001 to 18 percent in fiscal year 2002. Environment, safety, and capacity projects also decreased by $97 million, $66 million, and $40 million, respectively.

Airport Council International said the increase in AIP funding for security has affected airport development projects. It reported that airports have delayed almost $3 billion in airport capital development, most of which dealt with terminal developments, because of new security requirements. AIP funding to large hub airports increased by almost $111 million, or almost 4 percent of total AIP funding, while funding to small hub airports increased by almost $32 million, or 1 percent, in fiscal year 2002. In contrast, the greatest reductions in AIP funding were among non-hub airports, which decreased from almost $650 million in fiscal year 2001 to almost $510 million in fiscal year 2002, followed by reliever airports, which decreased from $213 million in fiscal year 2001 to almost $164 million in fiscal year 2002.[124]

The increase in AIP funding to large hub airports is attributed to their proportionally higher security needs. In the case of the decrease in AIP funding to non-hub airports, FAA's Airport Planning and Programming officials said that their security needs were

[124] According to Don Samuels, AIP staffer, security concerns have had a tremendous impact on AIP funding goals and programs (personal communications, November 11, 2002).

much lower than those of large hub airports, accounting for only $44 million, or 8 percent, of the $561 million awarded in fiscal year 2002.[125]

During fiscal year 2002, the Federal Aviation Administration (FAA) awarded a total $561 million in AIP grant funds to airports for security projects related to the events of September 11, 2001. This $561 million represented approximately 17 percent of the $3.3 billion available for AIP grants in fiscal year 2002 and was the largest amount awarded to airports for security projects in a single year since the program began in 1982. In contrast, FAA awarded an average of less than 2 percent of the program's total funding to security projects for fiscal years 1982 through 2001. During this period, AIP grant funds awarded to airports for security projects ranged from $2 million in fiscal year 1982 to $122 million in fiscal year 1991, when airports implemented new security requirements governing access controls, according to FAA Airport Planning and Programming officials.[126]

Additionally, the $561 million FAA awarded to airports for security projects in fiscal year 2002 represented more than an 800 percent increase over the $57 million for security projects awarded in fiscal year 2001. Based on data provided by FAA, all of the security projects funded with AIP grants since the events of September 11, 2001, met the legislative and program eligibility requirements. The projects, which range from access control systems to terminal modifications, qualified for AIP funding either under eligibility requirements in effect before September 11, 2001, or under subsequent statutory and administrative changes. The Aviation and Transportation Security Act (ATSA), passed in November 2001, amended existing legislation governing AIP

[125] Ibid.
[126] Ibid.

eligibility to permit funding for fiscal year 2002 of any security-related activity required by law or the Secretary of Transportation after September 11, 2001, and before October 1, 2002.

This legislation also permits FAA to use AIP funds for replacing airport baggage systems and the reconfiguration of terminal baggage areas to accommodate explosives detection systems. In addition to these legislative changes, FAA issued new program guidance that clarified project eligibility requirements to include, among other items, surveillance equipment, blast proofing of terminals, and explosives detection canines for use in terminals. Although FAA Airport Planning and Programming officials stated that they were able to comply with statutory requirements, set-asides, and other program priorities, the $504 million increase in AIP grant funds for new security projects in fiscal year 2002 has affected the amount of funds available for some airport development projects in comparison with the distribution of AIP grant funds awarded in fiscal year 2001.[127] There were reductions in AIP funding awarded to nonsecurity projects in fiscal year 2002, as compared with fiscal year 2001.

For example, there was an almost $156 million decrease in standards projects and a $148 million decrease in reconstruction projects. Similar decreases also occurred to the distribution of AIP grant funds by airport type. Although large and small hub airports received increases in their AIP funds, nonhub and reliever airports received the greatest reduction in their funding in fiscal year 2002, as compared with fiscal year 2001. FAA also deferred three letter-of-intent (LOI) payments under consideration prior to September 11, 2001, that totaled $28 million, until fiscal year 2003 or later.

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[127] Ibid.

For example, according to the GAO, the following three airports did not have discretionary funds included in their scheduled LOI payments for fiscal year 2002:[128]

• Hartsfield International Airport in Atlanta, Georgia, which is the busiest airport in the country with almost 40 million enplanements per year and was one of the most delayed airports in 2000 and 2001, had $10 million for a runway extension deferred.

• Cincinnati/Northern Kentucky Airport in Covington, Kentucky, another large airport with 11 million enplanements per year, had $10 million for a new runway deferred.

• Indianapolis Airport in Indianapolis, Indiana, a medium-sized airport with almost 4 million enplanements per year, had $7.5 million for a new apron and taxiway deferred.

Airports Council International reported that airports have delayed almost $3 billion in airport capital development because of new security requirements, most of which dealt with terminal developments. Finally, although the increase in AIP funds for security projects in fiscal year 2002 has affected funding for other airport projects, the impact of funding security projects in fiscal year 2003 is unclear. The impact will depend on a number of policy decisions. These include determining the extent to which terminal modifications to install explosives detection systems, which are estimated to cost between $2 billion and $7 billion, should be financed with AIP grant funds.[129]

As part of Congress' goal to make every airport safe and secure after September 11, Congress mandated that every airport implement 100% baggage screening by 2003. Inherent in this request was the requirement that every airport fit and refit their airport terminals to accommodate the technology needed to implement this task. In P. L. 107-206, Congress appropriated $738 million to the Transportation Security Administration

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[128] Ibid.

[129] Airport Council International. State of the Industry Report.

(TSA) for terminal modifications to install explosives detection systems. The question then became where would this money come from—AIP or other sources?

As noted in Chapter III, in administering AIP, FAA must comply with various statutory formulas and set-asides established by law, which specify how AIP grants funds, are to be distributed among airports. FAA groups the proposed projects into one of the following seven development categories, according to each project's principal purpose:[130]

1) **Safety and security** includes development that is required by federal regulation and is intended primarily to protect human life. This category includes obstruction lighting and removal; fire and rescue equipment; fencing; security devices; and the construction, expansion, or improvement of a runway area.

2) **Capacity** includes development that will improve an airport for the primary purpose of reducing delay and/or accommodating more passengers, cargo, aircraft operations, or based aircraft. This category includes construction of new airports; construction or extension of a runway, taxiway, or apron; and construction or expansion of a terminal building.

3) **Environment** includes development to achieve an acceptable balance between airport operational requirements and the expectations of the residents of the surrounding area for a quiet and wholesome environment. This category includes noise mitigation measures for residences or public buildings, environmental mitigation projects, and the installation of noise monitoring equipment.

[130] According to Don Samuels, AIP staffer, security concerns have had a tremendous impact on AIP funding goals and programs (personal communications, November 11, 2002).

4) **Planning** includes development needed to identify and prioritize specific airport development needs. This category includes the airport master plan, airport layout plan, a state system plan study, or an airport feasibility study.

5) **Standards** include development to bring existing airports up to FAA's design criteria. This category includes the construction, rehabilitation, or expansion of runways, taxiways, or aprons; the installation of runway or taxiway lighting; the improvement of airport drainage; and the installation of weather reporting equipment.

6) **Reconstruction** includes development to replace or rehabilitate airport facilities, primarily pavement and lighting systems that have deteriorated due to weather or use. This category includes the rehabilitation or reconstruction of runways, taxiways, apron pavement, and airfield lighting.

7) **"Other" categories** include all other development necessary for improving airport capacity and the safe and efficient operations. This category includes people movers, airport ground access projects, parking lots, fuel farms, and training systems. It also includes development for converting military airfields to civilian use, such as those authorized by the military airport program. FAA has traditionally assigned the highest priority to safety and security projects that are mandated by law or regulation.

Shortly after September 11, in response to increased security requirements and in exercising the authority granted under the Federal Aviation Reauthorization Act of 1996,[131] FAA reviewed its AIP eligibility requirements and made several changes to permit the funding of more security projects that previously had not been funded by AIP. For example, FAA broadened the list of eligible projects to include explosives detection

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[131] Federal Aviation Reauthorization Act of 1996 amends federal aviation law to reauthorize the Airport Improvement Program through FY 1998, with specified allocations for the Federal Aviation Administration (FAA) Facilities and Equipment Program.

canines, cameras in terminals, and blast proofing of terminals. According to officials in FAA's Airport Planning and Programming Division, the types of security projects eligible for AIP funding were expanded because the perceived threat area at an airport grew from those areas immediately surrounding an aircraft to terminal areas where large numbers of people congregated.[132]

In November 2001, eligibility for AIP funding was further broadened by the passage of ATSA. The act extended eligibility for AIP funding to any additional security-related activity required by law or the Secretary of Transportation after September 11, 2001, and before October 1, 2002. ATSA also created the Transportation Security Administration (TSA) within the Department of Transportation (DOT), and assigned it primary responsibility for ensuring security in all modes of transportation. As such, TSA is now responsible for funding some airport security-related projects, a limited number of which FAA had previously funded through AIP grant funds. These projects include pre-board screening devices and baggage screening equipment, such as explosives detection systems.

In fiscal year 2001, FAA awarded $13 million for security projects related to the events of September 11, 2001. AIP funds awarded for security projects in 1991 totaled $99 million nominal dollars—meaning some projects were paid with letters of intent to pay and not real dollars. Letters of intent allows airports to borrow additional money with the guarantee that the federal government will reimburse the airport for the loan in the future. Among airport types, nearly all of the $561 million awarded in fiscal year 2002 for security projects was awarded to large, medium, small, and nonhub airports, which is

[132] According to Don Samuels, AIP staffer, security concerns have had a tremendous impact on AIP funding goals and programs (personal communications, November 11, 2002).

consistent with where FAA has received the largest number of requests for AIP grants for security projects. General aviation and reliever airports received about 1 percent of the $561 million awarded in fiscal year 2002. Although most airports have received AIP funds for security projects, these funds have come at the expense of other airport projects.

The increase in AIP grant funds awarded to airports for security projects in fiscal year 2002 has affected the amount of funding available for some airport development projects, in comparison with fiscal year 2001. When comparing grant award amounts for fiscal years 2001 and 2002, the $504-million increase in AIP grant funds for security projects in fiscal year 2002 contributed to a decrease in the amount of funding available for nonsecurity development projects. For example, the greatest reduction occurred in standards—includes development to bring existing airports up to FAA's design criteria, which decreased by $156 million, from almost 30 percent of AIP funding in fiscal year 2001 to 25 percent of AIP funding in fiscal year 2002.

"In recent months, it has been held by some in the federal government that these improvements could be funded with ticket tax proceeds that accumulate in the Aviation Trust Fund and are used for Airport Improvement Program (AIP). This diversion is bad policy and bad math. This is bad policy because these funds were set aside for system expansion, and passengers paid their money to make sure airports could meet their future demands travel—whether to and from Houston or any other airport. It is bad math because the program has approximately $400 million in discretionary spending a year. Much of this money is committed and won't make an appreciable dent in the estimated

$4 to $7 billion in funding required for modifying airports to accommodate the required machines, staff, and supporting infrastructure."[133]

The increase in AIP funding for security also affected the distribution of AIP grant funds by airport type. In comparison with fiscal year 2001, large and small hub airports received increases in AIP funding, while all other airports experienced decreases in fiscal year 2002.

The increase in AIP funding for security projects contributed to the decreases in the amount of funding available for some airports. For example, the increase in AIP funding to large hub airports can be attributed to their proportionally higher security needs. Larger airports or airports representing over 40% of all passenger enplanements are only 10% of the 429 airports. In the case of the decrease in AIP funding to nonhub airports, FAA Airport Planning and Programming officials said that their security needs were much lower than those of large hub airports, accounting for only $44 million, or 8 percent, of the $561 million awarded in fiscal year 2002. Although larger airports received more funding than nonhub airports, all airports experienced a reduction in long-term projects.[134]

The $504 million increase in funding for security also affected the Letters of Intent (LOI) payment schedules that FAA planned to issue in fiscal year 2002. FAA deferred three LOI payments that were under consideration prior to September 11, 2001, that totaled $28 million, until fiscal year 2003 or later. LOI's are an important source of long-term funding for capacity projects at large airports. These letters represent a nonbinding commitment from FAA to provide multiyear funding to airports beyond the

[133] Airport Council International. State of the Industry Report.
[134] Ibid.

current authorization period. As a result, airports are able to proceed with projects without waiting for future AIP grant funds with the understanding that allowable costs will be reimbursed. These funds are used for runway extensions and taxiway improvements.

FAA Airport Planning and Programming officials believe that reduced funding for capacity projects in fiscal year 2002 will not have dramatic consequences in the immediate future because of the current decline in passenger traffic. However, they stated that if capacity projects continue to be under funded, the congestion and delay problems that plagued the system in 2000 and 2001 could return when the economy recovers. Similarly, FAA officials stated that although a 1-year reduction in AIP funding for reconstruction projects would not have a dramatic impact on runway pavement conditions, a sustained reduction could cause significant deterioration in pavement conditions.[135]

Finally, the effect of increasing AIP grants funds for security projects in fiscal years 2003 and beyond cannot currently be estimated with any certainty. Nonetheless, preliminary indications suggest that the total amount of funding needed for security projects in fiscal years 2003 and beyond could be substantially higher than in fiscal year 2002 and previous years. Most of the uncertainty over how much funding is needed is dependent on pending decisions by Congress in conjunction with DOT, TSA, and FAA regarding how TSA plans to fund the terminal modifications needed to install and deploy explosives detection systems and the extent to which AIP grant funds might be needed to help cover these costs. DOT's Assistant Inspector General Alexis Stafani testified that

[135] Ibid.

capital costs associated with deploying the new explosives detection systems alone could exceed $2.3 billion.

"TSA has requested $6.8 billion for FY 2002 and $4.8 billion for FY 2003. These requirements are against projected revenues from the security fee of $900 million and $1.7 billion, respectively. Clearly, TSA will require a large infusion of cash from the General Fund at a time when the General Fund is already strained to pay for vastly increased fiscal needs throughout the Federal Government. Within this context, the need for TSA to build cost control mechanisms into its infrastructure is critical. Controls are particularly important in terms of defining the scope of its missions, establishing employee compensation and controlling salaries, overseeing contracts, and utilizing space at airports."[136]

Representatives of Airport Council International and the American Association of Airport Executives stated that the costs for modifying terminals and baggage conveyor system to accommodate explosives detection systems could be as high as $7 billion.[137] While the airports are seeing new costs and needs for more government funding associated with the events of September11, so to are other segments of the aviation industry.

An analysis by the Boeing Company (BA) looking into the financial ramifications of a healthy airline industry is being used to put pressure on the government to pay for a new design initiative to completely overhauled air traffic control.[138] According to the analysis, the economic penalty of passenger delays will be about $157 billion over the

[136] Testimony of Department of Transportation Assistant Inspector General for Auditing Alexis Stefani Before the Committee on Transportation and Infrastructure, Subcommittee on Aviation, Progress in Implementing Provisions of the Aviation and Transportation Security Act (July 23, 2002).
[137] Airport Council International. State of the Industry Report.
[138] Boeing Company. State of Industry. October 3, 2002.

next 10 years - even if the modernization programs envisioned by the Federal Aviation Administration (FAA) are completed. Boeing is singing from the same hymnal as the airline industry.

Several chief executives of major carriers have been making the case that the industry will be caught off guard when demand rises – unless the federal government assists the aviation industry in assuming security costs and maintaining the air traffic control system. "We estimated at that time that the industry's losses associated with the tragedy for the shutdown period -- plus the huge expected revenue losses for several weeks thereafter -- would likely exceed $5 billion. While it is airline management's responsibility to deal with economic or competitive factors, the industry's ability to address the current crisis is seriously limited by the staggeringly high costs of well-intended post-9/11 actions by the government related to security. Airlines are not asking Congress to assist with economic or competitive challenges, but we do request that the government relieve the industry of government-imposed security costs stemming from the nation's war on terrorism."[139]

The airlines used the magnitude of the post 911 financial impacts of government policies on the airlines as a political move to stir up opposition to security fees. For example, Delta stated that the new security tax of $2.50 per segment had cost Delta $265 million.[140] The security tax was imposed on airline tickets to help offset the federal cost of security and was intended to be passed on to passengers. But airlines have no current pricing power, simply because their supply of seats so far exceeds passenger demand. In

[139] Testimony of Delta Airline Chief Executive Officer Leo Mullin Before the House Transportation and Infrastructure Committee, Aviation Subcommittee Hearing Regarding the Financial Condition of the Airline Industry (September 24, 2002).
[140] Ibid.

this high-capacity, low-demand environment, airline customers do not have to accept price increases – and they have not. Passenger are shopping on the Internet for the lowest possible price, for example, so airlines by necessity end up absorbing the new security tax. This converts what was intended to be a price add-on to an expense, making it a direct hit to the airlines bottom line. While the security fee has impacted Delta and other airlines so has terrorism insurance.

Terrorism insurance has cost the airlines close to $1 billion.[141] For example, Delta is paying $150 million in terrorism insurance. Terrorism insurance was essentially a throw-in item for the airlines insurance program prior to September 11, costing Delta only $2 million in 2001. Following September 11, premiums rose an incredible 900%, increasing costs by $150 million. In addition to insurance costs, the airlines have accumulated other security costs.

The airlines are assuming costs attributable to unreimbursed security mandates. This category includes the costs to meet new post 911 federal requirements to increase ramp security, maintain checkpoints for document verification, screen catering suppliers and materials, provide airport space occupied by the TSA, add security equipment, and provide security-related training. The Department of Transportation has also chosen to exercise discretionary authority granted to the DOT in the Aviation and Transportation Security Act to impose monthly fees on the airlines as reimbursement for passenger screening costs. The resulting rough estimate for the total post 9/11 security-related impact on the U.S. airline industry would be about $4 billion.[142] Boeing also is

[141] ATA Security Costs Estimates www.airlines.org.
[142] Ibid.

sympathetic to the airline industry's request for additional government financial aid to ward off bankruptcies.

The Boeing study says the infrastructure supporting civil aviation will not meet projected long-term capacity requirements and will become a "serious drag on U.S. economic growth" if major new improvements are not made. While acknowledging a significant drop in traffic following the terrorist attacks, it emphasizes that traffic will return to historic growth rates in the future.

According to John Hayhurst, president of Boeing Air Traffic Management, the study demonstrates the importance of getting a new design initiative started and justifies the use of general revenues to pay for such an initiative. "It is absolutely clear that we must do more to create a system that meets our future air transportation needs," he said. "A fundamental redesign of the current system is necessary to address both future capacity requirements and the new security environment, post-9/11."[143]

Boeing is making the case that the government should provide some type of financial aid to individual carriers as well as fund a new air traffic design initiative. Alan Mulally, president and CEO of Boeing Commercial Airplanes, said the study documents that there is a direct link between the health of the U.S. aviation industry and the U.S. economy. "While the current economic crisis in the airline industry demands attention from our government leaders, so, too, does the longstanding problem of inadequate aviation infrastructure," he said. "Ongoing government efforts to expand the capacity of the nation's aviation system are important contributions that must be fully funded in the years ahead. But they do not go far enough. To fully meet our nation's air transportation requirements in the decades ahead, we need a system with far greater capacity and higher

[143] Boeing Company. State of Industry. October 3, 2002.

levels of safety and security than what we have today."[144] Clearly, Boeing's report points to the need for the federal government to provide additional Post 911 financial help to the aviation industry.

Several members of the House Transportation & Infrastructure Committee are pushing the Department of Transportation (DOT) to hurry up and give airlines almost a half billion dollars they were promised shortly after Sept. 11. This is the amount of money that has not yet been distributed from a $5 billion direct grant fund approved by Congress two weeks after the terrorist attacks. According to the lawmakers, DOT seems more interested in passing rules governing how the money is dispensed than making it available to a deeply troubled industry. The House members who urged the DOT to loosen the purse strings were Rep. Don Young. R-Alaska, Chairman of the Transportation Committee, and Rep. John Mica, R-Fla., Chairman of the Aviation Subcommittee. In a letter to DOT Secretary Norman Mineta, they emphasized that a key component of the airline bailout legislation was a directive to pay $5 billion to U.S. airlines based on a rough estimate of their capacity share.[145]

"This committee needs to learn why the $5 billion has not been fully paid to the carriers, and the extent to which this failure has contributed to the aviation community's continuing financial weakness," the Oct. 9 letter to Mineta said. The DOT says that about $450 million still needs to be distributed. Young and Mica referred to potential legislation to free up the money, but that is not a particularly desirable route. The hope is that Mineta

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[144] Ibid.
[145] Letter from House Transportation Chairman Don Young to Transportation Secretary Norman Mineta (November 2002).

will take care of the problem on his own, which would endorse the Administration's support of a viable airline industry. [146]

Young and Mica are particularly offended that DOT had issued four rules in 2002 setting guidelines for distributing the money - without seeking views from the airline industry or financial and accounting experts. "We understand that DOT would be subject to criticism if it were to pay an airline more than it deserved," the lawmakers said in the letter. "However, we do not fully understand why you could not have paid the money quickly subject to later audits and repayment where necessary."[147] While Young and Mica argue the money could be paid back if necessary, the DOT posed the question of whether the government has a fiduciary responsibility to taxpayers or carriers.

Should one overcompensate someone and give an interest-free loan and not give someone else the money, is a question the DOT is currently pondering. Young and Mica told Mineta that the Air Transportation Safety & System Stabilization Act was designed to get the $5 billion in direct grants into the hands of carriers as "quickly as the checks could be cut" and to review the accuracy of the claims through later audits. The DOT contended that there was no need to rush or set artificial deadlines.[148]

One problem is that about 100 carriers did not give the DOT their final request for money, when requests were due in June 2002. Even if carriers concluded they would not get more money, they are required to file that final request. DOT apparently cannot make the final payments until it has final data from all carriers. The major carriers have

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[146] Norman Mineta. TSA Anniversary Speech. November 18, 2002.
[147] Letter from House Transportation Chairman Don Young to Transportation Secretary Norman Mineta (November 2002).
[148] Ibid.

submitted their requests for money. The problem seems to lie with carriers classified as "other" - air taxis, commuter airlines and air- freight forwarders, for example.

In addition, the process for cutting the checks is slowed by the structure of the legislation. The law asks DOT to look at actual losses suffered from the Sept. 11 terrorist attacks, but it also provides a formula based on available seat miles for the month of August, just prior to the attacks. Determining actual losses can raise questions for the 400 or so airlines that have applied for the direct grants - such as whether a scrapped airplane can be regarded as a loss. According to the DOT, their staff has to go through every application and where there are problems negotiate with the carriers. "The amount of money is the last leverage the government has. If the actual losses are not as much as the formula, the government wants to make sure before it sends out the last money. If you overpay some people, you could not pay other people."[149]

At the end of 2002, the House Transportation Committee did not consider a new airline financial aid bill, if it ever will. In October 2002, the House Aviation Subcommittee passed the measure. It would extend war risk insurance until the end of 2003, reopen a $10 billion loan guarantee fund if war breaks out with Iraq and help airlines carry mail on passenger airlines, among other things. Congress passed some relief for the airlines as part of legislation to create a Department of Homeland Security. Since the airports and the airlines are asking for security funding relief, the question becomes should aviation security be paid out by the users of the system through user fees and taxes or be viewed as a national security issue and be paid for by general revenue funds.

[149] According to House Transportation Committee staff, the Airline Stabilization Act was designed as a last resort for those carriers who needed aid, and was not designed for a select few (personal communication, November 2002).

As was noted in previous Chapters, general revenue funds only represent 30% of the Aviation Trust Funds. This contribution was maintained when many argued that a general fund contribution was needed to address national security uses and purposes that are included in an aviation system, including military use and air space protections. The events of Sept. 11, introduced a new use or purpose when airlines were used as terrorists missiles. When Congress moves to readdress the funding of Aviation programs, the issue of how much of the spending on aviation safety, security and capacity programs should the taxpayer bear will be one of the most important issues. Although it is an open question in aviation, many other transportation sectors have closed the question, specifically port security.

U.S. ports and shipping companies such as Crowley Maritime Corp. and Atlantic Container Line AB have been asked to draft plans to guard against terrorism. Ports, like the airlines and aviation, have been asked to assume or bear new security mandates. Ports must limit access to sensitive areas through employee background checks and identification cards under legislative, the Port and Maritime Security Act of 2001, cleared by Congress in the fall of 2002.[150]

``It requires for the first time ever that the government will do assessments of security at our ports," Sen. Fritz Hollings, D-S.C.[151] The vulnerability of U.S. harbors hasn't been addressed as quickly as at airports after the Sept. 11 attacks. The U.S. Customs Service inspects about 40,000 of the 11 million containers that arrive in the U.S. each year, including 6 million at the 361 seaports. The Coast Guard has increased patrols at ports to guard against terrorist attacks.

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[150] The Port and Maritime Security Act of 2001 amends the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes.
[151] Congressional Record, Sen. Fritz Hollings Speech (November 14, 2002) p. S10993.

In order to address the security concerns of the U.S. ports, the House and Senate lawmakers crafted a bill that would provide funding to improve port security. The bill was only approved after Hollings dropped his demand that fees for port users be set up to cover the cost of security. Congress basically decided that unlike aviation, the users of the nation's ports would not pay the cost of security. A debate on financing the cost, previously estimated at $700 million a year, was put off until 2003. Even though Congress provided general funding for port security, it appears that Congress has acknowledged that the funding requirement for aviation security is too much for the general fund to bear.

It has become apparent that the price of good security is substantial. TSA has requested $6.8 billion for fiscal year (FY) 2002 and $4.8 billion for FY 2003. TSA anticipates that in FY 2003 the agency's workforce will have grown to about 67,000.[152] However, revenues from the new passenger security fee will pay for only a fraction of these costs. Current estimates are that the fee will generate about $900 million this year, and $1.7 billion next year. It is evident the TSA will require a large infusion of cash from the general Fund at a time when the general fund is already strained to pay for vastly increased fiscal needs throughout the federal government.

The overriding goal for TSA will be to provide tight and effective security in a manner that avoids waste and ensures cost-effective use of taxpayer dollars. TSA faces significant challenges in overseeing the large number and dollar volume of new contracts it is allowing. Contracts associated with deploying a new Federal screener workforce and screening all checked baggage total over $2 billion, including all contract options; while

[152] Testimony of Stephen J. McHale Deputy Under Secretary for Management and Policy Before the House Transportation and Infrastructure Committee Subcommittee on Aviation on Hearing on Airport Security (September 17, 2002).

contracts with the current screening companies are expected to cost about $1.6 billion.[153] Because the TSA is new, it does not have an established infrastructure that provides an effective span of control to monitor contractor costs and performance. Although President Bush's creation of a Department of Homeland Security—which includes the TSA—would provide some span of control over security costs for the TSA, it may not be enough.

President Bush's creation of a Department of Homeland Security could have significant implications for TSA—particularly in overlapping functions, such as intelligence gathering and analysis, criminal investigations, administrative support, and space requirements at airports. For example, under the Department of Homeland Security, TSA would be merged with Customs Service and the Immigration and Naturalization Service, which already have a combined criminal investigative workforce of approximately 5,000.

The Department of Homeland Security will also include an Under Secretary for Information Analysis and Infrastructure Protection whose responsibilities will include receiving and analyzing law enforcement information and intelligence. It may be premature for TSA to expend resources now to expand an intelligence function beyond the existing staff of the Department and Coast Guard when that function could be merged into the new Department of Homeland Security. All of these considerations could increase or veil an already uncertainty funding process for aviation security.

The TSA is looking for ways to pay for equipment, construction and research needs even as the agency met its last big hurdle—the December 31, 2002 deadline for baggage screening. "Several pools could pay for permanent systems, which DOT

[153] Ibid.

estimates will run to about $2 billion, said DOT Deputy Secretary Michael Jackson, including Airport Improvement Program (AIP) funds, for which airport security is an "eligible expense." AIP funds were tapped last year for a similar purpose, Jackson noted at an airport security conference in Washington. While DOT doesn't want AIP to "bear the brunt…over the long haul," Jackson said DOT would not be "bashful" in approving TSA's use of AIP funds for construction and reconfiguration."[154]The TSA has acknowledged that funding sources need to be rethought. There seems to be agreement, at least among Congress and the Administration, that airports, the airlines and the federal government will bear the blunt of the TSA's costs, which may set the stage for more questions regarding the appropriate funding of aviation projects.

[154] Aviation Daily, TSA Looks to AIP, PFC Funding, Local Law Enforcement Pacts (p. 3). Washington, D.C.: McGraw Hill.

CHAPTER III: METHODOLOGY

This investigation will employ two different qualitative methodologies, primarily the case study and participant observation to analyze a series of budget decisions in which Congress used special purpose trust funds for other purposes. The study examines the public policy decisions of the Aviation Trust Funds from 1998-2000. The study also describes interest group policy activity and pressures and congressional decision making from 1998-2000.

The case study technique is used because it is designed to bring out the details of an investigation from the viewpoint of the participants. Most important, the case study technique is valuable in doing causal investigation, which in this case is determining why Congress uses special purpose trust funds for other purposes. The execution of the case study technique was based on the field method of participant observations.

Participant observation provided a realistic review of the case, including insightful causal inferences and insight into the interpersonal behavior between the various actors in the case. The weakness of this approach was the selectivity of facts; some facts may have been missed due to incomplete recollection of the investigator and the actors in the case. Most important, participant observation may have introduced some biases due to the investigator's role in the case. Once the data was collected from the participant observation, then a recommended procedure was determined to analyze the case study evidence.

Explanation building was used to analyze the case study evidence. The data illustrated a clear rational or explanation of why Congress uses special purpose trust funds for other purposes. The dissertation examined individuals who participated in the

Aviation Trust Fund debate from 1998-2000. The examination was conducted from 1998-2000. The examinations included four of the most influential interest groups, from the Air Transport Association, American Automobile Association, American Association of Port Authorities, and the Association of American Railroads, who participated in congressional hearings and policy meetings. Three questions were designed specifically for the study. The questions developed are based upon the research questions included in the dissertation. The questions focus on three areas: Political Preference, which will include examining the Department of Transportation, Federal Aviation Administration, Amtrak and Coast Guard policy preferences from 1998-2000; what were the Political Pressures applied on Congress, which included examining the four interest groups lobbying activities from 1998-2000 and their impact on policy preferences; finally, how were Political Decisions Made, this required the Congress, the Department of Transportation, Federal Aviation Administration, Amtrak and Coast Guard and the Air Transport Association, the American Automobile Association, American Association of Port Authorities and the Association of American Railroads political decision making impacts from 1998-2000.

Individuals who represented interest groups during the Aviation Trust Fund debate provided the primary sources on the interest groups' tactics and activities, and the political environment and the mood of the Congress. These three areas were essential for understanding the dynamics of the Aviation Trust Fund debate. In contrast the interest group activities are more important in understanding congressional decision-making.

The examinations included input from staffers of the House and Senate Transportation Committee members. These staff members provided insight into congressional decision-making. Congressmen, Senators and staffers were interviewed to discern their view on a number of issues. In most cases staff members were more responsive to the researcher's questions and able to remember information regarding negotiations that led to the Aviation Trust Fund compromise. All examinations included looking at member policy statements, press releases and testimony.

These examinations provided pattern matches or an actual comparison between the predicted and actual patterns. The pattern matches did not have any quantitative criteria; meaning quantitative content analysis was not used to code patterns. Content analysis was not used because the classification procedures would not produce reliable data. The heterogeneous nature of the variables within the patterns would make it difficult to determine units of measurement. For example, it would be difficult to compare the voting patterns of members on various legislative votes because each bill contained a different sort of issues and elements. A member's Yea vote for bill A may not mean the same as a member's No vote for bill B. Each bill that was voted on had its own set of issues and circumstances. The heterogeneous nature of the variables required more descriptive details rather than in depth quantitative analysis.

Instead, the discretion of the researcher was used to determine whether there were pattern matches between actual and predicted patterns. In this case, the predicted pattern was the presumption that interest groups pressures applied on Congress caused Congress to use special purpose trust funds for other purposes. The actual pattern illustrated that interest group pressure was one contributing factor in Congress' decision to use special purpose trust funds for other purposes. Alternative analytic techniques of analysis were used including creating displays and ordering information. Ordering information and creating displays created a descriptive framework around which the case study was organized. The strengths of the examinations are the candid and primary responses that may point to various unobservable facts. The weakness in this approach is the availability of written statements or policies.

The second research technique in the dissertation is the participant observation method, which is used to examine interest group policy statements and memos from 1998-2000. This is necessary in order to determine interest group tactics and strategies, and most importantly, to create displays and ordering patterns. Staff notes, legislative memos and policy letters were obtained while the researcher was Director of Information & Legislative Services for the National Business Travel Association. These documents indicated the frequency of interest group pressures on Congress, including coalition meetings, congressional hearings and grassroots campaigns. More importantly, the observations provided a sense of how congressional leaders viewed the policy debate. These documents were useful in determining the type of tactics used by interest groups and they judged their successes and failures. From this data, assertions are made about congressmen's positions or the interest groups' policy preferences. The strengths of these examinations help to capture the actual positions of the interest groups.

Data Collection

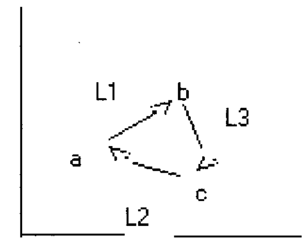
The first phase in data collection involved cataloguing the actors within the policy debate being considered, which included selected congressmen, interest group leaders, congressional staff, White House staff, Department of Transportation officials, Federal Aviation Administration officials, and other transportation public administrators. The intent is to ensure that those who had significant positions in the policy debate are captured.

The second phase included the actual collecting of data on House and Senate speeches, testimony and votes on the Aviation Trust Fund issue from 1998-2000. The data collection of testimony and votes will serve as a starting point for examination of the key players in the debate, and should provide the positions of interest groups as well as key House and Senate members. The data will be used to establish multiple policy preferences.

The policy preferences are used to create utility diagrams for the House Transportation, Appropriations and Budget committees and Senate Commerce, Appropriations and Budget committees; the full House and Senate and interest groups. Each diagram will contain the members and group's position along with the alternative policy preferences. The final policy preference approved by Congress served as a benchmark to measure each member's position vs. the final outcome vs. the alternative policy preference. The study will then attempt to determine whether the member's position vs. the alternative policy preference impacted congressional decision-making. This dynamic would validate the chaos theory, which proposes that when Congress is unable to find a majority of legislators who are able to choose a definite preference, Congress will seek an alternative that would accommodate all parties.

Utility Diagrams for the Aviation Trust Fund

The research describes House and Senate votes and member speeches and testimony from 1998-2000 in order to determine member policy preferences regarding the use of Aviation Trust Funds. Utility diagram is presented in the study to conceptualize the policy preference dimensions vs. the legislator's preference in order to create utility diagrams. The utility diagram describes the theory that has the greatest good and the largest number of choices of actions. The investigation describes interest group activity and pressures from 1998-2000, which created multi-policy preference dimensions close to the legislators' preferences. As a consequence, it influenced Congress to authorize and appropriate funds in the Aviation Trust Fund that would protect the funds while supplying money to other competing interests.



Start a: L1 and L3 vote for b, L2 and L3 vote for c, and L1 and L2 vote for a

Figure 7 An Illustration of the Chaos Theorem

As illustrated above, the member's preference appears on the far right of the x-axis because it places itself at the highest degree of utility for the member. The far left would represent the lowest degree of utility for the member. The member's preference along the y-axis represents the member's ceiling or preferred congressional decision based on the member's preference. The next level on the y-axis represents equilibrium or the compromise preference. The next level on the y-axis represents the floor or the member's unfavorable congressional decision. The member utility impact arrows represent the direction of decision making with regard to finding a position that best satisfies the member's current preference.

The Chaos Theory

The dissertation will seek to outline three policy preferences A=Protecting Aviation Trust Funds, B=Protecting but with Exceptions, and C=Remain Same. The dissertation will determine which preference is preferred. For example, a member who would be for protecting the Aviation Trust Funds would have a preference resembling sign A>B>C. A member who would be for protections with exceptions would resemble sign A<B>C. A member who would be for everything remaining the same would resemble sign C>B>A. The dissertation will determine the preference sign for every member. The strength of this approach is the ability to acquire actual votes and testimony from the Congressional Record and Committee Testimony Transcripts. The weakness of this approach will be in determining how to quantify members' policy preferences based on speeches and testimony. Since their preferences are abstract, a diagram will be drawn to conceptualize the member's preferences.

Figure 8 illustrates the policy preference dimensions vs. the legislators' preference signs in order to create a utility diagram along an X and Y-axis. The utility diagram should illustrate how close a member's preference is to policy preference dimensions. If it is determined that the member's policy preference are close to each policy preference alternative, in turn creating the chaos theorem, then a compromise policy would be the only result that would ensure passage of the bill. The strength of this approach is creating a visual diagram along an X and Y-axis, which shows where members' preference lie vs. interest group preferences. The weakness of this approach is due to voting rules instituted by Congress, which limits the number of votes taken and hence do not allow for all preferences to be voted on. Congressional rules could artificially limit the number of preferences a member has, making it difficult for members to actually find the preference they prefer. Nevertheless, the dissertation will describe whether interest group activity and pressures created multi-policy preference dimensions close to the legislators' preferences, which in turn forced Congress to authorize and appropriate funds in the Aviation Trust Fund that would protect the Aviation Trust Fund while supplying funds to other competing interests.

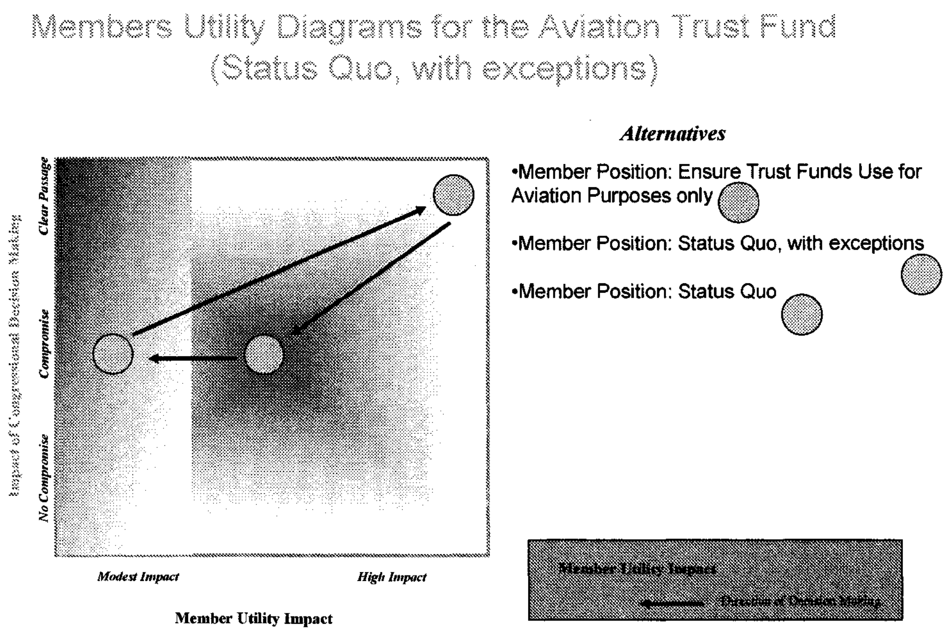


Figure 8 Status Quo with exceptions

In order to find a solution with the most utility, the member's position begins from the far right connects with preferences that favor of protections for the trust funds; however, these preferences represent only half of what the member prefers, so he moves to the next preference. The next preference also represents only half of what the member prefers, and the member is back to his original position.

In this scenario, the member's decision-making process connects each preference. Under this scenario, a compromise position that includes all preferences would be more favorable to the member.

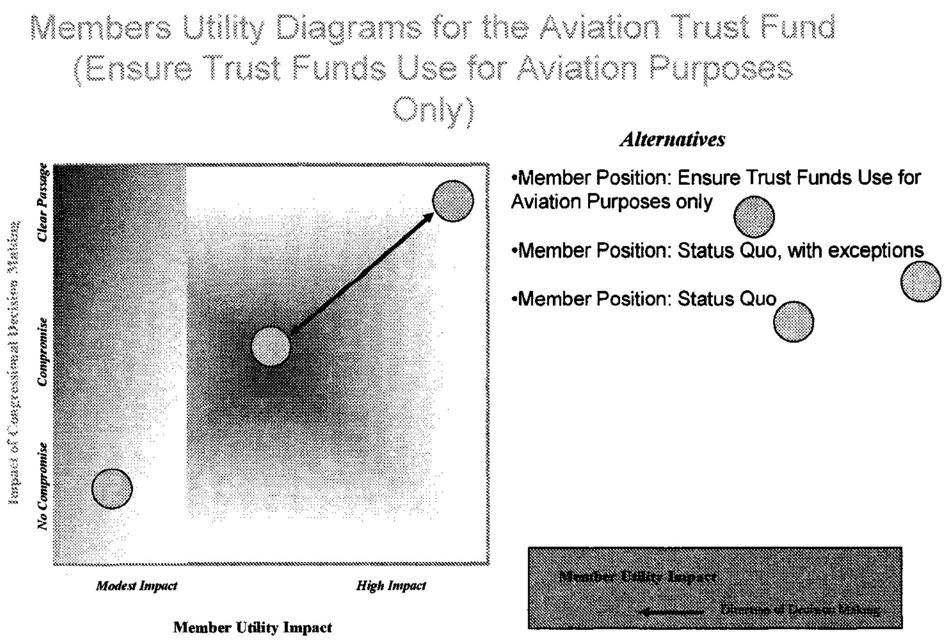


Figure 9 Ensure Trust Fund Use for Aviation Purposes Only

In order to find a solution with the most utility, the member's position begins from the far right connects with preferences that favor the status quo with exceptions because it includes the member's preferred outcome. However, its decision-making ends there because the other alternative outcome, status quo, does not include the member's preferred position.

In this scenario, the member's decision-making process connects only two preferences. Under this scenario, a compromise position is impossible because the member's preference demands are ensuring trust funds use for Aviation purposes only.

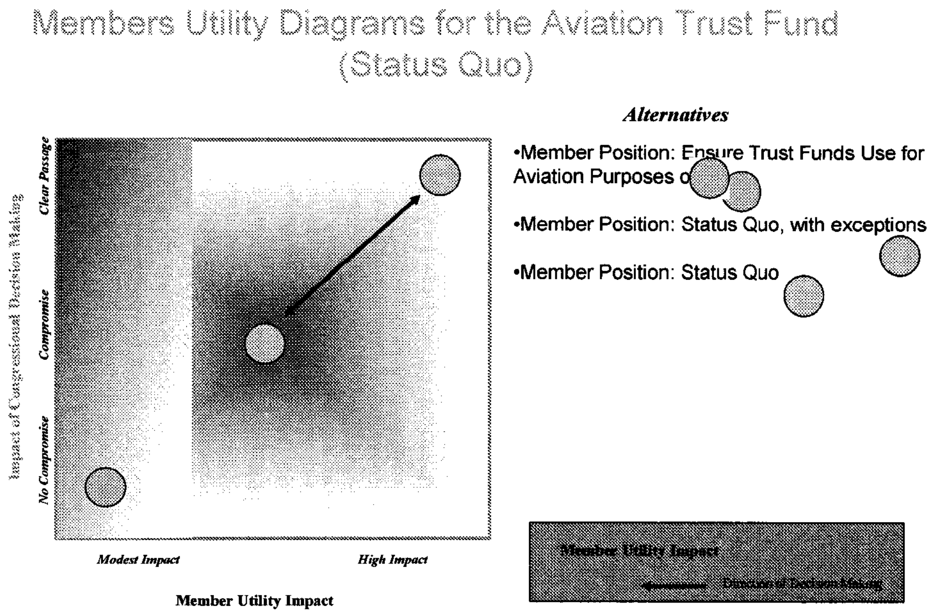


Figure 10 Status Quo

In order to find a solution with the most utility, the member's position begins from the far right connects with preferences that favor the status quo with exceptions because it includes the members preferred outcome. However, its decision-making ends there because the other alternative outcome, ensuring trust funds use for Aviation purposes only, does not include the member's preferred position.

In this scenario, the member's decision-making process connects only two preferences. Under this scenario, a compromise position is impossible because the member's preference demands are maintaining the status quo.

CHAPTER IV: PUBLIC POLICY FORMULATION OF THE AVIATION TRUST FUNDS FROM 1998-2000

Public Policy Revelations

In examining the formulation of legislation to provide special treatment to the Aviation Trust Funds, several questions were raised. These answers to these questions revealed much about how Congress manages special purpose trust funds and ways in which they seek to craft legislation that will build a strong consensus.

From 1998-2000, Congress sought to address the issue of how to best finance aviation under the current budgetary accounts and policies. In 1998, the dispute over how to fund the aviation trust fund was engulfed in a battle over how to infuse competition in the aviation market, including approving Department of Transportation Competition Guidelines, providing new service to smaller communities and increasing flights at the slot controlled airports. In 1999, the most substantive work went into creating a compromise bill that would ensure aviation trust funds were used for aviation purposes only. House Transportation Committee Chair Shuster's game plan appeared to have two parts. First, he was trying to satisfy aviation industry groups to name a few, that wanted Congress to act before a six-month extension of FAA airport improvement grants expired March 31, 1999. The extension was tossed into the omnibus budget law at the end of 1998, after McCain held up a full-year reauthorization by insisting that it include airline competition provisions that some House members opposed. Shuster would try to delay bargaining over McCain's competition provisions until he moved a broader bill later in the year that could incorporate the off-budget proposal for the trust fund, competition measures and possibly a multi-year FAA reauthorization. And finally, in 2000, Congress and the Administration were able to codify a compromise that not only provided protections for the aviation trust funds, but increases funding for aviation programs.

1998: Launching Negotiations: Competition Takes Front Seat, while Trust Fund Issue Builds

This discussion traces how, in 1998, Congress developed legislation to provide special treatment for the Aviation Trust Funds. An account of the methods used by negotiators and interest groups will illustrate how these first steps in the process of cooperation—steps toward negotiation—are taken.

In the following sections, the dissertation attempts to illustrate how types of negotiations—information exchange, incorporation, heuristic trial and error, and mediator trial and error—were replicated in the policymaking process. Information exchange is defined as gathering data regarding the preferences of the parties and alternative solutions to the problem. Incorporation is adding to one's proposal or search model some element of a proposal made previously by the other party. Heuristic trial and error is an effort by the parties themselves to develop new alternatives and to propose them to other parties without regard to how they will be received. Mediator trail and error is the active intervention of a mediator to do the same. The point here is to illustrate that, just as in a labor dispute or international negotiation, several types of integrative solutions were devised in the movement toward finding a consensus on providing special treatment of the Aviation Trust Funds.

Efforts to pass freestanding legislation reauthorizing FAA programs fell apart late in 1997 because House and Senate negotiators were unable to agree upon provision to eliminate flight restrictions at several airports. Consequently, provision were included in the omnibus appropriations law (HR4328)[155] to fund FAA airport improvements grants for the first 6 months of fiscal 1999, which would force Congress to revisit the issue in 1998.

The most intractable disputes centered on the length of the authorization and on efforts by Sen. McCain to loosen Reagan National Airport "perimeter" rule—which limits flights to 1,250 miles—and to increase the number of landing takeoff "slots" at National, O'Hare, JFK and LaGuardia airports. While Sen. McCain led the competition charge, competition issues were first debated in the House.

On June 25, 1998, The House Transportation and Infrastructure Committee approve a three-month delay in adopting proposed federal guidelines aimed at returning competition at regional hub airports.[156] A bipartisan compromise brokered by Chairman Bud Shuster marked a setback for major airlines. They had tried to kill or block the proposed guidelines that would make it harder for big airlines to cut their prices and keep smaller rivals from launching new routes to regional airports such as Pittsburgh or St. Louis.

The House Transportation Committee also approved by voice vote a one-year fiscal 1999 reauthorization bill (HR4057)[157] to provide $2.3 billion for the airport improvement program and $5.6 billion for FAA operations. Shuster said the one-year reauthorization bill was part of his plan to push in 1999 for legislation to require that all money in the Aviation Trust Fund be used on transportation projects. Although the bill

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[155] The Omnibus Appropriations law provided appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1999.

[156] The Airline Service Improvement Act of 1998 sought to provide assistance and slots with respect to air carrier service between high-density airports and airports not receiving sufficient air service.

[157] Wendell H. Ford National Air Transportation System Improvement Act of 1998 amends the Federal Aviation Act of 1958 to authorize appropriations for FY 1999 and 2000 for Federal Aviation Administration (FAA) operations.

address funding issues, the make or break issue that would dominate the funding bill was improving aviation competition.

The panel approved an amendment to the airlines service improvement bill that would provide for three months of congressional review of the guidelines, delaying the adoption until early 1999.[158] In another jab at big airlines, the amendment called for the Transportation Department to review joint business ventures by major airlines the sharing of passenger reservation information, aircraft leasing and frequent-flier programs. The bill would provide grants to support increased air service to small communities encourage competition by permitting exemptions to airline slot limits that restrict the number of flights at New York's Kennedy and LaGuardia Airports, Chicago's O'Hare Airport and Reagan National Airport. "It's a big win for us because it does not substantially delay our ability to come forth with guidelines," said William Schultz, a spokesman for the Transportation Department.[159]

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[158] Title IV of the Air Service Bill: Air Carrier Competition - Requires each major air carrier participating in a joint venture agreement, at least 30 days before the agreement may take effect, to submit to the Secretary a complete copy of such agreement and all related agreements, information, or documentation the Secretary may require. Authorizes the Secretary to extend such waiting period: (1) for an additional 150 days, in the case of a code-sharing agreement; and (2) for an additional 60 days, in the case of any other agreement. Directs the Secretary to consult with the Assistant Attorney General of the Antitrust Division of the Department of Justice in order to establish, through a written memorandum of understanding, preclearance procedures to prevent unnecessary duplication of effort by such parties under this title and the antitrust laws. Provides for the treatment of prior agreements and related waiting periods.

Directs the National Research Council of the National Academy of Sciences to complete a comprehensive update of the 1991 study of airline deregulation prepared by the Transportation Research Board of the Council. Requires a report: (1) from the Council to the Secretary and the Congress concerning the update; (2) from the Secretary to the Congress responding to Council findings and recommendations; and (3) from the Secretary to the Congress on a study of complaints received by the Secretary concerning acts of unfair competition or predatory pricing in the airline industry. Provides conditions and limitations on the issuance by the Secretary of final airline industry regulatory guidelines concerning such practices. Prohibits such guidelines from taking effect until 12 weeks after they are submitted to the Congress.

[159] According to William Schultz, Public Affairs person for the DOT, the DOT did not want any more delays of their proposal (Personal communication, June 1998).

Major airlines refused to concede defeat, saying they would press forward to kill guidelines and expressing confidence that studies would support their view that guidelines would be unfair. "We think once Congress assess what the guidelines will do, it will kill the guidelines," said David A. Fuscus, a spokesman for the Air Transport Association of America. "We don't think Congress will put up with these re-regulation efforts."[160]

A compromise emerged after long negotiations, more than two months after the DOT unveiled the proposed guidelines April 6. Transportation Secretary Rodney Slater sat in on one key meeting involving Shuster and James Oberstar, the committee-ranking member. And the administration put its stamp of approval on the deal before it was made public. The bill would require a study of airline competition by the DOT and separate a six-month study by the National Research Council of the National Academy of Science. The pending agreement would require the DOT to review airlines alliances, which stop short of business mergers but involve sharing of passenger reservation information to coordinate connection of flights and provide cooperation in other activities such as mileage awards for frequent fliers.

The deal emerged after heavy lobbying and an advertising blitz by the major airlines opposing the guidelines.[161] The lobbying came to a head on June 11 when top airline executives met with House Speaker Newt Gingrich and Shuster and other Republican leaders. The meeting was attended by executives of America, United, Delta,

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[160] According to David Fuscus, Government Affairs person for the ATA, the ATA believed the guidelines were clear attempts to re-regulate the airlines (Personal communication, 1999).
[161] Air Transport Association Press Release, Air Transport Association Response to DOT Airline Competition Policy Statement (April 4, 1998).

Northwest, Continental, and Alaska airlines, and by Carol Hallett, the president and CEO of the Air Transport Association. The airline officials said they opposed the guidelines.

The big airlines wanted to kill the guidelines outright, but they threw their support behind the proposals to require studies of airline competition, which would delay the guidelines and allow them more time to mount opposition. "We had to recognize political realities," said one airline industry official.[162] With lobbying from airlines and differing views among industry experts and scholars about the effectiveness of the proposed guidelines, lawmakers could have justified derailing the guidelines.

But they were under pressure from rural constituents in Kansas, Oklahoma and Iowa to take action against big airlines. Small airports had seen a decline in service. Business travelers, angered by rising prices for business-class and unrestricted fares, also demanded action.[163] In the key June 11 summit with top industry executives, Shuster said that Gingrich did not buckle to the airlines in the meeting and elected not to intervene in their behalf. "The Speaker really took a strong stand in favor of competition," said Shuster.[164]

The battle over the guidelines now moved to the House floor and to the Senate, where more skirmishes were expected. The aviation industry is deeply divided on the proposed competition guidelines, which would rein in major airlines and help smaller, lower-cost rivals pick up business. Big airlines said the guidelines would create a double standard by allowing small airlines to offer low fares when entering a market but

[162] According to an ATA lobbyist, the airlines did not want the public to believe the airlines were attempting to derail consumer protections, so they went along with the guidelines in hopes of delaying them behind the scenes (Personal communication, 1998).
[163] NBTA surveys revealed that over 60% of corporate travel managers believed the DOT should address several competition issues that existed within the aviation industry, including the growth in business fares.
[164] According to Newt Gingrich, his goal was to let the airlines know he was unwavering in ensuring that competition would prevail (Personal communication, November 2001).

preventing big airlines from matching them. While several lawmakers praised the deal made by Shuster's committee, many of them stopped short of embracing the guidelines.

The guidelines were issued on April 6. They were criticized in the Senate and House as hard to enforce. In the Senate, several committees held hearings on airline competition. "I think it's good they are looking guidelines. But I don't think they got it right on the first try," said Republican Slade Gorton of Washington, chairman of the Senate Commerce Subcommittee on Aviation.[165]

Gorton and other legislators said the guidelines would be hard to interpret and to enforce, requiring several tests to determine whether price wars between big airlines and new competitors at regional hubs involve unfair competition. One proposed guideline would prohibit big airlines from cutting fares sharply and increasing seat capacity only if these actions would reduce local revenues.

Alfred Kahn, a retired Cornell University economics professor who oversaw airline deregulation in the 1970s as chairman of the Civil Aeronautics Board, charged that further delay would result in more closures by small, lower-cost airlines that are trying to challenge major airlines at regional hubs. "It's outrageous to wait," Kahn said of the proposed study approved by the House committee. "It's disgraceful. The lawmakers will postpone this until all these smaller airlines are dead."[166]

Against the litany of complaints from business lobby groups, rural towns and consumer groups, major airlines had formed a united front against the guidelines. The big airlines had an extensive lobbying operation in Washington, and they pledged to continue

[165] Congressional Record, Gorton Speech (July 28, 1998) p. S8900.
[166] According to Alfred Kahn, former head of the Civil Aviation Board, he was very disappointed that airline deregulation had not provided the benefits he had envisioned when Congress deregulated the airline industry (Personal communication, June 1998).

the campaign to educate the public about airline competition and to fight the guidelines, which they portrayed as an attempt by the Clinton administration to "re-regulate" the airline industry.

A study by the Center for Responsive Politics, which monitors campaign contributions, found that the airline industry had contributed about $2 million to candidates and party committees in the 1997-98-election cycle, with 60 percent going to Republicans.[167] The industry gave $427,623 to Senate candidates and $574,262 to House candidates. In addition, the industry donated $1.1 million to party committees, with Republicans receiving about 70 percent. While the administration had pushed for adoption of guidelines on anti-competitive practices, key legislators had been asking for modifications to make the guidelines easier to enforce. Although the DOT's competition guidelines received the most attention in Congress during this period, Sen. McCain did not allow his "slot" issues to go unnoticed.

On July 9, the Senate Commerce Committee opened a new fight over Reagan Washington National Airport by approving a bill that would erase a distance limit on direct flights to airports in the fast-growing Western states—allowing many members to fly home more easily. The panel approved by voice votes a four-year $42.4 billion reauthorization for the FAA containing the Reagan airport provision. The bill was subject to amendments and was set for approval the week of July 13.[168] The approval did not come without a fight.

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[167] Center for Responsive Politics, http://www.opensecrets.org/industries/index.asp

[168] Wendell H. Ford National Air Transportation System Improvement Act of 1998 amended the Federal Aviation Act of 1958 to authorize appropriations for FY 1999 and 2000 for Federal Aviation Administration (FAA) operations and directs the Secretary, subject to specified conditions, to grant exemptions from the prohibitions against the operation of aircraft nonstop between Ronald Reagan Washington National Airport and another airport more than 1,250 miles away (perimeter rule), and against the increase or decrease by the Administrator in the number of takeoffs and landings (the High Density

Commerce Chairman John McCain, R-Ariz., won a battle in defeating by an 8-11 committee voting a proposal to raise the current cap, from $3 to $4, on charges that airports assess on travelers. McCain also predicted he could defeat a draft amendment by Wendell Ford, D-Ky., to shrink the reauthorization to one year.[169] National Business Travel Association, the Air Transport Association and others opposed a shorter period that would match a bill (HR2748)[170] backed by House Transportation Committee Chairman Bud Shuster, R-Pa., who planed to seek increased expenditures from the Aviation Trust Fund in 1999.

The panel approved the bill with little dissent, but McCain faced opposition in the Washington area to his proposal, which would allow flights beyond a 1,250-mile radius from the Reagan National Airport. The bill would permit 24 exemptions to daily flight limits at the airport, including 12 for flights beyond 1,250 miles. In 1998, there were 550 flights a day. The bill also would permit conversion of 100 unused military flight slots to commercial air carriers over three years at O'Hare International Airport in Chicago.

Local officials in Maryland and Virginia, including Sen. Charles Robb, D-Va., and others opposed action by Congress to lengthen flights at Reagan National Airport, saying lawmakers had already pre-empted local decision-making by passing a law to rename the airport for former President Ronald Reagan. Sen. Robb and others were concerned about the additional noise pollution that might be added to their districts

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Rule), to any air carrier that operates limited frequencies and aircraft on select routes between National Airport and domestic hub airports.

169 According to Sen. Wendell Ford's staff, the senator and many of his colleagues were concerned that the budget hawks might come after a long-term bill and thought a shorter term bill could keep the hawks off of their backs (Personal communication, July 1998).

170 Airline Improvement Act of 1997 would provide assistance and slots with respect to air carrier service between high-density airports and airports not receiving sufficient air service, to improve jet aircraft service to underserved markets, and for other purposes.

communities by additional flights into Reagan airport.[171] Critics charged that McCain was trying to help legislators save time on their commutes home by offering more direct flights. McCain vowed not to take any direct flight to Phoenix from the airport "if there ever is one."[172]

He said he was trying to increase airline competition and denied that his proposal was intended to benefit Arizona-based American West Airlines, which hopes to offer direct flights to Phoenix. McCain collected $78,115 from political action committees and employees of the air transport industry between 1991 and 1996, according to the Center for Responsive Politics; American West accounted for $4,900.[173] John Timmons, a lobbyist for American West, said the distance limit is a "considerable disadvantage." "We are the only major carrier that does not have direct access from our principal hub to Washington National," Timmons said.[174]

McCain said his proposal was likely to face opposition in the House, where members from the Washington suburbs urged colleagues to defeat any bill affecting operations at the airport. McCain moved to build support for the overall bill, which he said is meant to provide stable funding for federal regulators and promote airline competition. He supported the proposed Transportation Department guidelines meant to nurture competition at regional hub airports. He said he opposes a provision in the House bill calling for congressional review and a three-month delay in implementing the guidelines. Unfortunately for groups who wanted to see Congress address the aviation

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[171] Congressional Record (September 24, 1998) p. S10889.
[172] Ibid.
[173] Center for Responsive Politics, http://www.opensecrets.org/industries/index.asp
[174] According John Timmons, American West's goal was to use McCain's influence to capture flights from Washington D.C. to his hub in Phoenix.

trust funds, competition issues were taking the front seat. The bill did address some funding issues.

The proposed bill would provide \$23.5 billion for the FAA, \$8.9 billion for facilities and equipment and \$10 billion for air service. Senate Majority Leader Trent Lott, R-Miss., backed a narrow bill on airport changes but did not think the Senate will get involved in the matter of competition at hubs.

On July 14, 1998, a proposed bill designed to spur consumer choice and competition, took flight from the Senate Commerce Committee with a controversial provision to increase the number of commercial flights at four of the nation's busiest airports. The bill (S2279), approved by voice vote, would set broad national policy for commercial aviation and airport construction for four years, as well as provide \$23.5 billion in funding for the FAA and \$18.9 billion for airport construction over four years. The fate of the bill depended on resolving controversies over adding flights at four crowded airports in New York, Chicago and Washington. The prospects of the bill improved on July 16, 1998 when Senate negotiators agreed to slash the number of potential new flights at O'Hare International Airport, from 100 flights daily to 30.

Local officials in each city—Chicago, New York and D.C.—were adamantly opposed to extra flights because of the noise and congestion they would bring. Critics also worried about the safety of adding flights to jammed airspace. Supporters, including Sen. McCain stressed that greater capacity is the way to inject competition into the airline industry, which was consolidating and may become dominated by a handful of major carriers that could drive prices up. The push for more flights came primarily from

McCain, who said he thought adding competition would force fares down and add flights to underserved cities, including several in his home state of Arizona.

Another factor in cutting down the increased number of flights was the House version (HR2748) calling for 29 additional flights at Chicago's O'Hare, where there are 2,400 flights a day. The last minute change brought the Senate bill nearly in line with the House version. The issue was important to Sen. Carol Mosely-Braun, D-Ill., who was in a tough re-election race.[175] Over 400,000 people who lived near O'Hare would have hailed the reductions in extra flights, but it could anger residents in smaller underserved cities, like Springfield, who had been pushing for improved local service. In addition to the 30 flights at O'Hare, the Senate legislation would also open 24 at Reagan Washington National Airport and an unspecified number at New York's Kennedy and LaGuardia airports. Senators Mosely-Braun and Richard Durbin, D-Ill., also secured better service to smaller cities under the agreement. At least 18 of the 30 daily flights from O-Hare must fly into underserved areas.

On August 4, 1998, the House passed, by voice vote, a one-year FAA reauthorization bill, setting the stage for a confrontation with the Senate over aviation funding and airline competition. The bill provided $5.6 billion for the airport improvement program and generated little debate on the floor. But the battle lines formed behind the scenes over the one-year scope of the House bill, compared with the four-year Senate version (S2279), which was expected on the Senate floor in September.

Chairman Shuster limited the House reauthorization bill to one year in order to mount a campaign in 1999 to revamp aviation spending. "Approximately $10 billion is being paid into the Aviation Trust Fund each year, yet we are spending only about $5.6

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[175] Congressional Record (September 24, 1998) p. S10904.

billion of that," Shuster said.[176] Sen. McCain opposed Shuster's campaign. He backed a four-year reauthorization of aviation programs. Another battle was brewing over provisions on airline competition in the Senate reauthorization bill and in a separate House bill (HR2748) to improve service.

While lawmakers raced to complete work before the August 1998 recess, a feud broke out over proposals in the Senate reauthorization bill and in HR2748 to increase flights at four big-city airports. The battle divided state delegations, with members from rural areas and small towns supporting new flights to major cities and those from communities near big airports opposed to increased air traffic and noise. During this time, aviation trust fund coalitions and proponents stayed out of the turf wars because it involved members and their constituencies.

In the Senate, McCain quietly reached a compromise with Illinois Democrats Carol Mosely-Braun and Richard Durbin to reduce a proposed increase of flights a day at O'Hare to 30 flights. But that deal still faced attack by House Judiciary Committee Chairman Henry Hyde, R-Ill. Hyde also opposed a similar proposal for 29 new flights at O'Hare in HR2748. He blocked that bill with a July 16, 1998 letter to Speaker Newt Gingrich, R-Ga., asking for it to be referred to his Judiciary Committee because several antitrust-related provisions fell under his panel's purview including predatory pricing and airport capacity in the Chicago area.[177]

For example, one provision would require the Justice Department's antitrust division to sign off on Transportation review of pending airline mergers. Hyde told Gingrich he was "very concerned that the practical effect of this provision may be to limit

[176] Congressional Record (August 8, 1998) p. H7033.
[177] Statement of Henry Hyde Before the Committee on the Judiciary at the Oversight Hearing on the State of the Airline Industry (May 19, 1998).

the vigorous enforcement of the antitrust laws in this industry." Hyde said his panel should have jurisdiction over the proposed flight increases because they would change the "current rules of competition."[178]

Hyde staunchly opposed any increase in flights that pass near the west and northwest of Chicago suburbs in his district. A deal was expected to either kill increased traffic at O'Hare or remove an anti-trust-related provision, which would be added later as floor amendments or in conference committee.

But making a deal with Hyde on O'Hare could unravel changes at other airports. Fourteen House members, including Hyde, wrote a letter to Majority Leader Dick Armey, R-Texas, opposing increased traffic at "four of the most congested airports in the country" and demanding a floor vote on HR2748. They said Congress would stay out of local decisions on airport growth. While the House was addressing the competition issue, McCain was facing an assault in the Senate.

McCain faced a barrage of criticism over his proposal to end a ban on flights from Reagan National Airport that extend beyond 1,250 miles. Rep. James Moran, D-Va., charged that the change in the perimeter rule limiting long-distance flight at National could hurt nearby Dulles International Airport, where local businesses and big carriers have investments.

Meanwhile, a group of 25 state attorneys general lined up to promote quick adoption of pending Transportation Department guidelines. HR2748 would delay by at least three months implementation of the guidelines, aimed at curbing alleged anti-competitive practices by major airlines, to allow for a congressional review of the new policy. Iowa Attorney General Tom Miller said, "The airline industry wants to delay

[178] Ibid.

things. Our position is there should be no delay."[179] The dispute over competition did not prevent the Senate from moving on their proposal to improve aviation service and programs.

While the aviation industry prepared to celebrate the 20th anniversary of the airline deregulation, the Senate passed a two-year FAA authorization bill on Sept. 25, 1998 setting the state for a contentious debate in conference committee over proposals to increase airline competition. The Senate voted 92-1 to approve HR4057, providing for fiscal 1999 $5.6 billion for the FAA operations and $2.4 billion for the airport improvement grants. Sen. Charles Robb, R-Va., voted against the bill because he opposed a provision that would increase flights at Ronald Reagan Washington National Airport.

The lure of airport grants helped propel the bill through a thicket of controversy over the issue of airline competition. Passage came as the Transportation Department prepared final guidelines to forbid predatory pricing tactics allegedly used by major airlines to attack smaller rivals such as Southwest and Air Tran and protect hub airports in such big cities as Detroit and Denver. Major airlines use connections through hub airports to fill seats and cut costs.

While lawmakers did not enact heavy restrictions on big airlines, they endorsed modest measures to smaller communities and small airlines, including $30 million to provide grants of up to $500,000 a year to small towns to support local efforts to assess air service needs and improve service. The Senate also approved by voice vote Sept. 25, 1998 an amendment to forbid discrimination by big airlines in making cooperative agreements with regional carriers to coordinate ticketing, baggage services and gate

[179] Iowa Attorney General Press Release, Miller Leads Group Challenging the Major Airlines and Supporting Guidelines by U.S. DOT Aimed at Safeguarding Competition in the Airline Industry (September 8, 1998).

access at large airports where a single carrier has more than half the total passengers. The measure's sponsor, Sen. Byron Dorgan, D-N.D., charged that big airlines had "retreated into these regional monopolies because they don't want to compete with one another." Sen. McCain said the bill contained "essential provisions to promote a competitive aviation industry."[180]

Even as the Senate prepared to resolve differences with the House version of the FAA bill, House members hoped to revive a proposal from another stalled bill (HR2748) dealing with airline competition and rural service. HR2748 was blocked by an objection to increasing the number of daily flights at O'Hare airport from Rep. Henry Hyde, R-Ill., whose congressional district is nearby. Rep. James Oberstar, D-Minn., ranking Democrat of the Transportation and Infrastructure Committee, planned to insert in the FAA bill a provision of HR2748 that calls for federal aid to help finance acquisition of jets by regional airlines. While Transportation Department officials moved forward on guidelines, they offered to cooperate with Congress if it wanted to review them.

As the fight over guidelines simmered, the Senate approved several amendments offered jointly by the four senators from Maryland and Virginia to limit the effect of adding flights at National Airport. The Senate approved by voice vote provisions to set aside at least 10 percent of FAA grants for the airport authority to pay for noise abatement, to stagger flights throughout the day and to require an environmental assessment before flights are added. This environmental noise assessment was crucial for local politicians from Maryland and Virginia. The Senate approved by voice vote a manager's amendment that reduced the duration of the bill from four to two years, bringing it closer to the House bill's one-year length. The shorter term would leave room

[180] Congressional Record (September 24, 1998) p. S10935.

for lawmakers to move toward a plan to consider major changes in aviation funding in 1999.

The House blocked a plan the week of Oct. 5, 1998 to add more flights to four crowded big-city airports. Transportation Committee Chairman Bud Shuster insisted on a stripped-down one-year FAA authorization bill (HR4057) that cut out non-essential provisions, including adding slots at the airports. The Senate's version of the bill had called for a two-year authorization and included the flight additions. Rep. Constance Morella, R-Md., said House Judiciary Committee Chairman Hyde played a key role in persuading House leaders to oppose Senate provisions calling for additional flights at three airports. "Henry Hyde is a champion," Morella said. Hyde opposed the proposed addition of 30 additional daily flights at O'Hare, which is near his congressional district.

The House also blocked a provision by McCain to allow some flights to and from Reagan Airport to fly more than 1,250 miles without stopping. With time running out, lawmakers were prepared to delete non-essential provision to clear the way for passage of the bill, which contained airport improvement grants and funding for FAA operations. The bill included a House provision calling for a 12-week congressional review of pending Transportation Department guidelines aimed at increasing competition at hub airports. It was clear that Congress was unsure on how to address the competition issues and the FAA reauthorization.

House and Senate leaders ended a rancorous dispute over airline competition by agreeing to a stripped, six-month reauthorization of the FAA. The short-term reauthorization, needed to provide airport improvement grants, would be inserted in the omnibus-spending bill (HR4328). Transportation Chairman Shuster pledged to make

1999 the "year of aviation" and to seek changes in management of the Aviation Trust Fund. The House originally supported a one-year reauthorization, while the Senate backed a two-year bill. McCain said the reauthorization would set the stage for a new round of debate on airline competition, including his pet proposal: changes the three slot controlled airports.

At the end of 1998, the parties to the Aviation Trust Fund dispute, having learned a great deal about the problem, perceived they would be better off negotiating—striving to find mutual gains—than pursuing strictly conflictual behavior. A "turning point of seriousness" has been rounded, and parties had decided to participate in exploring a solution.

Ostensibly, the decision to negotiate stemmed from a balance of power between two main factions, those in favor of providing protections for the Aviation Trust Funds and those who saw the need to provide some relief to the growing aviation marketplace but not at the expense of national priorities. Proponents of providing protections for the Aviation Trust Funds realized they would have to negotiate if they were to increase funding for aviation programs.

As was shown from the above section, the most successful tactics were information exchange. Information exchange created hope that future negotiations might bring integrative solutions providing higher gains than those offered in the first stage. Critical to this information exchange was the importance of leadership in resolving public policy disputes. The conditions for accommodation—and for responding to the demands of core disputants in a conflict—may exist on any issue. But actually resolving the dispute hinges on the ability of public officials to demonstrate to the disputants that negotiation will be useful. In this case, in 1998, Chairmen Shuster and McCain took the lead in creating the perception that an agreement offering some gains to the core parties would be preferable to stalemate.

The initial phase in the resolution of dispute, however, is just that—a decision to explore further the possibility of an agreement. In this dispute, important parties—proponents of protecting aviation funds, proponents of increasing aviation competition, and budget hawks—became part of the process at the end of 1998. Moving into 1999, it was by no means clear that they would accept a final agreement. All parties did have an incentive to appear hostile to negotiation, even as they privately worked on compromises, as was evident in 1999.

1999: Developing a Consensus for Change

Once parties have made the decision to participate in negotiations, a second phase is underway: the formula phase. Whereas the first phase has focused primarily on defining the problem, the second phase focuses on defining the solution. The parties seek a shared perception or definition of conflict that establishes terms of trade.

Shared perception of the conflict can be interpreted to mean that all the parties would interpret the interests at stake in the conflict in about the same way (rather than understanding only their own positions). This differs from the first phase in that pre-negotiation entails each disputant's defining the situation in his own terms. In this case, for instance, proponents of protecting aviation funds worked to preserve aviation funds for aviation purposes. In the second phase, which played out in 1999, the parties try to find a definition of the situation that is acceptable to all sides and at the same time will permit a solution. In essence, their conflicting perceptions of the issue are reconciled when—as both realize their aims are the unity of the territory and its denial to the other—they agree on a "neutral plain." The whole territory is denied to both.

The formula is relatively a simple conception of an outcome. As we will see below, the formula ultimately devised to accommodate parties in the Aviation Trust Fund debate was simply an outline of the agreement; agreement on the details is what determines final agreement. The formula guides the search for a detailed agreement. The negotiations between the years1998-2000 were a process of uncovering these elements amid an ever-changing slate of parties, and amid changing conflicts. The legislative process in 1999 recounts how the formula was eventually discovered and crafted. It is an account that actually began in 1998, in which tentative efforts laid groundwork for the formula. The account continues with the participants searching for and finding the actual terms of agreement. The searching began at the dawn of 1999.

On January 6, 1999, House Transportation & Infrastructure Chairman Bud Shuster, R-Pa., introduced legislation, HR99,[181] which would seek to provide temporary funding for the Federal Aviation Administration through September 30, 1999. On that same day, Chairman Shuster introduced HR111,[182] which would seek to provide off-

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[181] Airport Improvement Program Short-Term Extension Act of 1999 - Title I: Extension of Federal Aviation Administration Programs - Amends Federal aviation law to reauthorize the Airport Improvement Program (AIP) through FY 1999, with a specified allocation for the Federal Aviation Administration (FAA) Facilities and Equipment Program. Title II: Extension of Airport and Airway Trust Fund Expenditure Authority - Amends the Internal Revenue Code to extend the expenditure authority of the Airport and Airway Trust Fund through October 1, 1999. Sets forth certain limits on transfers to the Fund.

[182] Truth in Budgeting Act - Prohibits the receipts and disbursements of the Airport and Airway Trust Fund, the Inland Waterways Trust Fund, and the Harbor Maintenance Trust Fund from being counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of the Federal budget as submitted by the President, the congressional budget, or the Balanced Budget and Emergency Deficit Control Act of

budget treatment for the Aviation Trust Fund, the Inland Waterways Trust Fund, and the Harbor Maintenance Trust Fund.

These bills served as the starting points for a discussion into the appropriate use of aviation trust funds. In a House speech on January 6,[183] Shuster noted that his, HR99, would extend the Airport Improvement Program (AIP) until the end of the fiscal year and reauthorize two other FAA programs for 1999-Facilities and Equipment, and Operations. The AIP program authorization was due to expire on March 31, 1999. Shuster noted, "Since AIP is funded with Contract Authority, the expiration of Contract Authority means no further funding of the program." Without this extension, the nation's airports would stop receiving new airport grants. These grants fund projects such as runway extensions, taxiway constructions and other airport capacity enhancing projects.

In his speech, Shuster spoke passionately, "Aviation Delays already cost the industry billions of dollars. According to the Air Transport Association, aviation delays in 1997 cost the air carriers $2.4 billion. If this bill is not passed by March 31, 1999, the airport capacity enhancing projects supported by the AIP program could be delayed, possibly increasing the cost of delays in the future."[184]

On January 7, 1999, Chairman Shuster cleared the way for an early showdown with Senate Commerce Committee Chairman John McCain, R-Ariz., on the issue of airline competition and airport finance.[185]Shuster's committee planned to approve the six-month reauthorization of the FAA at its organizational meeting later on in the week.

1985 (Gramm-Rudman-Hollings Act). Exempts such trust funds from any general statutory budget outlays limitation.

[183] Congressional Record (January 6, 1999) E1.
[184] Ibid.
[185] Congressional Quarterly Breaking News, Alan Ota. (Jan. 7, 1999).

However, Shuster did not make any plans to approve legislation to move the Aviation Trust Fund off budget.

Shuster's game plan appeared to have two parts. First, he was trying to satisfy aviation industry groups to name a few, that wanted Congress to act before a six-month extension of FAA airport improvement grants expired on March 31, 1999. The extension was tossed into the omnibus budget law at the end of 1998, after McCain held up a full-year reauthorization by insisting that it include airline competition provisions that some House members opposed. Shuster would try to delay bargaining over McCain's competition provisions until he moved a broader bill later in the year that could incorporate the off-budget proposal for the trust fund, competition measures and possibly a multi-year FAA reauthorization.

At this point the trust fund proposal was at the heart of Shuster's agenda; however it was facing opposition from budget hawks, appropriators, Coast Guard and Amtrak; and uncertain support from the aviation groups. While the NBTA supported Shuster's approach, several aviation groups, including the road and airport construction groups feared that Shuster's actions might further delay construction at many of the nation's airports.[186] Several airport construction projects were either being delayed or were being cancelled due to the ambiguity in airport funding. Airport groups wanted a quick resolution to the airport-funding crisis. A multi-year reauthorization of the FAA failed the previous year when House and Senate negotiators could not come to an agreement on airline competition provisions.

[186] Alliance for Truth in Transportation Budgeting, Airport and Airway Trust Fund Fact Sheet (January 1999).

On January 8, 1999, the House Transportation & Infrastructure Committee approved by voice vote a $10.1 billion fiscal 1999 authorization for the FAA.[187] The bill provided $5.6 billion for FAA operations, $2.1 billion for facilities and equipment and $2.3 billion for airport improvement grants. While Shuster celebrated this event, Senate Chairman McCain voiced his disapproval.

McCain opposed a one-year reauthorization the previous year because it did not include measures that would increase flights at four crowded airports: LaGuardia and John F. Kennedy in New York, O'Hare in Chicago and Ronald Reagan Washington National Airport. McCain also wanted the bill to include an increase in the 1,250-mile limit on flights to and from Reagan airport. The one-year FAA bill opened a battle between McCain and Shuster. A McCain aide said at the time the senator would likely support a multi-year FAA reauthorization, not a one-year bill.

Meanwhile, Shuster acknowledged after approving the one-year reauthorization that he hoped to move the following month on broader legislation that would include the unnumbered bill he was drafting to move the Aviation Trust Fund off budget. He noted that increased flights at the crowded airports and five-year FAA reauthorization could be included in the larger legislation. Shuster and ranking committee member Jim Oberstar, D-Minn., appeared to have a strategy for dealing with McCain.

First, they were hoping McCain would agree to a one-year bill because the Senate was distracted by the impeachment trial of President Bill Clinton, and thus were unable to move quickly on legislation. At the time it was unclear whether Shuster could head off opposition to the off-budget plan. The sticking point appeared to be the FAA reliance on general revenue for more than one-fifth of its budget, unlike road-building projects

[187] Congressional Monitor Breaking News (Jan. 8, 1999).

financed by the gas tax. In addition, appropriators and budget hawks opposed the off-budget proposal as an intrusion on their turf, and some questioned the need for increased aviation spending. Despite possible resistance from McCain and others, Shuster appeared to have key allies, including Speaker of the House Dennis Haster, R-Ill. While Shuster made plans for a confrontation with McCain, the Senate chairman had his own plans.

During Shuster's moves, McCain was pretty busy with the impeachment trial and his exploratory 2000 presidential bid, and these distractions created enormous problems for interest group coalitions seeking his support for off-budget treatment. The strategy adopted by most groups, including NBTA, was to use his presidential aspirations as a window of opportunity to get him more focused on being a savior for aviation competition and growth.[188] Several groups called on their local members to provide editorials and position papers in state and local newspapers. McCain saw airline competition problems as one of the top transportation issues that Congress should address, however he was not pleased by Shuster's efforts to put off moving the Aviation Trust Fund revenues off budget.

On January 19, 1999, McCain met Shuster head on by introducing his own bill, S82,[189] which would reauthorize the FAA for two years and would address the competition issues that McCain championed. On January 20, 1999, McCain held a hearing on his bill. The witnesses included Patrick Murphy, Deputy Assistant Transportation Secretary for Aviation and International Affairs, David Traynham,

[188] According to Marianne McInerney, NBTA Executive Director, NBTA spoke with other groups including ASTA, AAA, ARTBA, to utilize McCain's presidential aspirations as leverage in getting an airport deal finished (Personal communication, January 1999).

[189] Air Transportation Improvement Act - Title I: Authorizations - Amends the Federal Aviation Act of 1958 to authorize appropriations for FY 1999 and 2000 for Federal Aviation Administration (FAA) operations. Amends Federal aviation law to authorize appropriations for FY 1999 and 2000 for: (1) the FAA Facilities and Equipment Program; and (2) continuation through FY 2000 of the instrument landing system inventory program. Provided additional flights to O'Hare, Reagan and LaGuardia airports.

Assistant Administrator for Policy, Planning and International Aviation for the FAA, and John Anderson, Director of Transportation from the General Accounting Office (GAO). The GAO is the investigative arm of Congress.

During this hearing McCain worked hard to acknowledge that the House refused to appoint conferees to resolve the differences between the House and Senate bills the previous year. "As my colleagues will recall, the House of Representatives approved its own FAA reauthorization bill last year. Even so, the House refused to appoint conferees to resolve the differences between the House and Senate bills, and the legislation died at the end of the 105th Congress. In its place, Congress authorized a short-term, six-month extension of the AIP, which is set to expire on March 31, 1999. Although we have a short time frame within which to act on a substantive aviation bill, the likelihood of success is clearly within reach. The proposal before you was developed through thoughtful deliberations last year, and contains all of the same proposals that we worked on together to support. I realize that with new minority leadership at the Aviation Subcommittee, it is likely that revisions to or a substitute to the proposal may be considered at the committee markup. Notwithstanding this point, we are not starting from scratch. It should not take long to develop any refinements deemed important."[190]

The hearing audience confirmed that McCain was prepared to take on Shuster and blame the House for any disasters. Senate Transportation Ranking Member Fritz Hollings, D-S.C., highlighted the sense of urgency, "For FY1998, the FAA received $1.9 billion. For FY 1999, the FAA would have received $1.95 billion. Instead, the agency will receive only have of that amount, unless we pass either a short-term bill or a long-

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[190] Statement of Senator John McCain, Senate Commerce Committee Full Committee Hearing on S82, Air Transportation Improvement Act (January 20, 1999).

term extension of the program. One course we know can work quickly. The other course is more challenging." "Working quickly" seemed to be the key phrase spoken by most of the witnesses.[191]

Deputy Assistant Secretary Patrick Murphy seemed to avoid taking on the funding issues included in the airport-funding bill, citing the Administration's goal of providing their own proposal during President Clinton's submission of the budget later in the month. "Secretary Slater recognizes that 1999 will be the Year of Aviation. To that end, he is leading the Department's efforts as we formulate both legislative proposals and departmental actions designed to enhance aviation as we enter the 21st century. Of course, the Department looks to the Congress as we work together in the coming months on aviation matters. The work we started last year will form the foundation upon which we move forward together this year."[192]

Instead Murphy recognized that there was a need to immediately address some of the competition issues. "As you know, the Department has been active in seeking ways to assure that domestic airline competition remains vigorous so that the enormous benefits of airline deregulation can be realized by all cities and regions throughout the country. I think it is fair to say that this Committee and the Department have been in general agreement about the need to promote domestic airline competition and address small community air service issues."[193]

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[191] Statement of Frizt Hollings, Senate Commerce Committee Full Committee Hearing on S82, Air Transportation Improvement Act (January 20, 1999).
[192] Statement of Department of Transportation Deputy Assistant Secretary Patrick Murphy, Senate Commerce Committee Full Committee Hearing on S82, Air Transportation Improvement Act (January 20, 1999).
[193] Ibid.

The DOT, specifically Secretary Slater, spent the last six months meeting with aviation community leaders in Des Moines, Iowa, Seattle, Washington; Miami, Florida, and New York City, where leaders pointed to serious competition issues that exist in the aviation system.[194] Although the hearing focus was on FAA reauthorization, the DOT seemed to accept that this issue needed to be resolve by the House and Senate and the DOT should only address aviation service and competition issues. This approach had more to do with the Executive Branch recognizing the spending authority that is passed to Congress through the constitution. While the DOT stayed out of the budget fight, the FAA, whose programs are directly affected by the fight, emphasized their position.

Assistant Administrator FAA David Traynham pointed to the integral role aviation played in the economic growth that the country was currently enjoying. "From aircraft manufacturers, to business and tourists travel, to cargo transportation, each of these facets of the aviation industry makes substantial contribution to the economic vitality of this Nation", said Traynham.[195] Traynham pointed out that the Senate bill would make significant improvements to the FAA; however, there were still minor points of contentions, like treatment of state block grants and investment projects. Traynham statements did not reveal the FAA's position on many of the competition issues. The General Accounting Office (GAO) Transportation Director John Anderson was called in to address these issues.

Over the years, the GAO has conducted many studies investigating the competitive environment within the aviation industry. These studies have been quite useful for the Congress and the Administration. Anderson stated that provision in the

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[194] Ibid.

[195] Statement of FAA Assistant Administrator David Traynham, Senate Commerce Committee Full Committee Hearing on S82, Air Transportation Improvement Act (January 20, 1999).

Senate's legislation to enhance the competitiveness of the aviation industry addressed concerns the GAO had raised about operating barriers at airports and airline marketing practices that have limited the full potential benefits of deregulation. He noted some communities have not shared these benefits and have experienced higher airfares and/or less convenient service since deregulation. "By establishing programs to promote air service in various communities, the legislation would assist communities in developing and improving air service," said Anderson.[196] Most importantly, Anderson spent time addressing the fiscal problems with the aviation trust fund.

He noted that the GAO previously reported on the need for adequate and predictable funding for airport improvements. The GAO reported the previous year that airports face a potential funding gap of as much as $3 billion annually over the 5-year period of 1997-2001. The $3 billion is the difference between $10 billion in planned development and $7 billion in funding at historic levels or what is authorized by Congress to be spent.[197] By bringing together both proponents of competition and fair budgetary treatment for the FAA, McCain was establishing the need for legislation to address both the fiscal needs of the FAA and competition issues. However, because of impeachment proceedings it would be two weeks before McCain could address the bill.

Delayed by two weeks by impeachment proceedings, the Senate Commerce, Science and Transportation Committee scheduled a mark up of McCain's bill, S82, however the markup was cancelled due to a flu epidemic. Meanwhile the Administration began to take its stab at FAA reauthorization. On February 2, 1999, President Clinton

[196] Statement of GAO Transportation Director John Anderson, Senate Commerce Committee Full Committee Hearing on S82, Air Transportation Improvement Act (January 20, 1999).
[197] General Accounting Office, Federal Aviation Administration, Issues Concerning the Reauthorization of Aviation Programs (January 20, 1999).

proposed increasing the FAA's budget authority nearly 6 percent to $9.9 billion. The Administration proposed replacing the aviation excise taxes with service-based charges. The plan would also cut the FAA's airport improvement program by nearly 20 percent to $1.6 billion in fiscal 2000; however, the cut would be offset by raising the passenger facility charges (PFC) from $3 to as much as $5 per stop.[198] For every $1 increase in the PFC ceiling, the GAO estimates that large and medium hub airports would collect an additional $432 million, while smaller airports would collect an additional $46 million. In total, a $4 PFC ceiling would yield $1.9 billion, a $5 PFC would yield $2.4 billion, and a $6 PFC would yield $2.8 billion in total estimated collections. The Administration's proposals were met with intense opposition from consumer groups, including NBTA.

NBTA felt that the increase in passenger facility charges and the imposition of a new service fee would be viewed as airfare increases because corporations view airfare taxes and the fare prices in sum. NBTA sent a letter to President Clinton urging him not to impose any further surcharges on the traveling public. The letter noted, "Since the airline industry was deregulated in 1979, the benefits to consumers have been dramatic...ticket prices have declined 36%...this tax increase is going to raise ticket prices for every member of the traveling public and it should be soundly rejected by Congress." [199] An Air Transport Association's spokesman also addressed this issue, "It is regrettable that with so substantial a balance in the aviation trust fund, the administration finds it necessary to impose new taxes on the traveling and shipping public," said Edward Merlis, head of legislative affairs.[200] The Administration did acknowledge that they

[198] Department of Transportation, Section-by-Section Analysis of the Clinton Administration FAA Authorization Act of 1999 (February 1999).
[199] National Business Travel Association letter to President Clinton (February 1999).
[200] CNN.com (February 3, 1999).

needed to take much of their plan to Congress in order to get their favor. While the Administration waited for Congress' opinions of its proposal, the House moved forward.

On February 4, 1999, the House passed, by a margin of 408-3, a bill, HR99, that would provide $9 billion to reauthorize the FAA through September 1999, ensuring that airport improvement projects would be funded for the rest of the fiscal year 1999. The approval of the House bill still left open the questions of whether Congress can approve a long-term FAA reauthorization bill. Chairman McCain continued to make it clear that he would not support anything other than a long-term FAA reauthorization bill, which contains elements that would address aviation competition. On February 10, 1999, this divide was reviewed further by the GAO at a House Transportation, Aviation Subcommittee hearing.

During a February 10 hearing, the GAO attempted to further strengthen Shuster's contention that their needed to be adequate and preventive measures to utilize the trust funds. The GAO testified that "under current formulas, increasing the amount of Airport Improvement Program funding would help small airports more than larger ones, while raising passenger facility charges would help larger airports more."[201] According to the GAO, this dynamic created a need for the Congress and the Administration to design a budgetary program for the FAA that satisfied both the smaller and larger airports. Changes to the current design of AIP or PFCs could, however, lessen the concentration of benefits to one group of airports. More importantly, this admission by the GAO placed the Administration's proposal to increase the PFC's back on the table for discussion. The House's actions on the FAA bill placed tremendous pressure on the Senate to move on its proposal.

[201] GAO, Airport Financing (February 10, 1999).

On February 11, 1999, members of the Senate Commerce, Science and Transportation Committee finally considered the Senate bill to reauthorize the FAA. Committee consideration of the bill had been postponed and rescheduled at least four times because of the impeachment trial and a flu epidemic. Since the bill was first scheduled for committee work, the House passed its own short-term version, HR99, and President Clinton released his proposal to reauthorize the agency for five years. The two versions illustrate differences in funding strategies between McCain and Shuster.

Shuster's bill would fund the airport improvement program at $2.3 billion through the end of the fiscal year, while McCain's would authorize the program at $2.4 billion through the end of the fiscal year 1999 and $4.9 billion for fiscal 2000. McCain's bill included language to develop standards for air tours over national parks and to increase flights at Ronald Reagan Washington National Airport as well as at busy airports in New York City and Chicago. Several Senators planned to offer amendments to McCain's bill that would further separate the two proposals.

McCain offered an amendment that would have added more flights, or slots, into and out of National Airport, beyond the additional outlined in the bill. The panel adopted the amendment by voice vote, though ranking member Fritz Hollings said he would fight to remove the provision on the Senate floor and when the bill is sent to a House-Senate Conference.[202] Sen. Slade Gorton, R-Wash., considered offering an amendment that would allow airlines to increase a fee they charge each passenger, however he declined, saying it may come up at a later point.[203] At the time the fee was capped at $3 per passenger, and was used for airport safety and security improvements. Clinton suggested

[202] Senate Commerce Committee Markup (February 11, 1999).
[203] Ibid.

bumping the fee to $5 a passenger. Although the fee issue still remained unsolved, the Senate committee approved the legislation, with a pledge from McCain to force a showdown with major airlines and others over his proposal to add flights at crowded airports and the Administration's proposal of increasing the PFC.

McCain's proposal to add additional flights to the slot controlled airports was met by opposition from the major carriers who were concerned that many of those flights would go to low-cost carriers, like Frontier Airlines, AirTran and Alaska Airlines, and constituents near the four crowded airports who feared additional noise and traffic. Shuster's bill did not include new flights at the four airports. McCain acknowledged that he might ultimately lose the argument over whether to approve the House version, which calls for a simple one-year authorization. "If we don't win, it will be another victory for the major airlines and for special interests," said McCain at a February staff meeting.[204] McCain cited an October 22, 1998 private memorandum circulated to heads of the major airlines by Carol Hallett, president and executive officer of the Air Transport Association claiming a "significant victory" in winning provisions in the 1999 omnibus budget law that required congressional review of tough guidelines proposed by the Transportation Department aimed at attacking alleged predatory pricing by airlines at regional hub airports.[205]

McCain was resolved to fight the carriers and others on this issue. He pressed his staff to note that the limits on flights at the four airports and a cap on the length of flights allowed at Reagan were artificial barriers to competition. Although McCain pointed to

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[204] According to McCain's staff, McCain wanted to make sure special interest and the airlines were not victorious in preventing him from infusing competition into the aviation market (Personal Communication, February 1999).
[205] Ibid.

the airlines as his opposition, it was clear that he would also face opposition on the Senate floor. Sen. Fritz Hollings said additional slots for flights would further increase the substantial delays incurred by travelers. While McCain prepared to defend his bill, Shuster was meeting resistance in the House.

In March 1999, it became increasingly clear that Shuster had to pass a multi-year reauthorization bill before the House adopted a fiscal 2000 budget resolution that might head off his plan to provide big increases in airport funding. During the week of March 3, 1999 Shuster sent word to lobbyists representing travel, consumer and transportation interests that he will unveil his multi-year reauthorization bill soon.[206] While continuing to press for a one-year reauthorization to keep airport improvement grants flowing after March 31, 1999 Shuster was working to get his multi-year reauthorization to the House floor before a planned March 17 Budget Committee mark-up of the budget resolution. Shuster and his allies were concerned that the budget panel would cap airport spending, and would lock in higher spending levels. Shuster was also working behind the scenes with transportation lobbyist to find more co-sponsors for HR111.

The American Road and Transportation Builders organized an informal coalition of twenty groups, including the Air Transport Association, the Air Traffic Control Association, the Aircraft Owners and Pilots Association, Airports Council International, the American Association of Airport Executives, the American Association of Port Authorities, American Bus Association, the American Road and Transportation Builders Association, American Society of Travel Agents, American Trucking Association, the American Waterways Operators, the International Brotherhood of Teamsters, the

[206] According to House Transportation Chairman Don Young, Young confirmed discussed his legislative plan on attack at a House Transportation Committee meeting with transportation interest groups (March 1999).

National Air Carriers Association, the National Air Transportation Association, the National Business Aviation Association, the National Business Travel Association, the National Stone Association, and the U.S. Chamber of Commerce. These groups came together to urge lawmakers to "help unlock remaining transportation trust funds" by co-sponsoring HR111. NBTA and others supported the coalition, however, most lobbyists were working independently to ensure their voice was heard outside of the massive coalition. Most important was the consensus amongst the coalition that it might be appropriate to extend FAA reauthorization temporarily while the House and Senate settle their differences. The thought was to continue the airport improvement grants through May or June. It didn't take long for Shuster to reveal his new proposal.

On March 4, 1999, Shuster introduced legislation titled "The Aviation Investment and Reform Act for the 21st Century" or more popularly known as AIR-21. The bill, HR1000,[207] would reauthorize the FAA for the next five years, create off-budget treatment of the aviation trust funds and increase competition at the slot-controlled airports. The bill was scheduled for subcommittee and full committee action, however it drew fire from lawmakers worried about plane noise near urban airports and Shuster's proposal to move the trust fund off budget. Now, the Senate and House seemed to be on the same page, however, Congress faced an arduous task of cobbling the various aviation proposals into a cogent piece of legislation.[208]

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[207] Wendell H. Ford Aviation Investment and Reform Act for the 21st Century Amends the Federal Aviation Act of 1958 to authorized appropriations for FAA operations through FY 2003. Provided for an eligible agency to impose (in lieu of imposing the current passenger facility fee of $1, $2, or $3) a passenger facility fee of $4.00 or $4.50 on each airline passenger of a domestic or foreign air carrier boarding an aircraft at an airport the agency controls to finance an eligible airport-related project, provided certain conditions are met. Amended Federal aviation law to set forth changes in, and phase-out of, slot (landing and take-off rights at an airport) requirements at specified airports.

[208] CQ Breaking News Andrew Beadle (March 8, 1999).

On March 11, 1999, the House Transportation Committee approved Shuster's bill, meeting little resistance form committee members but setting the stage for a battle on wills with the Senate. "With this bill, the American people are guaranteed that the taxes they pay on every airline ticket will be invested in making our airports and air travel safer and more efficient," said Bud Shuster, Chairman of the Committee. "Within a decade, one billion people will take to the skies every year – about 50% more than right now. But congestion, delays and dangerous air traffic control system outages are already outpacing our ability to cope with them. We must invest in our aviation system or face the consequences."[209] AIR-21 sought to unlock the Aviation Trust Fund so that aviation taxes were reserved for aviation investments. "The bill renews the commitment we made with the American people to ensure that they have the safest skies in the world," Shuster said. Although AIR-21 authorized $89 billion in aviation investments funding for over five years, there were still considerable differences between the Senate and House bills.

For the operations of the FAA, the bill authorized $5.6 billion through the end of fiscal 1999, increasing annually to $8.8 billion in fiscal 2004. The Senate bill would authorize $5.6 billion for fiscal 1999 and $5.8 billion for fiscal 2000. The provision that was most likely to meet Senate resistance featured language that took the trust funds off budget, which would prevent the government from including its funding levels when estimating the overall government budget. In addition to the off-budget treatment of the trust fund, there were other issues that needed to be resolved.

The House FAA measure added up to six daily flights to Reagan, as opposed to a possible 48 new flights provided by the Senate companion bill. The House bill allowed

[209] House Commerce Committee Press Release, Committee Approves Bill to Boost Aviation Safety Improvements, and Competition (March 10, 1999).

the new flights only if they are shorter than 1,250 miles, and serve smaller community airports. The Senate bill would reserve half of the 48 daily exemptions for flights outside that 1,250-mile perimeter. Differences between the House and Senate goals for aviation the previous year led to an impasse and a six-month reauthorization of the FAA that was due to expire March 31, 1999. Shuster said after the committee mark-up that it was up to the House leaders to add on the short-term reauthorization before spending authority expired.[210] Although Shuster challenged the House leadership to make a move, it was the Senate that acted first. On March 18, 1999, the Senate unanimously voted to reauthorize the FAA for sixty days, a move that was necessary to keep safety and improvement programs running. The extension allowed the Senate and the House to continue negotiating on the more contentious full FAA reauthorization bill. On March 27, the House passed the Senate's temporary spending bill. Although the House matched the Senate's effort, Shuster was in a fight over the budget resolution.

The House Budget Committee crafted a budget resolution where $780 billion of the budget surpluses over the next ten years would be used for tax cuts.[211] About $50 billion of the $780 billion budget surplus would be attributable to the annual surplus in the Aviation Trust Fund. This spurred Shuster to circulate several Dear Colleague letters calling the move wrong. Shuster offered an amendment to the budget resolution that would set aside the $50 billion. Shuster was successful in implementing this change, however he was in for an intense fight with the Senate over the budget resolution.

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[210] According to House Transportation Committee Chair Bud Shuster, the House leaders, specifically chairmen of the House budget and appropriations committees would have to address the short-term needs of airport spending while he continued to craft a long term bill (Personal communication, March 1999).
[211] FY2000 Budget Resolution Appropriations bill lists recommended budgetary levels and amounts, for FY 2000 through 2009, with respect to: (1) Federal revenues; (2) new budget authority; (3) budget outlays; (4) deficits or surpluses; and (5) public debt.

As part of the Senate's budget resolution, the Senate adopted a "Sense of the Senate" provision, which stated that erecting budgetary firewalls to preserve aviation trust fund dollars for aviation spending would result in the decrease or elimination of spending in other transportation-related programs.[212] Shuster was successful in dropping the provision that would have pitted him against the Coast Guard, Amtrak and others. Shuster sent several letters to members stating that any budget increase would be outside the budget caps and would be fully paid for by the aviation taxes deposited into the trust fund. While Shuster continued his movements to protect his bill, lobbyist continued to aid his bid.

At a meeting on March 19, 1999 with House Transportation & Infrastructure Committee Staff Director Jack Schenendorf, urged the Alliance for Truth in Transportation Budgeting, a coalition consisting of NBTA, AAA and other aviation stakeholders, to step up lobbying activities in Washington and across the country on Shuster's bill.[213] It was at this time that Schenedorf informed the group that committee members expected the bill to be brought to a House floor vote in mid-May. On that same day, the Alliance gathered its members and informed the group that there was a need to capture 63 more co-sponsors for the bill to ensure that a provision to take the aviation trust fund off-budget had majority support going into the House vote. More importantly, these additional co-sponsors would send a powerful message to the Senate as it considered the aviation bill. Several strategies were suggested to accomplish this fete.

The Alliance identified 30 members whom were "leaning yes". The Alliance goal was to encourage Hill visits and develop a scorecard of members' positions. The

[212] Ibid.
[213] According to House Transportation Committee Staff Director, Jack Schenendorf, called on interest gropus in favor of AIR21 to step up lobbying activities (March 19, 1999).

scorecard would be forwarded to Chairman Shuster and Ranking member Oberstar. More importantly, the Alliance called for additional financial sponsors to run additional advertising campaigns calling for swift action on Shuster's bill. While the lobbying activities were met with overwhelming support, the financial objectives were not received well by Alliance members. Many members felt an ad campaign would be too expensive and would fail to really hit the key members on the fence. Many of the coalition members favored office visits over ad campaigns.

From January 19, 1999 to March 16, 1999, Alliance member organizations made a total of 341 visits to 229 member offices. From March 16-19 1999, Alliance members soliciting cosponsors for Shuster's bill visited 44 House member offices. The visits resulted in 10 additional cosponsors, making 155 total cosponsors of Shuster's bill. Based on these visits 30 (20 Republican and 10 Democrat) House members were "leaning yes" toward supporting Shuster's bill. Based on these visits 9 (3 Republicans and 6 Democrats) were "leaning no" toward supporting the bill. More importantly, 16 members (11 Republicans and 5 Democrats) indicated they will not cosponsor the bill and 116 members offices were "non-committal."[214] While the Alliance pressed on, Congress was still uncertain on whether this bill would make it passed either house's muster.

In April 15, 1999, Rep. Frank Wolf, chairman of the Appropriations Transportation Subcommittee, circulated a letter urging colleagues to consider that the guaranteed aviation funding might result in budget cuts for the Coast Guard and Amtrak.[215]Wolf also sent members estimates of the ramifications of Shuster's bill, which calculated an additional $1.1 billion in aviation spending that could result in a 21 percent

[214] Alliance for Truth and Budget Legislative Scorecard (March 1999).
[215] CQ Weekly, May 1, 1999. Small Airports Ambitions Steer Transportation Bill.

cut in non-aviation transportation programs. The Secretary Department of Transportation Rodney Slater pointed out that walling off the trust funds could mean elimination of Amtrak funding and severe reductions to the Coast Guard or the Federal Railroad Administration. "We estimate that an across-the-board, 21 percent funding cut in fiscal 2000 would mean severe reduction to Coast Guard's drug interdiction, fisheries enforcement and safety mission, the likely closure of a number of Coast Guard facilities, and the laying up of ships and aircraft," said Slater.[216]

In May of 1999, it became clear that "the fate of the transportation battle in Congress may hinge not on the clout of the nation's largest airports but on the needs of some of the smallest."[217]In the previous month, Senator McCain held several field hearings at smaller airports to determine the impact of boosting additional flights to the larger "slot-controlled" airports. Under McCain's bill many smaller airports would benefit from low-cost carriers, like Southwest, Frontier and Jet-Blue, whom would obtain service to smaller airports from Chicago's O'Hare or Ronald Reagan Airport. The access to the "slot-controlled airports" was an issue that had divided the two Houses in 1998. More importantly, Shuster's bill provided funding guarantees to smaller airports that were starving for additional funds to pay for expanding capacity. The attractiveness of additional funding for smaller airports introduced additional supporters of the Shuster's bill. While Shuster gained momentum, McCain was increasingly being distracted by his presidential campaign and the war in Yugoslavia. Because McCain was distracted from the process, other Senators stepped up to the plate.

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[216] Ibid.
[217] Ibid.

"The fate of Shuster's budget proposal could rest with the determination of a few senators likely to participate in any conference committee."[218]The Alliance reported that Senate Budget Committee Chairman Pete Domenici, R-N.M., was opposed to special budget treatment for the aviation trust funds and was seeking support from the Senate leadership. The Senate leadership was unhappy with the way Shuster imposed his will on them during several other past legislative fights and were seeking to slow his influence on the FAA bill. Domenici was the main force behind adding language to the Budget Resolution that called for opposition to the budgetary firewall around aviation programs. "If the aviation firewall proposal circulating in the House of Representatives were to be enacted, drug interdiction activities by the Coast Guard, National Highway Traffic Safety Administration activities, rail safety inspections, Federal support for Amtrak, all National Transportation Safety Board activities, Pipeline and Hazardous materials safety programs, and Coast Guard search and rescue activities would be drastically cut or eliminated from function 400."[219] Shuster was able to remove this language; however there were still calls from the Senate leadership to continue fighting the budgetary firewall.

On May 21, 1999, the Alliance reported, "The home stretch was in sight." Shuster made plans to bring his bill, HR111, to the floor the week of June 14. The Alliance now had 173 co-sponsors for the bill. Another 27 House members were "leaning yes."[220] The goal of the coalition was to get at least 218 co-sponsors so that the floor action on the bill

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[218] Ibid.
[219] Congressional Record. Senator Pete Domenici Speech (March 25, 1999) p. S3532.
[220] According to David Baurer, lobbyist for American Road and Transportation Builders Association, Alliance for Truth in Budgeting coalition meeting. (Personal Communication, May 21, 1999).

started with a majority. By starting with a majority, Shuster would have the leverage when the bill would move to conference.

The Alliance published a list for targeted attention.[221] The first list identified the 64 House members who co-sponsored almost identical off-budget legislation during the 105th Congress, but who had yet to become an HR111 co-sponsor. The second list identified the 85 House members who voted for the 1996 off-budget bill and were not HR111 co-sponsors. While the coalition ratcheted up its efforts, NBTA also pressed ahead.

On May 26, 1999, NBTA met with Rep. Nick Rahall, D-W.Va. NBTA urged the congressman to help obtain additional co-sponsors for Shuster's bill. Rahall had been active on transportation issues for years and more importantly was the ranking Democrat on the Surface Transportation Subcommittee. Rahall informed NBTA that additional grassroots efforts would be needed to get AIR21 through both houses.[222] On that same day, NBTA forwarded to its membership an update on the trust fund debate and urged the members to contact their Congressman in support of the bill.

From May 27-29 1999, there were a slew of events that impacted the advancement of Shuster's bill. On May 27, 1999, Shuster successfully steered a second version of his off-budget bill, HR1000, through his committee. While this bill called for off-budget treatment of the aviation trust funds, it also included competition issues that were attractive to McCain. The next day, the Transportation Subcommittee of the House Appropriations Committee gave voice approval of its draft fiscal 2000 transportation-spending bill. During consideration of their bill, the appropriators blasted HR1000. "The

[221] Ibid.
[222] According to Rep. Nick Rahall, there were concerns that the budget hawks may prevent AIR21 from moving out of either house (Personal communication, May 26, 1999).

aviation proposal makes a mockery of the entire budget process," said Rep. David Obey, R-Wis.[223] While Shuster headed the committee that authorized funding, ultimately it was the check writers or appropriators that would determine where funds were spent, so it was important for Shuster to have a very good strategy.

Shuster's strategy became apparent on May 29, 1999. His committee approved a multi-year FAA bill on March 11, but had never produced a committee report, which is highly unusual. By not producing a report, that gave Shuster a chance to re-craft the multi-year bill to garner more support before it moved to the floor.[224]Shuster acknowledged during the May 27 markup that appropriation committee staffers had been keeping track of HR111 co-sponsors, with a threat of retribution on the Appropriation bill. In another turn of events, Transportation Secretary Slater sent a letter to Shuster saying he would not recommend to the President to sign Shuster's bill, which was a clear indication that proponents of Coast Guard and Amtrak funding were gaining support from the Administration.[225]

"Office of Management and Budget Director Raines, in a separate letter, has communicated the Administration's serious concerns about the excessive funding levels in this legislation. I want to emphasize that, while there are many positive aspects to this legislation, the excessive funding levels in both bills remain a paramount concern of the Administration. The funding levels in these bills fail to give due consideration to other priorities in the budget: either they would require an unacceptable reduction in high priority discretionary program funding, or they would drain anticipated budget surpluses prior to fulfilling our commitment to save Social Security first. Both of these outcomes

[223] CQ Committee Coverage, Fiscal 2000 Transportation Appropriations (May 27, 1999).
[224] CQ Weekly, Shuster's Revised FAA Measure, Approved By House Panel, Raises Ire of Appropriators
[225] Letter from Secretary Slater to Chairman Shuster on AIR21 (May 1999).

would have unacceptable consequences for the American people. We look forward to working with the conferees to develop legislation that reflects sound transportation policies and that is funded at appropriate levels consistent with preserving the surplus and meeting our nation's other pressing priorities."[226] Although it appeared the opposition was on Shuster's heel, the threats by the Secretary and the appropriation staffers may have stiffening the resolve of supporters of the bill. While the House appropriators applied pressure on Shuster, the Senate appropriators began their assault on Shuster's bill.

On May 29, 1999, the Senate Appropriations Committee sent a fiscal 2000 transportation-spending bill to the floor. While the bill increased funding for the FAA, it did not provide for special treatment for the aviation trust funds. The Senate appropriators felt that Shuster's proposal would lead to a tighter budget squeeze for other transportation programs, such as the Coast Guard and Amtrak. Transportation Appropriations Subcommittee Chairman Richard Shelby, R-Ala., noted that he was barely able to craft a bill to boost airport funding without resorting to increased airport user fees, as recommended in the administration budget request.[227]As the Senate and House appropriators went on record, Shuster moved closer to the day his bill would be addressed on the House floor.

On June 11, 1999, only days before Shuster's bill were due on the House floor, three influential House members sought to derail his bill. Ways and Means Committee Chairman Bill Archer, Appropriations Committee Chairman C.W. Bill Young and Budget Committee Chairman John Kasich sent a letter to every Republican House member noting that they would offer an amendment to Shuster's bill to protect the caps,

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[226] Ibid.
[227] CQ Weekly. May 29, 1999. Senate Transportation Bill Would Cap Big States Share of Transit Funds

maintain fiscal discipline, guard tax cuts, and preserve the Social Security surplus.[228] The three members' argument was that Shuster's bill would not lower the discretionary spending caps as all of the House Republicans voted for in March. They believed the bill would increase spending as well as provide new "off-budget" spending. This move set the stage for consideration of Shuster's proposal.

During the week of June 11, Shuster stepped up his lobbying efforts. Shuster met with Democrat and Republican conservatives, who might be the deciding forces in the passage of his bill. Shuster vowed to send a "Dear Colleague" letter explaining his legislation to every House member every day until the bill was considered.[229] At a GOP Conference meeting a week earlier, House leaders told their conservative critics that they would scale back the transportation bill. While the scaled-down version of HR1000 reported by Shuster's committee May 27 did seem to address some of the concerns of appropriators, some members of the committee still had concerns even if the FAA bill would not affect fiscal 200 spending.

On June 19, 1999, The House voted 316-110 in favor of Shuster's $59.3 billion reauthorization of the FAA, which would take the Airport and Airway Trust Fund off budget and limit the options of appropriators. Shuster successfully fought off a coalition of House's most powerful chairman as he successfully defeated their amendments. "The most significant vote of the day occurred on an amendment offered by Appropriations Committee Chairman Bill Young and others that would have stripped the bill of its off-

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[228] Letter from House Budget Committee Chair John Kasich to House Members (June 11, 1999).
[229] According to David Baurer, lobbyist for American Road and Transportation Builders Association, Shuster had some concerns that there were some members who still did not understand the budgetary impact of AIR21. (Personal communication, June 1999).

budget treatment of the airport trust fund."[230] It would have also eliminated a guaranteed contribution from the general fund, which was contested by authorizers and appropriators. These groups have questioned whether there is a need for a general fund contribution given the enormous surplus in the trust fund account. "Young contended that Shuster's bill would set a dangerous precedent, throwing a wrench into the federal budget process."[231]In the end, the House rejected the amendment 179-248. The focus now shifted to the Senate, where McCain had sponsored a two-year bill that did not include Shuster's off-budget treatment for aviation funding.

Divisions still remained between the House and Senate over landing slots for Reagan and O'Hare airports. Sen. John Warner, R-Va., still had concerns regarding providing additional flights to Reagan Airport. His contention was that the additional flights would increase noise in the busy airport across from Washington. At the time, the Senate leaders did not want to schedule a floor vote until Warner and McCain settled their differences. Although the House did its part, there was concern that if the Senate did not act by early July, there was little hope of reaching a House-Senate conference agreement between the two bills before the current, temporary authorization expired on August 6, 1999. As lobbyists and Shuster scrambled to gain supporters in the Senate, it was still clear that the Senate lacked a champion of the off-budget treatment of aviation funding. More importantly, the Office of Management Budget, the Secretary of Transportation and the Senate Budget chairman, all, were opposed to special budget guarantees for aviation funds. These groups feared what could happen to the Coast Guard

[230] CQ Weekly. Aviation Trust Fund Fight Shifts to Senate As Shuster's Plan Wins in House
[231] Ibid.

and Amtrak under such a proposal. While the Senate sought leadership on its bill, the House was still fighting over the funds.

On June 23, 2000, the House approved the fiscal 2000 Transportation Appropriation bill; however the bill did not include spending for the FAA. The House voted to amend the transportation-spending bill by removing FAA spending until Shuster and Transportation Appropriations Subcommittee Chairman Frank Wolf, R-Va., settled an issue over how to pay for FAA operations. Shuster objected that the bill funded FAA operations entirely out of the Airport and Airway Trust Fund. Historically, Congress has taken about 30 percent of the FAA operation from the general funds, with the remainder covered by the trust fund. During consideration of Shuster's aviation bill the week of June 14, the House voted to continue a general fund contribution, rejecting an amendment by appropriators to remove it.

So Shuster raised a point of order alleging a rules violation against the section of the Transportation appropriation bill that called for total reliance on the trust fund. However, Rep. Tom Coburn, R-Okla., a fiscal conservative, expanded Shuster's point of order to include the entire section of the bill covering FAA operations. He argued that FAA operations had not been specifically subject to an authorization bill. When Coburn's point was accepted, the FAA was struck from the bill. "Coburn hopes the House-Senate conference committee will settle on the Senate's funding level for FAA operations, which is about $245 million less than the original House level."[232]While everyone agreed this move was dangerous because it would affect the national aviation system, most felt that it would be resolved when the House and Senate met in conference. The Senate was

[232] CQ Weekly. House Transportation Bill Heads for Senate Without Money for Air Traffic Controllers. (June 26, 1999).

expected to take up its version of the Transportation bill soon after the July Fourth recess. Shuster did not let the transportation appropriation bill set back affect him for long.

On August 5, 1999, the House agreed by voice vote to go to conference with the Senate on a five-year FAA reauthorization.[233] Although the Senate had not considered its multi-year bill, Shuster by passed Senate passage of the legislation to expedite settlement. Shuster's unorthodox move short-circuited the traditional process of both chambers passing similar bills and then going to conference. His approach was to call up a Senate bill, S1467[234] that would provide a stopgap two-month extension of FAA programs, stripping its contents and inserting his long-term measure HR1000. The provision of Shuster's FAA authorization was language not included in the Senate bill S82. The House bill would take the aviation trust funds off budget.

The Senate Commerce Committee approved its FAA authorization bill on February 22, 1999; however, it was mired in negotiations over provision that would relax flight restrictions at Reagan, LaGuardia and O'Hare airports. Shuster's maneuver ensured that the current authorization for the FAA, which was set to expire August 6, 1999, would lapse for at least the duration of the August recess. The move froze $290 million in airport grants, preventing new construction and safety projects at many of the nation's airports. Although the move was highly unusual, it did not meet much opposition from Shuster's opponents. However, the move did upset proponents of Shuster's bill, specifically airport and road construction groups who were counted on airport funding to support the pending projects. Since the move was completed prior to the August congressional recess, interest groups who were dependent on construction funds were

[233] Congressional Record. Extension of the Airport Improvement Program (August 5, 1999) p. H7460.
[234] Aviation Investment and Reform Act for the 21st Century, a bill to extend the funding levels for aviation programs for 60 days.

unable to establish a lobbying campaign to alert Shuster of their concerns. Shuster's move set the stage for an active fall of 1999.

On September 8, Shuster and Oberstar urged the Senate leaders to move ahead with comprehensive aviation legislation. In a press release, Shuster predicted aviation gridlock and the potential air catastrophes that might occur if the bill was not immediate considered by the Senate.[235] In addition to the press release, Shuster sent a letter to Senate Majority Leader Trent Lott and Minority Leader Tom Daschle, which stated "Our aviation system is hurtling toward gridlock and potential catastrophes in the sky if we do not act promptly on long-term, comprehensive aviation legislation"[236]

On September 8, 1999, the Alliance met to discuss the outlook and timing for Senate action on the aviation reauthorization bill.[237] The Alliance agreed to send a coalition letter to the Senate urging action on an aviation reauthorization bill and the use of all aviation user fee revenue for aviation improvements. The Alliance concluded that the main goal of the coalition would be to fight attempts to prevent the Senate from appointing conferees to the bill. The Senate could not settle their differences with the House unless the Senate Majority Leader Trent Lott, R-Miss., appointed conferees.

On September 11, 1999, the Senate Majority Leader Lott tried to appoint conferees on the FAA bill, a move that would have required unanimous consent. But Democrats blocked him, at least some of who objected that the Senate had not yet debated a long-term reauthorization.

> "I ask unanimous consent the Chair lay before the Senate a message from the House to accompany S. 1437, the FAA reauthorization. I further ask consent the

[235] Committee on Transportation and Infrastructure Press Release (September 9, 1999).
[236] Committee on Transportation and Infrastructure Letter to the Senate Leadership (September 9, 1999).
[237] According to David Baurer, lobbyist for American Road and Transportation Builders Association, Alliance for Truth in Budgeting coalition meeting. (September 8, 1999).

Senate disagrees to the amendments of the House, agree to the request for a conference with the House, and the Chair be authorized to appoint conferees on the part of the Senate. Before the question is put, I do want to say the FAA reauthorization is a very important piece of legislation, obviously. It never seems to be easy getting it through the Congress. I remember in 1996 it was the last bill that we passed of the session, and it took an extra week of the session to get it through. Now we find, after a lot of work involving issues all the way from safety and improvements in airports and questions of slots at various airports--New York, Chicago, as well as what to do with Reagan National Airport--the Senate has developed what I think is a good bill. The House has passed a bill, but it has provisions in it that are of great concern to the chairman of the committee in the Senate and the chairman of the Budget Committee. So there are, once again, complications. Because of the need to stay on the appropriations bills and fulfill our commitments, it is very difficult to schedule a lengthy debate on FAA reauthorization. I have spoken to Senator Daschle and said: Is there some way we can work out an agreement to perhaps bring it up in a short period of time so we get it done, even in the midst of all the appropriations bills? The other option is to go straight to conference with the bill the Senate Commerce Committee reported and the bill the House has reported. That is what this would attempt to do so we could move on with the process. That effort was made during the latter part of July. We thought we had it cleared a couple of times, and then we ran into objections."[238]

The Senate had not considered a long-term bill, only the short-term extension that was amended to include the House's long-term bill. Sen. Byron Dorgan, D-N.D., said in a floor speech that aviation was an important issue that deserved a full Senate debate. More importantly, the Senate was still divided over providing off-budget treatment of the trust funds and opening up flights at the nation's busiest airports.

"I shall object on behalf of Senator Daschle, the Democratic leader. But before doing so, I would like to point out the Senate passed S. 1467, which is a 60-day extension of the airport grant program. We have dealt with this issue of the reauthorization act for some long while. In fact, in the Commerce Committee on which I and the majority leader both serve, we have passed S. 82. It has been waiting to be brought to the floor of the Senate for debate. The process that is described by Senator Lott would, in effect, prohibit Senators from debating this issue on the floor of the Senate. Because the House passes an omnibus bill and attaches it to the 60-day extension, the Senate does not have the opportunity to debate. It means people who have amendments they would like to offer, perhaps, to the bill that we wrote in the Commerce Committee will not have that opportunity. This will then be decided in conference. That is not appropriate and

[238] Congressional Record. Senate Majority Leader Trent Lott Speech (September 10, 1999) p. S10719.

> not something we could agree to. But I do want to say, and I expect the majority leader probably disagrees, this process has been abysmal. We have a system in this country with radical expansion of the number of people flying. The FAA is an organization that desperately needs some assistance and some predictability and consistency with a reauthorization they can count on. We should have done this long ago. Passing 60-day extensions doesn't serve anybody's interest. Several days on the floor of the Senate would resolve this from the standpoint of the larger reauthorization bill and move this process forward. I will be forced to object to the unanimous consent request for those reasons, the request offered by the majority leader. I do so object, and then I would like to offer a unanimous consent request on a different way to accomplish the same result. But I object to the unanimous consent request by the majority leader."[239]

Forgotten in the debate was the lapse in authority to operate the Airport Improvement Program, which sent airport executives quickly to Washington for emergency funding. "On behalf of the thousand of men and women who manage our nation's airports. We urge you to support the emergency funding for the nation's airports."[240]While the airport executives moved into action, the pressure on the Senate finally produced results.

On October 5, 1999, the Senate approved their $43 billion FAA multi-year reauthorization bill, which would allow 24 more flights in and out of Reagan Airport. Opponents, led by Warner argued unsuccessfully that more flights through Reagan Airport would increase congestion and noise in the skies over Northern Virginia neighborhoods. The passage ended months of haggling over the controversial provision of the bill that would increase the number of flights arriving and departing Reagan, La Guardia, O'Hare and Kennedy airports.

The bill made it through despite Virginia, New York and Illinois blocking the bill from being introduced on the floor amid concerns that the added flights would increase

[239] Congressional Record. Senator Byron Dorgan Speech (September 10, 1999) p. S10719.
[240] American Association of Airport Executives Letter to Senate Appropriation Chairman Ted Stevens (September 20, 1999).

congestion and noise in nearby neighborhoods. In order to alleviate the concerns, the bill called for a study of how the FAA calculates noise levels as well as a better explanation from the FAA and the airlines about their efforts to muffle the noise. Despite objections from some lawmakers, there was widespread support from the Clinton Administration for boosting competition at the three major airports. The bill was now ready to go to conference with the House's version, which passed in June 1999 and called for 12 more flights in and out of Reagan Airport.

The Senate insisted on its amendment and asked for a conference. The appointed conferees were McCain; Stevens; Burns; Gorton; Lott; Hollings; Inouye; Rockefeller; and Kerry from the Committee on Commerce, Science, and Transportation. Senate appointed conferees Domenici; Grassley; Nickles; Lautenberg; and Conrad from the Committee on the Budget for the consideration of budget items. The Speaker appointed conferees: Shuster, Young (AK), Petri, Duncan, Ewing, Horn, Quinn, Ehlers, Bass, Pease, Sweeney, Oberstar, Rahall, Lipinski, DeFazio, Costello, Danner, Johnson, E. B., Millender-McDonald, and Boswell. The Speaker appointed conferees - from the Committee on the Budget for consideration of budget items, and modifications committed to conference: Chambliss, Shays, and Spratt. The Speaker appointed conferees - from the Committee on Ways and Means for consideration of tax items, and modifications committed to conference: Archer, Crane, and Rangel. The Speaker appointed conferees - from the Committee on Science for consideration of science issues, and modifications committed to conference: Sensenbrenner, Morella, and Hall (TX). More importantly, there was an aggressive effort by all to bring attention to the issue.

On October 8, 1999, the Alliance developed a plan of action.[241] The goal was to send the conferees of the bill a letter outlining the coalition's membership and support of Shuster's bill. "The more than 100 national organizations of the Alliance for Truth in Transportation Budgeting urge you to include language in HR1000."[242] On October 14, 1999, the House Subcommittee on Aviation held a hearing on Air Traffic Control Delays. While the intent of this hearing was to address air traffic delays, the issue that dominated this hearing was reauthorization of the FAA. "According to FAA delay statistics, this is the worst summer in five years. Delays for the period January through July 1999 are almost 19 percent higher than in 1998. Delays for May, June and July 1999, total more than 125,000, a 36 percent increase over last year. This inconvenienced 140,000 passengers per day. In July, delays increased 75%! Delays for the first 8 months of the year total 265,200."[243]

All of the witnesses at the hearing, including FAA Administrator Jane Garvey, ATA President Carol Hallet, Airline Pilot Association President Duane Worth, and Russell Chew from American Airlines, pointed to the dire need for Congress to appropriate full funding for the FAA and the aviation trust funds. "The first step toward a long-term solution is to commit to funding increased staffing levels and automation enhancements needed to improve the way we manage airspace capacity today," said Chew.[244] Even the issue of PFCs or user fees was included in the hearing on delays. "The FAA's ATC revenue stream must become cost-based. The Administration believes that

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[241] According to ARTBA lobbyist, David Bauer, during an Alliance for Truth Budgeting meeting, all proponents of AIR21 must work their networks and ensure conferees protect that aviation funds (October 8, 1999).
[242] Alliance Letter (October 6, 1999).
[243] House Transportation Committee Press Release, The Recent Increase in Air Traffic Delays (October 14, 1999).
[244] Testimony of Russell Chew, Managing Director of Operations for American Airlines, before the House Transportation Committee (October 14, 1999).

Congress should replace the current financing mechanism, an excise tax on airline passengers, with a system in which the actual commercial users of air traffic control services pay for them based on the cost of those services."[245] It became clear later that this hearing was staged in order to gather additional momentum towards reconciliation between the House and the Senate on FAA reauthorization as each witness highlighted the need for additional funding for the FAA.

A week later, the American Association of Airport Executives sent a letter to the conferees urging the conferees to increase the passenger facility charges (PFCs) from $3 to $6 and pass a multi-year reauthorization with significantly greater resources devoted to aviation infrastructure investment.[246] "We strongly urge you to adopt a final conference report on HR1000 that contains the following item, lifting of the federally-imposed cap on Passenger Facility Charges (PFCs) from $3 to $6. The PFC is a pro-competitive funding mechanism that affords local communities the ability to meet the needs of their own airports. Local and state governments must be given this flexibility in order to exercise greater control over infrastructure investment decisions."[247] While providing off-budget treatment for the aviation trust funds and increasing slots to the three busiest airports were contentions issues leading up to passage of both House and Senate bills, new issues emerged out of the differences in each bill, including increasing PFCs.

Increasing PFCs was not included in the Senate bill. The House bill would increase PFCs from $3 to $6. Many groups, including NBTA and AAA, opposed this action because consumers would view this increase as a tax increase and/or a fare

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[245] Testimony of Jane Garvey, FAA Administrator, before the House Transportation Committee (October 14, 1999).
[246]Letter from the American Association of Airport to House and Senate Conferees (October 15, 1999).
[247] Ibid.

increase because it is paid at the point of sale of a ticket or merchandise at an airport. On October 19, 1999, NBTA asked their attorneys to investigate the contribution of business travel to the overall trust fund and to the PFC pool.[248] Although it was not determined what the contribution was, it was concluded that due to the volume of business travel on domestic carriers the amount is significant. This contribution would be the selling point in NBTA's efforts to halt a PFC increase. While NBTA opposed the increase in PFCs, the airports continued their push to include the language. By the end of October 1999, it became apparently clear that this issue would slow any reconciliation between the two Houses.

On November 3, 1999, the conferees met to discuss their differences. During this meeting, the Senate Budget Committee offered a proposal that would guarantee federal aviation investment. Under their proposal, the bill would guarantee aviation investment; however it would remove the general fund contribution, which represents 30% of the trust fund. NBTA and the Alliance opposed this approach because the general fund share of FAA's budget represent payment for a variety of FAA services, including general safety and security services, as well as military and other government aircraft that use the system but do not pay taxes. More importantly, the coalition was concerned that the proposal would side step the current unspent aviation excise taxes deposited in the trust fund and interest earned by these funds. When Congress initiated federal aviation user taxes, it created a contract with American public that those taxes would be earmarked to support "pay-as-you-go" aviation safety, management and capital improvement

[248] According to NBTA, Webster and Chamberlain attempted to determine the contribution of business travelers to the PFC fund (Personal communication, October 19, 1999).

programs. By ignoring the trust fund's unspent balance, the proposal would continue the violation of this contract.[249]

On November 10, 1999, negotiations between the House and Senate broke down. "In a strongly worded statement November 10, 1999, House Transportation and Infrastructure Committee Chairman Bud Shuster, R-Pa., said the latest Senate proposal would actually cut aviation spending and allow an additional $3 billion to build up the Airport and Airway Trust Fund."[250]In a statement the following day, McCain replied that he was disappointed that negotiations had broken down, saying, "The air traveling consumer will have to wait once again for crucial competition enhancement provisions to take effect."[251]The Senate conferees proposed allowing the authorization for aviation spending to grow as receipts in the aviation trust fund increased. They also propose that the interest generated by the trust fund, estimated at about $1 billion a year, could be authorized for aviation. The trust fund money would be protected against money being spent on other purposes by a point of order.

More importantly, the Senate conferees promised that there would be some form of general fund contribution. Shuster directed his staff November 8, 1999, to draft language that would implement his verbal agreement with senators. Senate staff members rejected the language Shuster produced November 9, 1999. One aide, citing its explicit guarantee of general fund money, described the language as a "huge step backward."[252]Senate aides came up with their own language, however Shuster rejected their proposal because their plan would reduce current baselines on aviation spending,

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[249] Alliance for Truth in Transportation Budgeting Letter to Budget Chairman Pete Domenici (November 4, 1999).
[250] CQ Weekly. November 13, 1999.
[251] Ibid.
[252] Ibid.

and that the promises on general fund money did not go far enough. The lack of results meant that Congress would end the session without an FAA reauthorization bill, and Shuster would have to wait until 2000 to fight again.

The inability of the House and Senate to reconcile their differences once again left airport funding in limbo. However, unlike the previous years, there were more similarities between the House and Senate bills than there were differences. More importantly, both houses were united behind the conferees, which meant that what ever would be produced by the Conference Committee would be acceptable by both houses.

The second phase of this dispute was one in which the parties over time and in a piecemeal way set the terms of trade of the ultimate agreement. It was a time when moderates within the factions recognized the legitimacy of the interests of other factions and admitted—if still covertly—that a certain general set of solutions was necessary. By the end of 1999, all the disputants recognized that, should this depute end in agreement; the nation's aviation system would be placed in a very secure place for years to come. The development of a formula was, however, complicated by flux in the distribution of power among groups during this period. It was not certain from one month to the next whether, for instance, proponents of protecting aviation trust funds would actually accommodate enough support in both Houses and Senate to justify a firewall for aviation funds.

Because of the seriousness of the negotiations, it was also during this time that referents were developed. Specifically, those parties who wanted to create strict firewalls around the aviation trust funds were now considering looser restrictions with assurances of at least higher guaranteed authorized funding levels. By the end of 1999, they were also considering procedural motions to allow windows of opportunity for budget leaders to use the trust funds in the case of an emergency. Though the potential for joint gains continued to expand and coalition building was gaining momentum, the legislative process at this time posed serious hindrance of cooperation.

The parties developed the formula—first in a deductive and then in a slow, inductive fashion—as illustrated in 2000. Once again, it will be necessary to observe the methods through which legislators developed and altered proposals that would offer joint gains.

2000: Finishing with an Eye Toward the Future

The formula phase provides guidelines for the solution of problems of detail. It is in the detail phase that these precise problems are addressed. The parties send signals; make concessions, and exchange "points" or differences of detail. By concession is meant the act of giving in to meet the other party's demands, the term refers to negotiations in which the stakes can be considered as increments of the same item. Concessions on both sides result in compromise.

Exchanging points means trading on minor points. Part of the work in this phase is finding the appropriate item of exchange under the agreed formula. Negotiators may alternately decrease and increase complexity as appears necessary in order to further the agreement. They decrease complexity by dividing or fractioning issues for easier handling. They increase complexity by packaging issues together to allow tradeoffs. They use threats and promises to add further complexity and enhance compliance.

Finally, negotiators in this phase decide how to conclude the negotiations in a final agreement. They may order the items on the agenda from the largest issue to the smallest. Or they may keep all issues open until the end. In the end, the negotiation is often ended through the approach of a deadline—externally or internally imposed. In this work, 2000 marked this negotiating phase. It was during this period that congressional negotiators sought agreement on the remaining sticking points of the legislation: providing additional slots at the slot-controlled airports, authoring long-term aviation funding, determining how to wall-off some or all of the aviation trust funds and creating budgetary safeguards for other domestic programs. The process was marked by as much competitive bargaining as integrative—and likely more of the former. The threat that one party would attempt to destroy the formula during 2000 was a constant worry, which might explain why it took Congress three months before it tackled the issue again.

On March 4, 2000, the key antagonists over funding for aviation programs reached a tentative agreement March 1, ending a yearlong dispute over a three-year, $40 billion measure (HR1000) to reauthorize the FAA and guarantee a spending increase for airport construction. One immediate effect of the deal would be to increase the maximum passenger facility charge from $3 to $4.50 for each leg of travel. Airports can levy the charge for their own use. Airlines and other consumer groups, including NBTA, have opposed any increase in the fee because the fee is measured as a rate increase on the price of a ticket. The House wanted to raise the limit to $6; the Senate said nothing, and negotiators split the difference.

Negotiators reached agreement on eliminating restrictions on the number of takeoffs and landings at three of the nation's most congested airports by January 1, 2007. All three would be opened to regional jet service without limits in spring 2000. At Reagan Airport, 24 more daily flights would be allowed, including 12 outside a 1,250-

mile perimeter. This deal would permit American West based Phoenix to fly directly to National. McCain had insisted on the additional flights in negotiations with the House.

The spending agreement between Senate Majority Leader Trent Lott, R-Miss., Senate Budget Chairman Pete Domenici, R-N.M., and Shuster would put in place a new method of financing the nation's aviation programs. As lawmakers worked out details of the package at week's end, aides predicted the Senate could consider the conference report the week of March 6 and by the House the week of March 12, if procedural hurdles could be overcome. President Clinton at this time did not indicate whether he would sign the measure.

The budget agreement resoled a standoff between Shuster, one of the Hill's most feared negotiators, and several determined Senate budget hawks. The agreement calls for a guarantee that all of the receipts and interests in the trust fund will be appropriated for the next three years for aviation programs—projected total of $33 billion. The money comes mainly from airline ticket taxes. The measure would authorize an additional $6.7 billion for aviation programs, but that money would be subject to the normal appropriations process. In all, the bill would authorize $12.7 billion for aviation programs in fiscal 2001, a $2.7 billion increase.

The House-passed version was a more wide-ranging, five-year plan. It would have to take aviation programs "off-budget," meaning that their funding would have been guaranteed and would not have counted against the federal surplus. The House bill also would have included a contribution from the general treasury for aviation. As a fallback, Shuster pushed for funding guarantees for aviation programs along the lines of the firewalls he won for highway a transit spending in the 1998 surface transportation authorization. The surface transportation law requires that road and transit program be funded at certain levels, based on the balance in the Highway Trust Fund, but the money is counted as part of the overall budget.

Senate conferees, led by Domenici, Appropriations Committee Chairman Ted Stevens, R-Alaska, and Slade Gorton, R-Wash., were intent on making a stand against another transportation entitlement program, particularly one that might remove funds from other domestic programs like the Coast Guard and Amtrak. Groups representing the interest of the Coast Guard and Amtrak, like the National Association of Railroad Passenger and the American Association of Port Authorities, argued that the highway and transit firewalls had put a squeeze on other transportation programs. A Senate aide said the deal was acceptable to the senators because the spending guarantees would only apply to money in the aviation trust fund, which historically has lagged behind the needs of aviation.[253] Since there would be no guaranteed windfall for aviation programs, the bill would not further strain other transportation needs. "This package we can live with," Stevens said March 1, 2000.[254]

Shuster lost on a key demand—guaranteed general fund spending. The House chairman pulled out of conference negotiations over the issue in November 10, 1999. However, the March 1 deal gave no assurances that general fund money will be appropriated. "The final agreement permits the use of general funds for aviation programs subject to the normal appropriations process," Domenici said.[255] But Shuster won a significant concession on the Airport Improvement Program and the FAA's

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[253] According to Budget Committee staffer, budget members were now comfortable that guarantee funding would come from aviation revenues and would not be pulled from general fund revenue, particularly funds that might be targeted to help the Coast Guard, Amtrak etc. (March 2000).
[254] CQ.com Breaking News (March 1, 2000).
[255] Stephen Irwin, Airport News: "Senate, House Near Deal on Aviation Bill" (March 1, 2000).

facilities and equipment account. The two capital programs were key concerns for Shuster and his legislative ally, the airports. The programs would be funded out of the trust fund first.

The Airport Improvement Program would receive a significant authorization increase, from $1.9 billion in fiscal 2000 to $3.2 billion in fiscal 2001, $3.3 billion in fiscal 2002 and $3.4 billion in fiscal 2003. The program provides construction grants to airports. That would leave the burden on the FAA to fight for its highest priorities—operations and safety programs such as air traffic control—through the regular appropriations process. In a sign of administration concern on this point, Transportation Secretary Slater said it was "most important that any final legislation fully fund the FAA operations at the level requested in the president's budget for fiscal year 2001."[256]

On March 8, 2000, compromise legislation to reauthorize the FAA was adopted by the Senate, 82-17. Two days earlier the House Appropriations Committee Chairman Bill Young, R-Fla., outlined "serious reservations" with the aviation bill, noting that it would require a $2.7 billion funding increase for fiscal 2001, $1.5 billion above President Clinton's budget request. "You know that the huge budget increases in AIR21 must be paid for by somebody. You also know that the funding guarantees in AIR21 reduce budget flexibility—essentially requiring that any shortfall be borne by the Coast Guard and Amtrak. Implying that those bills should be paid by the agencies of other cabinet secretaries, rather than by your own department, is irresponsible. If you are really concerned about the Coast Guard funding, I suggest you recommend the President veto

[256] According to Transportation Secretary Rodney Slater, the administration still had concerns regarding the level of funding included in AIR21 (personal communication, March 2000).

AIR21."[257] Young and allies such as House Budget Chairman John Kasich, R-Ohio, and Majority Whip Tom Delay, R-Texas, argued that the House should not go along with guarantees for aviation programs at the possible expense of other domestic needs.

But Shuster won a nasty fight over the bill on the House floor in June 1999—DeLay at one point called the bill "irresponsible"—and the conference agreement moderates the funding and budget guarantees of the original House bill. "We're in a better position than we were," said Rep. John Sweeney, R-N.Y., a strong supporter of the bill.[258] If the Senate vote is any indication, House opponents have a tough job. Opposition to the bill's most contentious issues—budget protections, increased spending and more flights at some congested airports—had been much stronger in the Senate.

All the controversies that had dogged the aviation bill for more than two years faded into the background by the time the Senate began debate on the conference report March 8. Sen. John Rockefeller, D-W.Va., noted that the FAA had operated under a half-dozen temporary extensions since 1998; a period in which airline traffic had grown to historic levels. "It's been an extraordinary but frustrating process, but a successful one,"[259] Rockefeller said. Sen. Slade Gorton, R-Wash., one of several fiscal conservatives who opposed broad guarantees of aviation spending, praised the final bill as "a reasonable balance with the needs of the aviation system and out limited federal resources."[260]

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[257] House Appropriation Committee Chair Bill Young Letter to Transportation Department Secretary Rodney Slater (March 17, 2000).
[258] CQ.com Breaking News, Conferees Throw in the Towel On Long-Term FAA Funding (March 17, 2000).
[259] Congressional Record, Sen. John Rockefeller Speech (March 8, 2000) p. S1300.
[260] Congressional Record, Sen. Slade Gorton Speech (March 8, 2000) p. S1300.

But the prospect of guaranteeing $33 billion for aviation over the next three years, on top of the spending guarantees for highways and transit adopted in the 1998 surface transportation was too much for Sen. Frank Lautenburg, D-N.J. He said prospects for deep cuts in funding for Amtrak, the Coast Guard and other transportation programs were now very real. "You can't ignore the needs of one mode of transportation in favor of another," Lautenburg said. "Are we less concerned about those at sea than those in the air?"[261]

Despite the Senate vote, controversy remained over easing restrictions on the number of takeoffs and landings at some of the nation's most congested airports in order to give newer airplanes a shot at more markets, and to open more service to smaller, regional airports. "The phase-out of the slot rule...will open a new era of aviation," said Sen. Charles Grassley, R-Iowa. "It should give smaller airports a better chance at a piece of the economic pie."[262]

Lawmakers whose constituents would have to bear the increased noise fiercely opposed increasing the number of flights. The compromise was to gradually eliminate restrictions at O'Hare, Kennedy and LaGuardia airports, and to add two-dozen more slots a day at Reagan Airport. Most of the opponents had been won over through negotiations last year. But Senators Peter Fitzgerald, R-Ill., Charles Robb, R-Va., and Daniel Moynihan, D-N.Y., voted against the final measure. The lone no-show on the vote was the Senate sponsor, McCain, who had pushed for more slots at Reagan Airport, which would benefit Phoenix-based American West Airlines. McCain was barely mentioned in the floor debate and was in Arizona deciding the future of his presidential campaign.

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[261] Congressional Record, Sen. Frank Lautenburg Speech (March 8, 2000) pp. S1300-S1301.
[262] Congressional Record, Sen. Charles Grassley Speech (March 8, 2000) p. S1251.

Administration officials seemed pleased with the final legislation. Transportation Secretary Rodney Slater, who was at the Capitol for the vote along with FAA Administration Jane Garvey, said that the bill embodied 95 percent of the administration's goal for safety, airport security, modernizing air-traffic control, adding capacity and increasing airline competition. "We put on the table, and the Congress responded," Slater said. "It's a good day for us."[263]

Airports emerged as the measure's biggest winners, getting the largest spending increases and the strongest guarantees for that spending. Funding for the Airport Improvement Program increased from $1.9 billion appropriated in 2000 to $3.4 billion by fiscal year 2003—all ensured by points of order against changes on the floor. The legislation says it would not be in order for the House or Senate to consider appropriations that do not allocate all trust fund revenue for aviation and do not match authorization levels for airport construction and FAA capital programs.

Under pressure from Senate Appropriations Committee Chairman Ted Stevens, R-Alaska, Shuster dropped a section that would have prevented the House and Senate from waiving the points of order. Every airport with construction would see an increase—part of the real selling power of the legislation. The basic construction grant would double, from a minimum of $500,000 to $1 million. Shuster hoped the money would help ensure that airports can add capacity as air travel continues to increase—from current levels of 650 million passengers a year to more than 1 million by 2007. Airports also would be able to finance their own construction projects through a higher personal

[263] According to Transportation Secretary Rodney Slater, the final bill seemed to satisfy all of actors concerns and goals (Personal communication, March 8, 2000).

facility charge paid by each passenger—the maximum fee would increase $3 per airport to $4.50.

The legislation contained scores of other policy initiatives, including creation of a chief operating officer at the FAA in charge of air-traffic control systems; continuation of a grant program for small communities and a study of airline market practices that raise their ticket prices; all airport security personnel would be subjected to background checks; and new and increased penalties for customer service violations. The Transportation Department's inspector general could monitor airline services agreements. But financing all of the new programs would be a challenge. The deal funded FAA operations at the level of the fiscal 2001 Clinton budget request, which was a promise that removed administration objections to the bill.

But funding in future years could be hard to come by, as appropriators may find themselves squeezed by airport and capital funding guarantees. The struggle over "unlocking" the Airport and Airway Trust Fund, which is largely financed by airline ticket taxes, was the central issue that took two years to resolve. Shuster got much less than he asked for, and probably less than expected. In the end, a meeting of the minds with Senate Majority Leader Trent Lott, R-Miss., helped him immeasurably, who was convinced that the big spending increases were justified and who was eager to move the bill before the budget season closed its window of opportunity. In a March 1 agreement Lott brokered a deal that ended a six-month deadlock on how to guarantee spending from the aviation trust fund while protecting oversight. Under pressure from Lott, Senate Budget Chairman Pete Domenici, R-N.M., and Stevens went along with the compromise.

On March 18, 2000, Shuster finally achieved for the aviation industry what he did for highways and transit in 1998—a guaranteed source of funding for airports, runways and air-traffic technology. Any criticism of Shuster's plan or his tactics was drowned out when the House, on a 319-101 vote, cleared a sweeping, three-year aviation authorization bill and sent the measure to President Clinton for his expected signature. "With AIR 21, the money the traveling public pays in ticket taxes will finally be dedicated solely to improving the safety and efficiency of our aviation system," said Committee Chairman Bud Shuster. "Our air traffic control systems must be modernized, single airlines have gained monopolistic supremacy at many of our large airports, and flight delays and customer complaints are increasing. This legislation will go a long way in relieving our overburdened aviation system without raising taxes."[264]

The vote capped a two-year test of wills between two powerful blocks in Congress. One side featured Shuster and his public works allies, who advocated massive, guaranteed infrastructure investments to meet growing aviation traffic. On the other side were fiscal conservatives in both chambers, who warned that the effort to give aviation special status would shortchange other urgent domestic priorities, and appropriators, who are used to having wide discretion in doling out aviation trust funds.

"This, in my judgment, is one of the worst bills I have seen go through the Congress. It is wrong because of what it does within FAA. It says the top priorities are concrete; the lowest priorities are people. It is plain and simple. The lowest programs for funding are air traffic controllers, personnel who deal with safety. They compete with other people for funding, but the people who pour the concrete do not. The people who

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[264] House Transportation Committee Press Release, Air Travelers Win Big as House Votes to Increase Aviation Investment Without Raising Taxes (March 15, 2000).

buy facilities and equipment do not, and we have had a history in this agency of having a terrible time bringing any contract in on time or in an appropriate fashion. It does the wrong thing for FAA. Then at the very day that the House Committee on the Budget is meeting to deal with the budget resolution for this session, where we hear we are going to have very tight restrictions on discretionary spending, we are going to say the first priority above everything else is building more runways, more runways, more important than anything else on the agenda. That is what we are doing with this bill. More important than other transportation priorities within our subcommittee, that small unprotected operation is going to have to compete with Amtrak and the Coast Guard. So if there are concerns about Amtrak or the Coast Guard, better take another look within the transportation area. If there are other concerns of what we are going to fund this year, if there are priorities beyond concrete for runways, take another look before casting what my colleagues might think is their easy vote. Mr. Speaker, I rise in opposition to the conference report on AIR21 for several reasons. This is a bad bill that strikes a blow at fiscal responsibility. It continues to unfairly subsidize aviation from the general fund. And it will not adequately address the safety and security needs of our air traffic system."[265]

The decisive vote for Shuster and his capital investment program ended a two-year stalemate in which Congress could manage only a series of short-term extensions that kept the aviation system on life support, while passenger traffic continued to surge. Transportation Secretary Rodney Slater hailed the bill's passage and indicated that

[265] Congressional Record, Rep. Martin Sabo Speech (March 15, 2000) p. H1018.

Clinton would sign the measure. "I look forward to this new era in American aviation history," he said.[266]

Airport officials said that the bill would go a long way toward closing a funding gap that has persisted over the past several years. The legislation would accelerate a backlog of expansion projects already approved by the FAA but delayed for lack of funding, including runways in Northern states with a short construction season. A report from state aviation officials warning of the possibility of losing another entire year of construction in the North was one factor that pressured conferees to come to an agreement. "You've got to invest today in much larger dollars to meet tomorrow's needs," said Todd Hauptli, a lobbyist for the American Association of Airport Executives.[267] Most of all, airport officials said AIR21 would allow them to start making new plans for construction in a way that has not been possible for the past two years of legislative gridlock.

For the second time in three years, Shuster was able to engineer a massive transportation construction bill through a Congress dominated by fiscal conservatives and appropriators. This time, he capitalized on growing consumer frustration over delays and limited choices in airlines and flights. Further, every lawmaker either had an airport in his district or has a constituent who uses a nearby airport. "I suppose it is difficult in an election year for Members to vote against projects that might show up in their districts sometime between now and the election. In fact, I would say to the gentleman from Pennsylvania (Mr. Shuster), that I probably would like to have some of the money in my

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[266] CQ.com Breaking News (March 15, 2000).

[267] According to Todd Hauptli, Chief Lobbyist for the American Association of Airport Executives, communications by state aviation officials of the potential loss of jobs if an aviation bill did not pass in 2000 spurred many House and Senate members to come to the table (Personal communication, March 2000).

own district. But, I am hoping, for a number of reasons that we are not going to pass the bill this year. I would like to say this. I know that the authorizing committee sometimes wonders where I stand. I believe that the funds that go into a trust fund for a specific purpose should be protected and should be used by that trust fund only for those purposes. By the same token, I am strongly of the opinion that the trust fund or the authorizing legislation should not be able to mandate other spending. We have a difficult enough time in keeping our spending numbers down as low as we can without mandating more spending. This bill mandates certain amounts of spending."[268]

Rep. David Obey, the senior Democrat on Appropriations, said the aviation bill was another broken promise by the GOP-controlled House to maintain fiscal responsibility. "This bill throws that promise out of the window," said Obey. Obey argued the measure place airports above all other domestic programs. "I don't want anyone who votes (for the bill) to say they were for making more room for cancer research, for education or for defense," Obey told his colleagues during floor debate.[269]

But Rep. James Oberstar, D-Minn., ranking member of the Transportation Committee, defended the conference agreement as a way to ensure that airline passengers would see a return on their ticket taxes. He said the spending guarantees in the bill were warranted, because passengers had been told that they are paying taxes into a trust fund for aviation, while the money actually has been used for other purposes. "What the appropriators argue is they should be allowed to hoard those dollars," he said. "That

[268] Congressional Record, House Appropriations Chairman Bill Young Speech (March 15, 2000) p. H1014.
[269] Congressional Record, Rep. David Obey Speech (March 15, 2000) p.H1016.

doesn't keep the faith with the traveling public."[270] While funding appeared to be the major issue in this bill, airline competition played a key role in its passage.

Lawmakers embraced the idea that expanded competition could help solve some passenger woes. Many small cities are served by only one airline, and many "hub" cities have service dominated by a single airline. In these markets, passengers often face high fares. The bill's sponsors hoped to alleviate the problem with greater use of lower-cost regional jets and by opening up access to the four key slot controlled airports. The bill completely eliminated slot restrictions at O'Hare by July 2002 and at New York's airports by January 2007. It would allow unlimited, regional jet service into those airports beginning this spring. At National, 24 new flights would be permitted each day, including 12 long-distance flights beyond a federally imposed 1,250-mile "perimeter."

The efforts to relax slot restrictions drew rebukes on the House floor, especially from lawmakers from Chicago, New York and Northern Virginia representing constituents in the affected flight paths. Opponents to the new flights cited safety concerns and the environmental impact of the traffic.

"Mr. Speaker, I cannot support this conference report. My concerns about this bill are the same as those I have expressed for many years. I believe this bill will increase safety hazards for those flying into O'Hare and for my constituents who live under O'Hare's increasingly congested flight paths. Compressing more aircraft operations into the extremely limited capacity at O'Hare compromises safety and poses a significant risk of an air tragedy. Adding more flights will only increase the already unacceptable safety hazards at O'Hare. A third airport is the only safe, sound and effective response of the public's need for more flights. To those who argue that lifting of the slot rule will increase

[270] Congressional Record, Rep. James Oberstar Speech (March 15, 2000) p. H1013.

competition, I challenge you to show the specific facts that demonstrate that lifting the slot rule will actually increase competition. We have had a slot exemption on the books since 1994 to allow new competition at O'Hare, 6 years, yet the overwhelming majority of added flights under this exemption have gone to the affiliates of two major airlines. So, if you want to increase competition, why not do it in the safest, and I emphasize safest, most logical effective way possible. The answer to effectively creating real time competition in the Chicago region is a new regional airport of sufficient size to allow new entrants to come in with a critical mass of flight operations. That means the capacity to grow and accommodate thousands of flights daily, capacity that can only be obtained at a new metro Chicago airport. Mark my words: Congress' action in lifting the slots will create an air traffic logjam of nightmare dimensions at O'Hare."[271]

"This is a day of hope for my region,"[272] said Rep. John Sweeney, R-N.Y. Upstate New York has seen some of the highest ticket prices in the country as airlines have pulled out of markets like Albany, Buffalo and Rochester. Sweeney's upstate colleague, Rep. Louise Slaughter, D-N.Y., noted that JetBlue, a new airline serving Buffalo and Ft. Lauderdale, Fla, from JFK Airport, now would be able to expand and connect her constituents in the Rochester area to New York City. The number of lawmakers from underserved areas turned out to be far greater than those representing areas that will suffer the effects of more flights. But the defeat left many lawmakers from Illinois and Virginia bitter about what they said were federal government's "broken promises" to limit the impact of the airports. "They want to stuff as many airplanes as they can, from

[271] Congressoinal Record, House Judiciary Committee Chair Henry Hyde Speech (March 15, 2000) p. 1005.
[272] CQ.com Breaking News (March 15, 2000).

wherever they can," said Rep. Frank Wolf, R-Va.[273] although the bill sought to address competition issues for the sake of passengers; it was still unclear whether the bill will address the traffic control issues that plagued the aviation system over the last two years.

Airlines clearly hoped the bill would have an impact on the strained air traffic control system. Passengers were frustrated by a record number of delays in 1999. Airlines blamed most of the delays on management problems at the FAA. The effort to modernize the air-traffic control system had been under way since 1981, and it had been plagued by numerous setbacks and cost overruns. Some of the computer systems designed to take over air-traffic control was deemed obsolete before they were even deployed. The bill would create a new chief operating officer for air-traffic control at FAA. This new executive would enable the FAA administrator to act more like a chief executive officer, setting the overall policy and tone for the agency.

Among the goals of the legislation were facilitating a new scheme to fit more planes into the national airspace; employing modern global positioning satellite technology on a large scale; and authorizing "free flight," a new system that gives pilots more route flexibility. The bill would enable the FAA to collaborate closely with the airline industry on traffic control issues. "The current system is safe, but it is old and inefficient," said David Fuscus of the Air Transport Association. "It can't handle the traffic out there. It was designed to control the traffic flows of 20 years ago."[274] But several lawmakers on the House floor said the bill's emphasis on construction could put air-traffic control in a tight spending environment.

Rep. Young noted that Republicans were preparing a tight fiscal 2001 budget

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[273] Ibid.
[274] Ibid.

resolution even as the House was debating the FAA bill. "The electronics and concrete companies are going to like this bill. I have no problem with them," said Young. "I'm concerned about the people who run the system, who ensure safety."[275] The Clinton administration also voiced concerns over operations funding levels, but it backed the agreement when conferees increased authorization levels to match the president's fiscal 2001 budget request.

"Although this legislation seeks to provide substantial funding guarantees for airport construction and other capital investment, it jeopardizes funding for safety. I remain concerned about the possible effect of H.R. 1000's procedural requirements on appropriations for air traffic control and other crucial safety functions funded by the FAA's Operations account. The bill mandates unnecessarily large increases for FAA capital spending under the budget caps, thereby making it more difficult to fund other discretionary programs, especially transportation programs such as FAA Operations, Amtrak, and the Coast Guard. Because the bill also limits the ability of the appropriators to reallocate aviation-related capital spending to meet more pressing operational needs within the FAA, the bill creates an extra hurdle to fully funding the amounts authorized and required for FAA operations. My Administration will work with the Congress to achieve more balanced funding of aviation programs in fiscal year 2001. This legislation provides benefits to passengers and the aviation community, and represents a first step toward our long-term objectives for modernization and stability of

[275] House Appropriation Committee Chair Bill Young Letter to Transportation Department Secretary Rodney Slater (March 17, 2000).

FAA's critical air traffic control services. I thank the Members of Congress who led the 3-year effort to enact this bill, and I am pleased to sign it into law."[276]

Shuster and Oberstar said they received assurances from House leaders that the transportation appropriations spending allocation would allow for growth in aviation without cutting into programs like the Coast Guard or Amtrak. But many observers think appropriators will be hard-pressed to fund those programs as soon as fiscal 2002.

As the President signed AIR-21, negotiators for the main parties had essentially determined the shape of aviation funding and programs for the next five years. It had been determined by the power of the parties, but also by the efforts of mediators. Ironing out details—details of legitimacy and legalization of the program and policies—laid ahead for them. Also, was the job of ensuring that there were no retractions of spending guarantees included in AIR-21. In addition, unknowingly, were the events of 9-11 and its impact on aviation spending priorities.

September 11, 2001 (9-11): Using Airport Grant Funds for Security Projects

The events of 9-11 created several new challenges for the aviation industry in ensuring the safety and security of the national airport system. Chief among them is deciding to what extent Aviation Trust Funds should be used to finance new security requirements at the nation's airport. While many in the aviation industry believe that funding security projects has become even more important in the aftermath of September 11, they also recognize the need to continue funding other airport development projects, such as those designed to enhance capacity in the national airport system. However, it will be difficult to do both.

[276] Public Papers of the Presidents, William J. Clinton—2000, Statement on Signing the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (April 5, 2000) pp. 637-639.

Safety and security has now taken the front seat in aviation. There is increasing sensitivity on the issue of whether protecting Aviation Trust Funds also means protecting aviation development projects from security projects. In a telephone survey of House and Senate Transportation Committee staffers conducted in May 2002, only four out of the 61 Senate and House member staffers felt comfortable answering whether their member's position regarding utilizing Aviation Trust Funds for aviation purposes changed as a result of the events of 9-11.[277] The issue of funding aviation programs became a sensitive issue after 911.

Over the years, the GAO and other government oversight agencies made recommendations to Congress to improve screeners' performance, strengthen airport access controls, and better protect air traffic control computer systems and facilities. As of September 2001, the FAA and Congress had implemented some of these recommendations and were addressing others, but its progress was often slow. In addition, many initiatives were not linked to specific deadlines, making it difficult to monitor and oversee their implementation.

Since September 2001, securing the nation's transportation systems from terrorists' attacks has assumed great urgency and care. The Congress and the Administration have reorganized the federal agencies responsible for transportation security and placed new mandates on them, without unduly inhibiting the movement of goods and people. Most importantly, the events of 911 demonstrated the existence of significant, long-standing vulnerabilities in aviation security. Among those vulnerabilities were airport screeners' inadequate detection of threats when screening passengers and

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[277] According to House and Senate Transportation Committee staffers, the events of 9-11 made it very difficult for members of Congress to take a position regarding aviation funding, particularly in light of emergence of some security funding failures (Personal communications, March 2002).

their carry-on bags prior to their boarding aircraft; the absence of any requirement to screen checked baggage on domestic flights; inadequate controls for limiting access to secure areas at airports; and inadequate security for air traffic control computer systems and facilities. In the view of the public, Congress could easily be held responsible for failing to adequately oversee and fund these programs before 911; thus addressing or answering aviation funding questions was a sensitivity issue to congressional staff.

FAA has traditionally assigned the highest priority to safety and security projects that are mandated law or regulation. Shortly after September 11, in response to increased security requirements and in exercising the authority granted under the Federal Aviation Reauthorization Act of 1996, FAA reviewed its AIP eligibility requirements and made several changes to permit the funding of more security projects that previously had not been funded by AIP.

During fiscal year 2002, the Federal Aviation Administration (FAA) awarded a total of $561 million in AIP grant funds to airports for security projects related to the events of September 11, 2001.[278]This $561 million represents approximately 17 percent of the $3.3 billion available for AIP grants in fiscal year 2002 and is the largest amount awarded to airports for security projects in a single year since the program began in 1982. The projects which range from access control systems to terminal modifications, qualified for AIP funding either under eligibility requirements in effect before September 11, 2001, or under subsequent statutory and administrative changes. These changes were born out of the Aviation and Transportation Security Act, passed right after 9-11.[279] The

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[278] GAO, Report to the Committee on Transportation and Infrastructure, Using Airport Grant Funds for Security Projects Has Affected Some Development Projects (November 1999).

[279] Aviation and Transportation Security Act amends Federal transportation law to establish in the Department of Transportation (DOT) the Transportation Security Administration, to be headed by an Under

legislation created the Transportation Security Administration (TSA) within the Department of Transportation that is responsible for transportation security, including aviation. The legislation also created a uniform, consistent security system at our nation's airports.

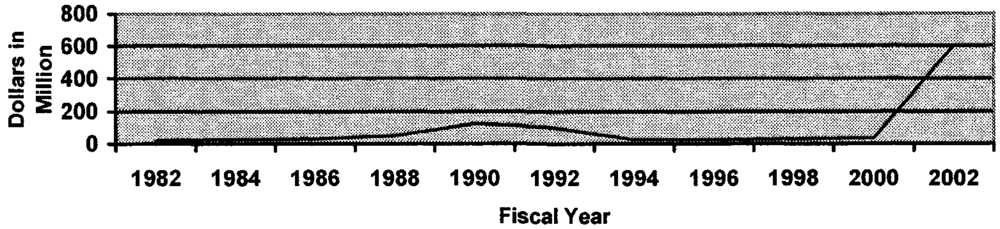

Figure 11
AIP Grant Funds Awarded for Security Projects, Fiscal Year 1982 through 2002 (Source: FAA)

More important, the Aviation and Transportation Security (ATSA) amended existing legislation governing AIP eligibly to permit funding for fiscal year 2002 of any security-related activity required by law or the Secretary of Transportation after September 11, 2001, and before October 1, 2002. ATSA also created the Transportation Security Administration (TSA) within the Department of Transportation, and assigned it primary responsibility for ensuring security in all modes of transportation. As such, TSA is now responsible for funding some airport security-related projects, a limited number of which FAA had previously funded through AIP grant funds. These projects include pre-board screening devices and baggage screening equipment, such as explosives detection systems.

Secretary of Transportation for Security responsible for security in all modes of transportation, including: (1) civil aviation security; (2) security responsibilities over nonaviation modes of transportation that are exercised by DOT (other than the Federal Aviation Administration (FAA)); (3) policies, strategies, and plans for dealing with threats to transportation; (4) supervise all airport security and screening services using Federal uniformed personnel; (5) ensure the adequacy of security measures for the transportation of cargo; (6) perform background checks for airport security screening personnel, individuals with unescorted access to secure areas of airports, and other transportation security personnel; and (7) develop standards for the hiring and retention of security screening personnel.

Table 3
Changes in AIP Eligibility for Airport Development Projects, Since Sept. 11, 2001
(Source: General Accounting Office)

Project eligibility status	Example of projects
Traditionally eligible to receive AIP funding that are still eligible	Computerized access control for ramp areas, closed-circuit television at ramp access doors, explosive detection devices used to inspect suspicious packages, fingerprinting equipment, perimeter fencing, explosive disposal equipment, centralized security office, police vehicle identified in security plans, and planning for new security requirements
Eligible to receive AIP funding since September 11, 2001	Explosive detection canines and kennels, cameras, additional security lighting, motion sensors, body armor, blast proofing of terminals and glass, checkpoint exit lane technology, cargo area security equipment or facilities, and land to construct security facilities
No longer eligible to receive AIP funding because these projects are now the responsibility of the Transportation Security Administration	Air carriers' pre-board screening devices (x-ray and metal detection); baggage screening devices, such as explosives detection system; metal detection hand screening wands; and interactive training systems for security requirements

The unprecedented increase in AIP grant funds awarded to airports for security projects in fiscal year 2002 has affected the amount of funding available for some airport development projects, in comparison with fiscal year 2001. The $504 million-increase in AIP grants funds for security projects in fiscal year 2002 contributed to a decrease in the amount of funding available for non-security development projects. The greatest reduction occurred in standards, which decreased by $156 million, from almost 30 percent of AIP funding of $3.28 billion in fiscal year 2001 to 25 percent of AIP funding of $3.22 in fiscal year 2002. The next largest reduction occurred in reconstruction, which decreased by $148 million, from almost 23 percent of AIP funding in fiscal year 2001 to 18 percent in fiscal year 2002. The environment and capacity projects also decreased by

$97 million from $417 to $319 million and $40 million from $517.9 to $477.6 million, respectively.[280]

Airport Council International stated that the increase in AIP funding for security has affected other airport development projects. It reported that airports have delayed almost $3 billion in airport capital development, most of which dealt with terminal developments, because of new security requirements.[281] In the aftermath of 9-11, the airports contend that current funding mechanisms and the Department of Transportation policy impede airports' ability to meet financial challenges. Since 9-11, airports have deferred—not cut—preexisting capital programs. For example, Hartsfield International Airport in Atlanta, which is the busiest airport in the country and the most delayed, deferred $10 million for a runway extension. The airports contend that stopping and then restarting projects is costly. Since 9-11, the TSA has indicated airports will need to spend billions of dollars on new security systems. TSA has focused on "hardening" airports not customer service or aviation operations.[282]

Airport funding capacity is being squeezed from all sides: funding requirements are increasing and funding sources are declining. The airports contend that the focus on security will force diminished funding capacity away from investments in such areas as capacity and safety, etc. More importantly, the use of AIP funds is a zero-sum game. It may help with security costs but, unless AIP funds are dramatically increased, funds will be reduced for other needs. The increase in AIP funding for security affected the

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[280] According to Don Samuels, AIP staffer, security concerns have had a tremendous impact on AIP funding goals and programs (Personal communications, November 11, 2002).
[281] Mark Reis (Seattle-Takoma Airport) Airport Council International. "The Future of Airport Funding" ACI Economic Specialty Conference (March 2002).
[282] According to Ron Sokolov, TSA Customer Service Director, TSA is working on creating security systems that both accommodate the airport's needs and that of the federal government's security requirements (Personal communication, September 18, 2002).

distribution of AIP grants funds by airport type. Large and small hub airports received increases in AIP funding, while all other airports experienced decreases in fiscal year 2002.[283] The increase in AIP funding to large hub airports can be attributed to their proportionally higher security needs. It is clear that reductions in funding for airport development projects will not have an impact in the short term because traffic is down; however, in the long-run there will be a need to address capacity concerns when traffic returns.

The effects of increasing AIP grant funds for security projects in fiscal years 2003 and beyond cannot currently be estimated with any certainty. Nonetheless, preliminary indications suggest that the total amount of funding needed for security projects in fiscal years 2003 and beyond could be substantially higher than in fiscal year 2002 and previous years. Most of the uncertainty over how much funding is needed is dependent on pending decisions by Congress in conjunction with the DOT, TSA, and FAA regarding how the TSA plans to fund terminal modifications needed to install and deploy explosives detection systems and the extent to which AIP grant funds might be needed to help cover these costs.

Since the Act was passed, it has also become apparent that the price of good security is substantial. The DOT's Inspector General testified before the House Transportation Committee that capital costs associated with deploying the new explosives detection systems alone could exceed $2.3 billion.[284] For fiscal year (FY) 2002, TSA has been appropriated over $6.2 billion and has requested $4.8 billion for FY 2003. TSA

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[283] According to Don Samuels, AIP staffer, security concerns have had a tremendous impact on AIP funding goals and programs (Personal communications, November 11, 2002).
[284] Department of Transportation Inspector General Report. "Progress in Implementing the Provision of the Aviation Transportation Security Act (August 7, 2002).

anticipates that in FY 2003 the agency's workforce will have grown to about 67,000. However, revenues from the new passenger security fee will pay for only a fraction of these costs. Current estimates are that the fee will generate about $900 million in 2002, and $1.7 billion in 2003. It is evident the TSA will require a large infusion of cash from the general fund at a time when the general fund is already strained to pay for vastly increased fiscal needs throughout the federal government. The Inspector General concluded that the overriding goal for the TSA must be to provide tight and effective security in a manner that avoids waste and ensures cost-effective use of taxpayer dollars. The airports reinforced the clear warning by the Inspector General.

According to the airports, the current approach to AIP funding, are inadequate to the responsibilities the federal government has imposed on airports. The unprecedented $504 million increase in funding for security has affected Letters of Intent (LOI) payment schedules that FAA planned to issue in fiscal year 2002. Letters of Intent are an important source of long-term funding for capacity projects at large airports. These letters represent nonbonding commitment from FAA to provide multiyear funding to airports beyond the current authorization period. As a result, airports are able to proceed with projects without waiting for future AIP grant funds with the understanding that allowable costs will be reimbursed. According to FAA Airport Planning and Programming officials, prior to September 11, 2001, the agency had planned to include discretionary funding in fiscal year 2002 for the LOI payments schedule. However, funding has been deferred until fiscal year 2003 or later because of the need to ensure that adequate funds would be available for security projects.

Representatives of the Airport Council International and the American Association of Airport Executives stated that the costs for modifying terminals baggage conveyor systems and terminals to accommodate explosive detection systems could be as high as $7 billion. Airports across the country are deferring development projects and replacing them with security projects. David Plavin, president of ACI-North America, told Aviation Week & Space Technology that these deferrals are feasible only because the effect of Sept. 11 on travelers interrupted air transportation growth. Passengers will come back, Plavin said, and so will the deferred projects.[285] Ultimately, Congress will play a role in whether these projects really do return.

Clarification of the AIP's status as a source of security funds probably will be an issue in 2003, when Congress draws up its first FAA reauthorization bill in three years. The GAO prepared its newly issued AIP report at the request of Rep. Don Young, R-Alaska, chairman of the House Transportation and Infrastructure Committee, which will write the House version of the reauthorization bill. Young said it is "important that [the AIP] continues to have sufficient resources to support airport safety and capacity enhancement projects at the same time that we are improving airport security."[286]

Moving responsibility from the Department Transportation to a Homeland Security Department would require that funding policy be rethought by people even less familiar with how the system works. In the end, Congress, the FAA, the DOT and the Administration may find itself at the table again attempting to negotiate how to manage and distribute the Aviation Trust Funds.

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[285] David Bond. Security Costs Cloud Airport Grant Projects Aviation Week & Space Technology (Nov. 3, 2002).
[286] Ibid.

Table 4: Summary Table of the Recipients, Custodians and Users of the Programs Funded by the Aviation Trust Fund and their Positions and Roles in the Contest

ACTORS	Role in Contest	For Off-budget Treatment	For Status Quo	For Status Quo with Exceptions	Lobbying Style
Airlines	User	X		X	Egocentric
Airports	User and Recipient	X		X	Mediation
Air Traffic Controllers	Recipient	X		X	Egocentric
Aviation Labor	Recipient	X		X	Mediation
AMTRAK	Recipient		X		Antagonistic
CBO	Trustee	X			Mediation
Coast Guard	Recipient		X		Antagonistic
House Budget Committee	Trustee		X		Antagonistic
House Appropriations Committee	Trustee		X		Antagonistic
House Transportation	Trustee	X			Antagonistic
Consumer Groups	User	X		X	Mediation
Travel Agents	User	X		X	Mediation
Railroad Groups	Recipient		X		Antagonistic
Aeronautic Groups	Recipient and User		X		Antagonistic
Naval Groups	Recipient		X		Antagonistic
Governors Association	User and Recipient	X		X	Mediation
League of Cities	User and Recipient	X		X	Mediation
President	Trustee		X		Egocentric
Senate Commerce	Trustee			X	Egocentric
Senate Budget	Trustee		X		Antagonistic
Senate Appropriations	Trustee		X		Antagonistic
OMB	Trustee		X		Antagonistic
NASA	User and Recipient		X		Antagonistic

Legend: Actors within the contest are either trustees (managers of the fund), users (users of the programs), or recipients (recipients of money from the fund). Lobbying styles are either Antagonistic (those who went up against other groups opposed to their position), Egocentric (those who actively pursued their own self-interest even if it meant working with adversaries), or Mediation (those who actively worked to find a compromise in the dispute).

CHAPTER V: CONCLUSION

The U.S. republic provided an opportunity for refining the various views on political questions. There was an opportunity, in other words, for the representatives to distill the sentiments of various factions rather than succumb directly to any one group or special interest. The Founding Fathers, including John Adams believed that the public good could be achieved by balancing these competing interests in the legislature; and James Madison believed that competing interests would tend to check each other's machinations on a national scale. Neither man believed that under a system of simple majority rule the rights of the minority would be protected. Consequently, the framers crafted the Constitution to accommodate various and diverse interests.

The process of American lawmaking often seems as complex and unpredictable as to be unmanageable. However, after careful review of the actors, decisions, rules and outcomes one can understand how American lawmaking can be very manageable and predictable. The results of an analysis of the public policy formulation of the Aviation Trust Fund policy provides a window into how congress formulates policy, how interest groups lobby their interests and how the impending outcome might provide more questions than answers.

The competition amongst interest groups for scarce resources has created constant pressure on Congress and the President. This dynamic has in recent times impelled Congress and the President to create budgetary mechanisms that would ensure specific funds are used for specific purposes, and in turn, protect specific interests from groups who are competing for those funds. Inherent in the formulation of these budgetary mechanisms were compromises between the competing groups, Congress and the President.

Supporting the Hypothesis

The prevailing explanation for the observed patterns and issues in this study is when Congress is confronted with the problem of deciding whether to use special purpose trust funds for other purposes; Congress provides some form of tangible or symbolic assurances to all in order to attempt to protect all interests.

This study demonstrates that two theories supports this hypothesis—that interests groups succeed in their goals of influencing government—to the point that government itself, in one form or another provides a measure of protection to almost all societal interests, and that competing legislative policy preferences impel Congress to provide legislators with a policy choice that is close to the legislator's preferred policy preference. This study therefore supports the hypothesis.

Activating the Methodology

The dissertation employed qualitative methodologies, primarily the case study approach and participant observation to analyze a series of budget decisions in which Congress used special purpose trust funds for other purpose. The study examined the public policy decisions of the Aviation Trust Funds from 1998-2000. The study described interest group policy activity and pressures and congressional decision making from 1998-2000. The foundations of the case study are personal communications as an employee of the National Business Travel Association.

The dissertation utilized participant observation to examine individuals who participated in the Aviation Trust Fund debate from 1998-2000. The examinations included four of the most influential interest groups based on the frequency of congressional hearing testimony and lobbying activity the American Automobiles Association, Air Transport Association, American Association of Port Authorities, and the Association of American Railroads, who participated in congressional hearings and policy meetings. The examinations were developed based on the research questions included in Chapter I of the dissertation. As was noted earlier the questions cover two areas: The first and second area, Political Preference and Pressures, which examine policy preferences of the four interest groups and their lobbying activities from 1998-2000 and their impact on policy preferences. Finally, Political Decision Making examines Congress, the agencies and groups political decision making from 1998-2000. These three areas provide the basis for understanding the dynamics of the Aviation Trust Fund debate.

Political Preferences and Pressures

What happened as Congress considered the Aviation Trust Fund bill is typical of what happens to most bills. Some provisions that people want were included, other provision were not included, and still others were included in modified form. One way of explaining why some provisions were included and others were excluded from the Aviation Trust Fund bill is to focus on the specific events at various points in the congressional process.

The dissertation looked at House and Senate votes and member speeches and testimony from 1998-2000 in order to determine member policy preferences regarding the use of Aviation Trust Funds. Illustrations were drawn illustrating the policy preference dimensions vs. the legislator's preference in order to create utility diagrams.

The dissertation illustrates whether interest group activity and pressures from 1998-2000 created multi-policy preference dimensions close to the legislators preferences, which in turn forced Congress to authorize and appropriate funds in the Aviation Trust Fund that would protect the funds while supplying money to other competing interests. The first variable to review is the impact of interest groups.

Table 5: The lobbying activities of the American Automobile Association (AAA), Air Transport Association (ATA), the American Association of Port Authorities (AAPA) and the Association of American Railroads (AAR) provided look at all views of the issue. Table (5) provides a look at each organization, its membership, and its explanation to the critical questions:

1) What was your organization's position regarding providing off-budget treatment for the Aviation Trust Funds? Have you always held that position?
2) How active were you in lobbying Congress on this issue? Which house of Congress, members or industries provided the greatest resistance to your organization's position and what tactics did you use to forward your position?
3) To what extent has the events of 9-11 changed your organization's position regarding providing special treatment for the Aviation Trust Funds?

Four Major Interests Groups and Their Interests and Activity in the Aviation Trust Fund Public Policy Process				
	AAA	ATA	AAPA	AAR
Member	• Travel Agencies, Auto Clubs	• U.S. Airlines	• 150 Public Port Authorities	• Major Freight railroads in the U.S.
Position	• Ensure off-budget treatment for the funds	• Ensure off-budget treatment for the funds	• Provide adequate resources to the Coast Guard	• Ensure public investment in Amtrak
Lobbying	• Membership Outreach • Testimony • Grassroots	• Member-ship Outreach • Testimony	• Membership Outreach • Testimony • Provided Research	• Testimony • Provided Research on passenger rail
Question 1	• Long held position of off-budget treatment	• Full funding • For off-budget treatment	• Concerns regarding off-budget treatment • Funding for Coast Guard	• Concerns regarding off-budget treatment • Full funding for Amtrak,
Question 2	• Very Active • Used National and Club group lobbying • Greatest resistance came from Budget and Approps committee	• Very Active • Used Individual Airline Influence • Greatest resistance came from Budget and Approps committees	• Very Little • Provided testimony on the importance of the Coast Guard • Greatest resistance came from House and Senate Trans.	• Very Little • Provided testimony on the importance of Amtrak • Greatest resistance came from House and Senate Trans.
Question 3	• No, but raises additional questions	• No, but raises additional questions	• Raises the importance of the Coast Guard	• Raises funding and insurance issues

As a very simplified illustration of what occurred to the crucial provision of the Aviation Trust Fund bill as it traveled through Congress, consider Table (5.2), which shows selected provisions of the bill at five stages of the legislative process considering the provision regarding providing off-budget treatment for the Aviation Trust Funds.

Table 6
Selected Provision of the Aviation Trust Fund at Five Points in the Legislative Process

PROVISION	HOUSE COMMITTEE	FULL HOUSE	SENATE COMMITTEE	FULL SENATE	CONFERENCE
Off-budget Treatment	Included Off-budget Treatment	Included Off-budget Treatment	Did not include Off-budget Treatment, but include higher funding	Did not include Off-budget Treatment, but include higher funding	Off-budget Treatment with parliamentary exceptions

As reported by the House Transportation & Infrastructure Committee the bill would provide for full off-budget treatment for the Aviation Trust Funds. This provision was critical to the House Transportation Committee Chair Bud Shuster. In contrast, the Senate Commerce Committee reported the bill without off-budget treatment but with higher funding levels. Thus, the two committees reported the bills with different budget treatments. The two bills then went through their respective bodies with a slight policy advantage to the Senate because it was closest to the status quo. The two bills then went to a Conference Committee to resolve the differences with as light advantage to the House because its bill was first approved and steered the issue.

This process illustrated a basic problem of understanding and predicting legislative policy making. Sometimes a committee member's preference is included in committee bills, and sometimes they are not. Sometimes full chambers accept the recommendations of their committees whereas at other times they modify (or even reject) them. Sometimes Conference committees appear to favor the provision in one chamber's version of a bill over those in the other.

There are further explanations of why certain preferences were added or dropped in the Aviation Trust Funds bill legislative process. The legislative theories of concern here are the interest group liberalism and the chaos theories. The goals of both theories will be to identify the interrelationships among the preferences of legislators and interest groups, the strategies these legislators adopted for attaining these preferences, the legislative rules under which these strategic choices are made, and the final legislative outcomes that result.

Political Decision Making: Utility Diagrams for the Aviation Trust Fund

If you were a member of Congress or an interest group and could choose between voting for or against Aviation Trust Fund legislation as it emerged from the committees, only one of the three possible conditions logically must characterize your preferences for these two options. (1) You can prefer the bill to the status quo of no bill; (2) you can prefer the status quo to the bill; or (3) you can prefer them equally (in which case, you are said to be indifferent between the bill and the status quo.) The fact that only one of these relations must hold between the two preferences is referred to as the connectedness axiom. In requiring connectedness, the chaos theory requires that an actor's preferences concerning a given set of outcomes are connected or related to each other so they can be compared.

More importantly, there are transitive preferences when a legislator is presented with a choice between three alternatives. A legislator could prefer the status quo to the bill and prefers the bill to a combination of the two. If so, this legislator would be said to have transitive preferences. Without transitive preferences, a legislator cannot develop a strategy to pursue his or her preferences effectively. If the legislator thought about voting for the bill, he or she would strategize his choice based on his transitive preferences.

The connectedness and transitivity axioms are the core of the chaos theory. They imply that a rational actor has a consistent and non-contradictory set of preference over any set of alternatives. It is thus assumed that the choices a rational actor makes as a consequence of these preferences will also be consistent. This consistency, in turn, implies that the behavior of a rational actor is predictable from knowledge of his or her preferences. Therefore, the following utility diagrams will examine the preferences for members of the House and Senate Transportation Committees, the House and Senate chambers and the studied interest groups from 1998-2000.

The diagrams will outline three policy preferences A=Protecting Aviation Trust Funds, B=Protecting but with Exceptions, and C=Remain Same. The diagrams will illustrate the preferred preference. For example, a member who would be for protecting the Aviation Trust Funds would have a preference resembling sign A>B>C. A member who would be for protections with exceptions would resemble sign A<B>C. A member who would be for everything remaining the same would resemble sign C>B>A. The dissertation will determine the preference sign for each group. Each group will then be placed under each preference sign.

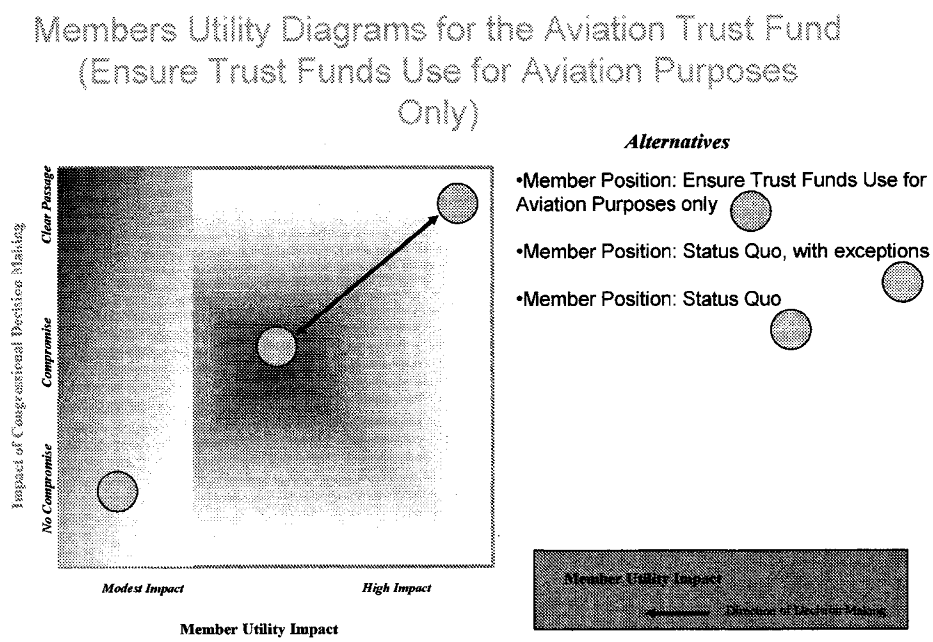

Figure 12
Group A: Ensuring Trust Fund Use for Aviation Purposes Only

The House Transportation Committee, the Full House, the American Automobiles Association, and the Air Transport Association, would fit in Group A. The characteristics of this group finds a solution with the most utility, the group's position begins from the far right connects with preferences that favor the status quo with exceptions because it includes the group's preferred outcome. However, the group's decision making ends there because the other alternative outcome, status quo, does not include the group's preferred position. In this scenario, the group's decision-making process connects only two preferences. Under this scenario, a status quo position is impossible because the group's preference demands are ensuring trust funds are used for Aviation purposes only. These characteristics can be further verified by looking at each group.

The House Transportation Committee membership, as indicative by its report of the bill out of committee,[287] was unanimously in favor of providing off-budget treatment for the Aviation Trust Funds. "The House Transportation and Infrastructure Committee today unanimously approved several bills for House consideration, including H.R. 1000, the Aviation Investment and Reform Act for the 21st Century (AIR-21). With this bill, the American people are guaranteed that the taxes they pay on every airline ticket will be invested in making our airports and air travel safer and more efficient," said Bud Shuster, Chairman of the Committee. "Within a decade, one billion people will take to the skies every year – about 50% more than right now. But congestion, delays and dangerous air traffic control system outages are already outpacing our ability to cope with them. We must invest in our aviation system or face the consequences."[288]

The bipartisan support exemplified by the 48-member committee proved to be a strong engine toward gaining support for off-budget treatment. More importantly, the key inventor and driver of the policy was the Committee Chair Bud Shuster, who would ensure committee consensus. Shuster's control over transportation projects within every member's district provided the spark plug to get a majority of the House in favor of his proposal.[289] With the House in line, Shuster then turned to interest groups for additional support.

The American Automobiles Association (AAA) strongly supported off-budget treatment for the both the aviation and highway trust funds. (See AAA's strategy Table 5) This has been a long-held position for the Association. They have always argued that

[287] House Transportation Committee, House Committee Report 106-167. The bill was ordered to be reported unanimously by voice vote on March 11, 1999.
[288] House Transportation and Infrastructure Committee Press Release, Committee Approves Bill to Boost Aviation Safety, Improvements and Competition (March 11, 1999).
[289] HR1000 was passed 316-110, Roll call vote no. 209.

revenue going into the trust funds should only be invested in transportation-related programs and projects. AAA National and clubs were very active in lobbying the off-budget and reauthorization issues. They utilized AAA club member publications to communicate their positions to their members and urge action. Clubs arranged meetings with congressmen and Senators in their states/districts in addition to lobbying efforts in Washington, D.C. AAA was also very active in participated in several coalition efforts at the national level and clubs developed or participated in coalition efforts at the local level.

"I think the key to success (in both TEA-21 and AIR-21) was the ability to demonstrate unmet need and the impact of years of under investment. Part of the success as well was good timing, both in leadership and the economy. Shuster was a master behind the scenes. Without him, I'm not convinced we would have had the victories we did. As well, we were lobbying in a time of budget surplus, so the decision to wall off highway and aviation money was a little easier. I think this round of reauthorization will in many ways be even harder than last time. Budgets are tighter, national security is a new competing focus for resources, and Shuster isn't here."[290] AAA wasn't the only large association active in lobbying on behalf of AIR21, so was the association for the airlines.

The Air Transport Association (ATA) (See ATA's strategy Table 5) expressed the airline industry's firm support for unlocking aviation trust funds as part of the Federal Aviation Administration (FAA) reauthorization bill. The Air Transport Association member airlines were engaged in multiple attempts to deal with infrastructure modernization over the last several years. ATA submitted several proposals during

[290] According Jill Ingressia, AAA lobbyist, AAA was very active in lobbying for AIR21 (Personal communication, August 8, 2000).

consideration of the Aviation Trust Fund bill to ensure that there was a more equitable distribution of funds. ATA's individual member airlines were very active in lobbying the off-budget and reauthorization issues. Airlines, like Delta, United and American, led the ATA's fight to provide off-budget treatment for the Aviation Trust Funds, including making individual White House and Washington visits. More importantly, the ATA was called upon to testify on the issue at Senate and House committee hearings, in which the ATA provided some suggested legislative language to fulfill the objectives put forth in their testimony.

"The Air Transport Association member airlines have been engaged in multiple attempts to deal with infrastructure modernization over the last several years. The ATA airlines believe that fundamental change is required in the near term to insure that aviation infrastructure modernization becomes a reality before demand swamps the systems available capacity. The needed reforms, as we view them, fall into two categories - governance and budget reforms. Our carriers believe that these two cornerstones of Federal Aviation Administration reform are inextricably linked to form one solid platform for comprehensive reform. Both of these reform areas are equally critical to a successful outcome - but neither can be a success in isolation. This Committee has long led the fight for restoring integrity to the transportation trust funds. The Air Transport Association has endorsed efforts to unlock the trust fund on several occasions in the past. We want our passengers and shippers to receive the benefits derived from spending the taxes for the purpose for which they were collected from them. We strongly endorse doing for the Aviation Trust Fund what this Committee and Congress has done with the Highway Trust Fund -- through the enactment of TEA - 21 - and urge you to establish a new and separate aviation budget category which is no longer subject to budget caps. Only through this mechanism can we be certain that the funds collected from aviation users are spent to enhance the safety and efficiency of our aviation system."[291] While Group A represented the drivers of this debate, Group B represented the pragmatic evaluators of finding a consensus.

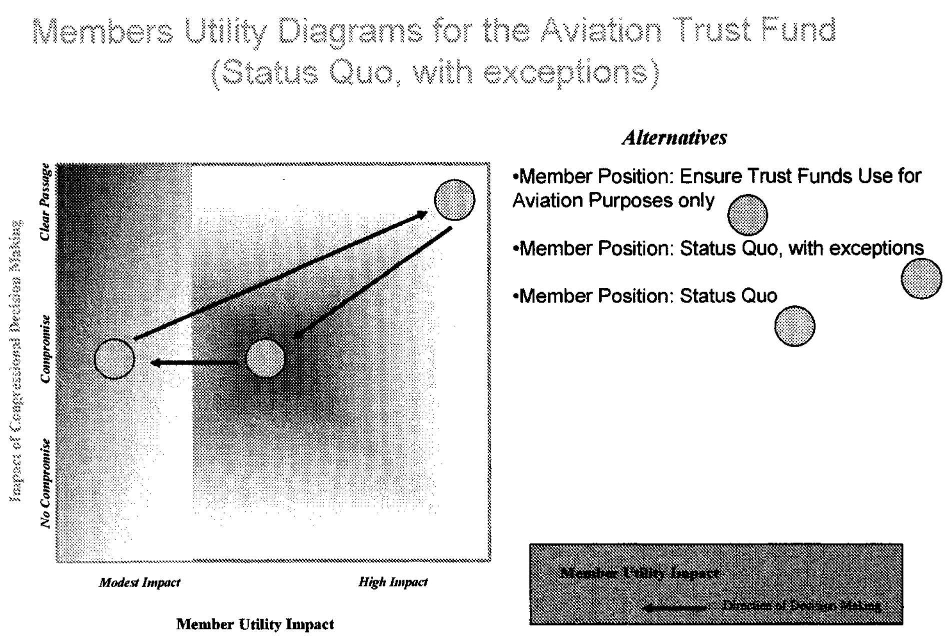

Figure 13
Group B: Ensuring Status Quo, with Exceptions

The Senate Transportation Committee and the Full Senate would fit in Group B. The characteristics of this group finds a solution with the most utility, the group's position begins from the far right connects with preferences that favor of protections for the trust funds; however these preferences represent only half of what the group prefers, so it moves to the next preference. The next preference also represents only half of what the

[291] Statement of Carol Hallett, President and Chief Executive Officer of the Air Transport Association of America (ATA) Before the Subcommittee on Aviation Committee on Transportation and Infrastructure, Hearing on the Financial Needs of Airports (May 5, 1999).

group prefers, and the group is back to its original position. In this scenario, the group's decision-making process connects each preference. Under this scenario, a compromise position that includes all preferences would be more favorable to the group.

The Senate Transportation Committee had reservations with providing off-budget treatment to the trust funds. Senate Transportation Committee Chairman John McCain favored more funding for a longer time period, however he did not feel that the trust funds should be taken completely off budget. "Part of the answer to resolving future capacity constraints involve improving the nation's system of airports. Which is why it is so important that we enact a long-term reauthorization for the Airport Improvement Program as soon as possible?"[292]

His position resonated with the more careful and considerate Senate members. The Full Senate had some concerns regarding the overall language of the House bill and the aggressiveness and unyielding approach of House Transportation Chairman Bud Shuster. "Beyond our important oversight role, we have a responsibility to ensure that the FAA has the resources and tools to accomplish its mission. But this can be a difficult task because we also have a responsibility to be fiscally responsible with the entire federal budget."[293] While the Senate was more prepared for negotiating with the House in trying to find some solution to the Aviation Trust Fund issue, there were some who were against the proposal and in favor of the status quo.

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[292] Statement of Sen. John McCain Chairman, Senate Commerce, Science and Transportation Committee, Aviation Subcommittee Hearing on Air Traffic Control Modernization (March 25, 1999).

[293] Statement of Sen. Slade Gorton, Senate Commerce, Science and Transportation Committee, Aviation Subcommittee Hearing on Air Traffic Control Modernization (March 25, 1999).

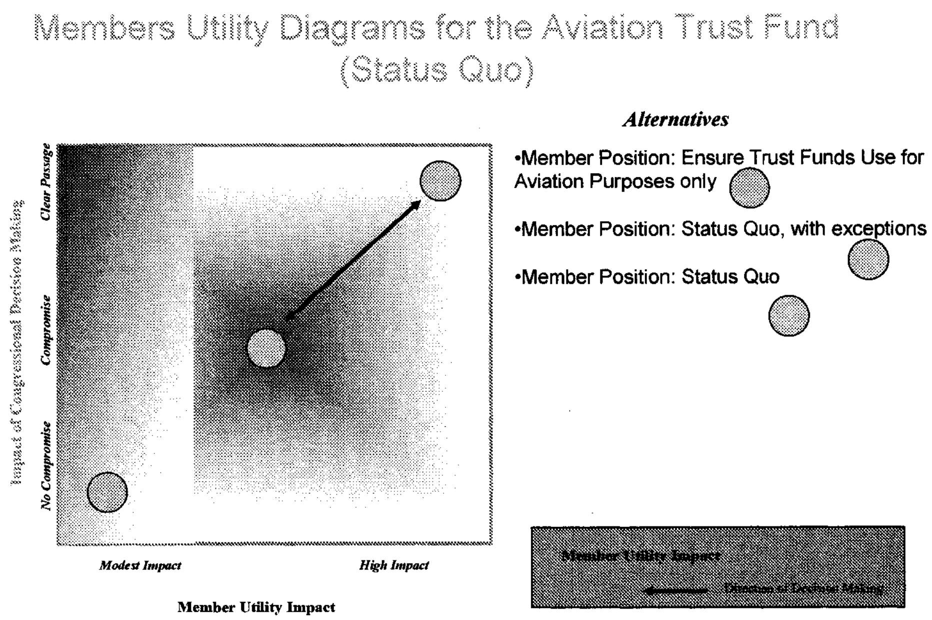

Figure 14
Group C: Ensure the Status Quo

The House and Senate Budget and Appropriations Committees, the Administration, the American Association of Port Authorities and the Association of American Railroads would fit in Group C. The characteristics of this group finds a solution with the most utility, the group's position begins from the far right connects with preferences that favor the status quo with exceptions because it includes the group's preferred outcome. However, its decision-making ends there because the other alternative outcome, ensuring trust funds use for Aviation purposes only, does not include the group's preferred position. In this scenario, the group's decision-making process connects only two preferences. Under this scenario, a compromise position is impossible because the group's preference demands are maintaining the status quo.

The House and Senate Budget and Appropriations committees were concerned about the funding levels included in the Aviation Trust Fund proposal. Their contention was that the funding guarantees would reduce the budget flexibility—essentially requiring that any shortfall be borne by the Coast Guard and Amtrak. Both houses Budget and Appropriation committees utilized their power over the Budget Resolution and overall spending to voice their opposition to the off-budget treatment.

The House Appropriations Committee went as far as recommending to the Department of Transportation that the President veto the bill. "If you are really concerned about Coast Guard funding, I suggest you recommend that the President veto AIR21. Such an action would not only provide your office and mine more budget flexibility in the coming years; it would help us ensure that significant Coast Guard cuts do not occur. The Budget Committee's recommendation is merely a reflection of what can occur when the President signs into law legislation, which raises spending without offsets. If you recommend to the President that AIR21 be enacted, you will also bear a huge responsibility when the Coast Guard or FAA does not receive needed funds."[294]

The Department of Transportation and the Administration was concerned that an aviation firewall might harm other programs within the President's agenda, especially non-transportation programs that were beneficiaries of the Aviation Trust Fund's ballooned accounts. "I recognize the widespread transportation needs of our country, which is why transportation infrastructure investment during my Administration has increased by 32 percent above the previous Administration's average. However, our transportation investment must be strategic and applied to critical needs, and excessive

[294] House Appropriations Committee Chair Bill Young Letter to Transportation Secretary Rodney Slater (March 17, 2000).

earmarking can undermine this goal. Completing the full funding of our request for Coast Guard operating expenses will improve the safety of all Americans by enabling the expansion of the Coast Guard's vital search and rescue, law enforcement, and drug interdiction activities. Provision of our request for Amtrak capital funds will improve passenger service and keep the rail service on the 5-year glide path to operating self-sufficiency that was agreed to in 1997 by the Congress and my Administration. I ask the House and Senate Appropriations Committees to work with the Department of Transportation to see that essential projects that can quickly utilize Federal funding are given the ability to move forward."[295] House and Senate budget hawks and the Administration were not the only groups concerned about the bill's impact on the Coast Guard and Amtrak, the American Association of Port Authorities and the Association of American Railroads were also concerned.

The American Association of Port Authorities (AAPA) was very concerned that any guaranteed funding for aviation could remove crucial funds from the Coast Guard's safety and security programs. The AAPA supported the continued maintenance of established Coast Guard programs. The association felt it was critical that Congress and the Administration recognize the important role the Coast Guard plays on the nation's waterways and provide adequate resources for their continued success. "Protecting America's seaports must be an essential component of our national strategy to address homeland security, since 95% of our international trade transits through ports and our military rely on ports for mobilization and deployment of U.S. Armed Forces. AAPA and other industry groups opposed both in last year's budget and were successful in securing

[295] Public Papers of the President—William Jefferson Clinton, Statement on Signing the Department of Transportation and Related Agencies Appropriations Act, 2000 (October 9, 1999) pp. 1747-48.

language in FY 99 authorization and appropriations bills prohibiting the proposed increase in navigation taxes. It is now up to Congress to address appropriate user fees and funding levels for waterway users."[296] AAPA called for the highest degree of funding for the Coast Guard because it takes the lead in protecting America's ports by inspecting cargo and vessels.

The American Association of Port Authorities, which represents the leading ports in the Western Hemisphere, believes port security can be enhanced through a partnership approach in which the port industry and Federal government work in concert in addressing the terrorism threat to this nation. AAPA in letters, testimony and congressional visits urged that Federal funding and programs that focus on homeland security provide adequate money to ensure America's ports are protected.

"The Coast Guard provides vessel traffic management for ports to ensure that pilots and mariners can move safely and efficiently through our nation's waterways. There are eight vessel traffic systems operated by the Coast Guard. Efforts to develop new and innovative methods of monitoring ship traffic in and out of ports continue to evolve. Ports rely heavily on these new technologies to ensure safe conditions and allow the efficient movement of passengers and cargo. AAPA opposes new trade taxes and strongly believes that it is a federal responsibility to appropriate adequate resources for navigation safety. These navigation aids are used by pilots, fishermen, recreational and scientific interests, cruise vessels, ferries, and others. Further, aids to navigation are part of a national defense navigation system that operates efficiently to protect life, property, and the environment. As the Transportation Appropriations Subcommittee considers

[296] AAPA Press Release Administration's Budget Calls for $1 billion in New Maritime Taxes (February 2, 1999).

Coast Guard appropriations, we encourage Congress to provide adequate funding for this essential navigation safety programs."[297] AAPA was not the only non-aviation group to have some concerns with AIR21's funding priorities; the Association of American Railroads (AAR) also had some reservations.

The Association of American Railroads developed a series of principles regarding the future of Amtrak. The association called for future rail passenger public policy to acknowledge the extreme capital intensity of railroading and to ensure that railroad' investment needs can be met. "Policies which add to freight railroads' already enormous investment burden, such as further saddling them with support of passenger rail infrastructure needs, or which reduce their ability to provide the quality service needed by their freight customers, must be avoided."[298]

The association's concerns were that a reduction of funding to Amtrak, without an appropriate public substitute, might undercut the nation's freight rail capabilities and be counterproductive in addressing the country's congestion, environmental, safety, and economic concerns. The Association of American Railroads were not adamantly opposed to the Aviation Trust Fund bill as was supporters of the Coast Guard, but the railroads did have concerns that the bill could place greater burdens on the private railroad industry.

"Railroads, in fact, face competition for almost everything we haul. And if our industry is to grow, we must be able to compete effectively in a market where our customers already have many transportation options. According to FORTUNE Magazine, railroads require an asset base of $2.48 to generate just one dollar of annual revenue. This

[297] AAPA Letter to House Appropriations Committee, Transportation Subcommittee Chair Frank Wolf (April 28, 2000).
[298] Testimony of Edward Hamburger, President and Chief Executive Officer of AAR, Before the House Transportation Committee, Subcommittee on Railroads (April 11, 2002).

is far more than our customers or our competitors. Utilities, on average, need $2.35; mining, $1.49; chemicals, $1.10; and trucking companies, just 48 cents. Because we are privately owned, we are responsible for the full cost of maintaining and improving our infrastructure. Last year, it cost us almost $9 billion just to maintain and improve our tracks and signaling systems. Railroads have spent more than $230 billion since 1980 to maintain and improve infrastructure and equipment. Railroads have put a higher percentage of revenues back into capital improvements than any other industry in the United States since 1990. AAR supports sufficient funding and staffing for the Amtrak to ensure that it can carry out its responsibilities in an effective and timely manner."[299] As previous chapters indicated, an attempt to reconcile the proponents and opponents of the bill was quite a challenge; however the Chaos Theory explains how compromise was achieved.

The Chaos Theory explains both the outcomes of the legislative decision-making and the impact of various rules and structures on such outcomes. Group A members favored off-budget treatment for the Aviation Trust Fund, Group B favored the status quo with exceptions and Group C favored the status quo. The group's preferences were connected or related to each other so they could be compared. More importantly, the preferences were transitive meaning; groups can develop a strategy to pursue his or her preferences effectively. If a group thought about voting for the bill, they would strategize choice based on their transitive preferences.

There are three policy preferences A=Protecting Aviation Trust Funds, B=Status Quo with Exceptions, and C=Status Quo. The members in Group A would have a

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[299] Testimony of Edward Hamburger, President and Chief Executive Officer of AAR, Before the Senate Commerce, Science and Transportation Committee, Subcommittee on Merchant Marine and Surface Transportation on Surface Transportation Board Reauthorization (March 2, 1999).

preference resembling sign A>B>C. The members in Group B would have a sign A<B>C. The members in Group C would have a sign C>B>A. It might be thought that in any case like this, the members would simply split the difference between providing special protections to the trust funds and the status quo. By examining the preferences, it can be seen that the median preference is status quo with exceptions, however this is not a monetary "split the difference" debate; there are policy considerations.

Note also that, in this case, it makes a difference in which order the alternatives were considered. In this case, the House was the driving force behind the bill and approved their version first. Although the Senate had their own version, it contained additional policy considerations like providing additional slots at the slot-controlled airports and airline passenger rights concerns. Since the Senate bill contained additional policy issues, the House bill became the vehicle in which the Congress used to move the issue. With the House bill as the vehicle, it became clear that the Congress would have to create a bill that would address the off-budget issue with exceptions.

As was indicated earlier, the House's position begins from the far right connects with preferences that favor the status quo with exceptions because it includes the member's preferred outcome. However, the House's decision ends there because the other alternative outcome, status quo, does not include the member's preferred position. The Senate's position begins from the far right connects with preferences that favor protections for the trust funds; however these preferences represent only half of what the member prefers, so the Senate moves to the next preference. The next preference also represents only half of what the member prefers, and the member is back to his original position. Consideration is provided as to how legislative rules and procedures impacted the outcome.

Since both chambers passed their own versions of the bill and the House's version was identified as the vehicle, the House and Senate went to conference on the House bill. "Conferees are limited to matters in disagreement between the two chambers. The rules state clearly that conferees may not delete provisions identical in both bills nor may they insert subject matter not found in either the House or Senate-passed bill. Moreover, the conferees are asked to stay within the range of differences, i.e. not exceed the boundaries that define the House and Senate bills."[300]

In actual practice, even these restrictions are violated in the interests of achieving a consensus. If inserting a new program not included in the earlier stages of the legislative process can pick up votes, conferees will add it. If the political support exists for a conference version that technically violates the rules of procedure, exceptions to the regular order are made in both chambers. Procedural correctness will give way to political consensus, and thus, was the case with consideration of Aviation Trust Funds.

As was discussed in earlier chapters, there were three proposals before the conferees, providing off-budget treatment for the Aviation Trust Funds, create exceptions, or remain with the status quo. One set of strategies used by Congress to find compromise is the use of various rules and procedures governing the legislative process in the Congress. The "point of order" was utilized in this case. A point of order is made during floor proceedings to assert that the rules of procedure are being violated.[301] A point of order halts proceedings while the presiding officer rules on whether or not it is

[300] The Congressional Institute Floor Procedures Manual, http://www.conginst.org/floor/index.html.
[301] Ibid.

valid. In the Senate, any Senator may appeal the chair's ruling, and the chair has been frequently overturned. In the House, appeals are also possible, but rarely made and even more rarely succeed.

The conferees decided to utilize a point of order to control whether Congress should spend any funds allocated to the Aviation Trust Fund for non-aviation purposes. What this compromise did was satisfy the House's goal of providing full funding for the trust funds, while satisfying some of the concerns that were made by the Senate and budget leaders that there needs to be safeguards in place to provide flexibility in the spending of funds allocated for aviation purposes. The chaos theory demonstrated that the Congress settled on another more-or-less stable one-dimensional issue in terms of which legislative competition was defined and winning platforms could be predicted.

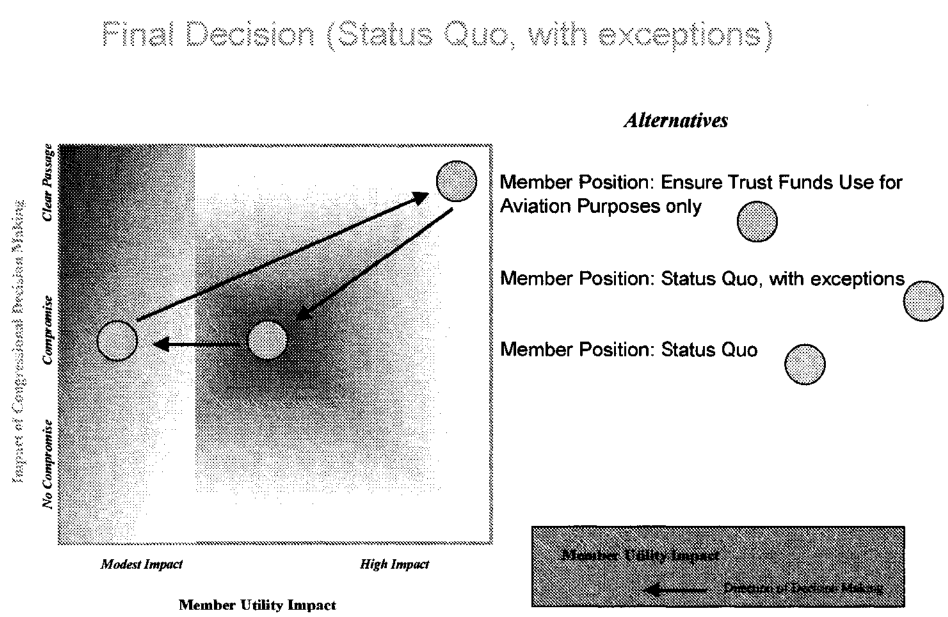

Figure 15
Final Decision (Status Quo, with exceptions)

The system settled on a stable one-dimensional issue, which there was a majority rule-winset point. Since this agreement satisfied the definition of status quo with exceptions, Group A and Group B's decision-making process connects to this preference. Under this scenario, a compromise position that included all preferences was found to be favorable; the bill was agreed upon and sent to the President.

The analysis of this chapter has identified how legislative preferences can be managed in order to produce an outcome that satisfies all legislative preferences. At the theoretical level, it would appear that the Congress successfully protected the Aviation Trust Funds from being used for other purposes. However, like with any policy outcome or decision, there will always be tests that might challenge the policy or decision.

Funding Explanations

The dissertation provides some explanations as to the question of why Congress uses special purpose trust funds for other purposes. By employing the Case Study Approach, reviewers are afforded an example of how Congress has used special purpose trust funds.

This study could contribute much to students of American Politics understanding of the uses and needs for special purpose trust funds. The results of the study attempt to explain that by providing guaranteed funding levels to any one activity in the budget does not necessarily protect that activity from competition with other areas for scarce resources. The study's results illustrate whether the design of any guarantee has implications for other federal activities and for federal resources. Various programs demand more resources than others do, while some programs are self-sustaining due to user fees and taxes. The results of this study could illustrate whether there is a need to strike a balance between self-sustaining programs, like the Aviation Trust Fund and those that need additional resources.

The dissertation, argues that the interest group liberalism theory is present in Congress' decision to use the Aviation Trust Funds for other purposes. Interest groups, representing the special purpose trust fund, in this case the Aviation Trust Fund, succeed in influencing Congress to protect their exclusive funds; however, Congress, in one form or another, provides a measure of protection to all of the competing interests.

This proposition is illustrated by the dynamic through examination of the chaos theory. This study asserts that when Congress is confronted with the problem of deciding whether to use special purpose trust funds for other purposes the chaos theory forces Congress to provide some form of tangible or symbolic assurances to all in order to protect all interests and ensure an outcome.

Although the Aviation Trust Fund was established exclusively for aviation purposes, since 1996 budget acts have forced Congress to use the rich Aviation Trust Fund to reduce the deficit and to pay for general fund programs that were constricted by budgetary spending caps. The distribution of the trust funds to other programs created competitions between various interest groups looking to tap into its vast resources. The result has been that the Aviation Trust Funds have been used for other purposes.

In Theory--Compromise--How Congress Uses Special Purpose Trust Funds

The accommodating measure employed by Congress in 2000 illustrates a macro and micro conceptualization of how Congress uses special purpose trust funds for other purposes. The macro level is illustrated through the interest group liberalism theory. The interest group liberalism theory states that interest groups succeed in their goals of influencing government—to the point that government itself, in one form or another provides a measure of protection to almost all societal interests.[302] In this dissertation, it is argued that the interest group liberalism theory is present in Congress' decision to use the Aviation Trust Funds for other purposes. Interest groups, representing the special purpose trust fund, in this case the Aviation Trust Fund, succeeded in influencing Congress to extend some form of protection to their exclusive funds; however, Congress, in one form or another, provides a measure of protection to all of the competing interests.

The interest group liberalism theory was selected out of the behaviorist approach. The dissertation demonstrated how Congress acts when it is presented with competing interests fighting over funds contained in a special purpose trust fund. The dissertation demonstrated that under majority rule Congress sought to satisfy both the proponents and opponents of providing special treatment for the Aviation Trust Funds. The alternative behaviorist approach, elitism, did not reveal itself in the public policy formulation of the trust funds. For that reason, competing interests made it difficult for a minority, particularly House Transportation Chairman Bud Shuster, to dominate the public policy process.[303] A majority is needed in Congress in order to pass any initiatives. The interest group liberalism theory explained—in a broad view—how interests groups were critical in the formulation of the policy process. The chaos theory explained how—on an individual basis—members of Congress attempted to find the legislative outcome with the greatest utility.

Legislators were presented with policy preferences that were closes to their own, which allowed them to gravitate toward the final policy outcome. As illustrated in the

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[302] Theodore Lowi, *The End of Liberalism* (New York: W.W. Norton & Company, 1979).
[303] Robert Dahl, "A Critique of the Ruling Elite Model," *American Political Science Review*, Vol. 52, No. 2. (1958), pp. 463-469.

previous chapter, the movement of legislative preferences from their own individual preference toward that of the final outcome demonstrates that when Congress is confronted with the problem of deciding whether to use special purpose trust funds for other purposes the chaos theory forces Congress to provide some form of tangible or symbolic assurances to all in order to protect all interests and ensure an outcome. Most important, the chaos theory described how legislators deal with policy preferences.

The chaos theory was selected because it describes how legislators deal with multi-policy dimensions close a legislator's policy preferences. Multi-policy dimensions are unique because they present a variety of policy choices or solutions; thus they present quite a dilemma for democracy and the art of compromise. Unlike social issues, where there are clear two-sided dimensions, issues dealing with revenue and spending create multi-policy dimensions that require extreme legislative compromises. For example, an issue like late-term abortions provides a two-sided dimension. Either you are for it or against it. However, issues like whether to provide special funding protection for the Aviation Trust Funds has a multi-dimensional component. You can reduce, increase, maintain, or eliminate spending. As was indicated in the last chapter, compromise is possible because the multi-dimensional component allows Congress to strike some form of balance between the multi-dimensional preferences. While policy preferences are one component of congressional decision-making and compromise building, this dissertation did not assert it is the only component.

Congressional decision making theories supported by David Mayhew[304], Gary Cox[305] and Jerrold Schneider[306] attempt to look at constituency, ideological and party

[304] David Mayhew, *Congress: The Electoral Connection* (New Haven: Yale University Press, 1974).

coalitions as measurable patterns of voting and policy decisions. The dissertation does not suggest these variables--forwarded through these theories--do not have a measurable affect on voting and policy decisions. The dissertation does assert that these theories do not adequately explain how these variables or preferences are addressed when a legislator is presented with preferences that cut across each variable. Further more, the dissertation presents variables that could impact preferences.

For example, the Aviation Trust Fund debate from 1998-2000 presented ideological preferences, i.e. fiscal conservatives vs. liberals, constituency issues, i.e. airport improvements, and party coalitions, i.e. committee participation. The chaos theory attempted to explain how a legislator uses these preferences in order to make his decision. The chaos theory contended that the legislators would choose the position that appears closer to his preferences. In the case of the Aviation Trust Fund, pressure from various interest groups, like NBTA, ATA, AAA and others, on the legislators created multi-dimensional distributions of ideological preferences. Congress was unable to find a majority of legislators who were able to choose one definite preference. The result was that Congress found a compromise point that accommodated all interests—which is in line with the interest group liberalism theory.

The interest group liberalism theory states that interest groups succeed in their goals of influencing government—to the point that government itself, in one form or another provides a measure of protection to almost all societal interests. In this dissertation, it is offered that the interest group liberalism theory is present in Congress' decision to use the Aviation Trust Funds for other purposes. Interest groups, representing

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[305] Gary Cox and Mathew McCubbins, *Legislative Leviathan* (Berkeley: University of California Press, 1993).
[306] Jerrold Schneider, *Ideological Coalitions in Congress* (London: Greenwood Press, 1979).

the special purpose trust fund, in this case the Aviation Trust Fund, succeeded in influencing Congress to partially protect their exclusive funds; however, Congress, in one form or another, provided a measure of protection to all of the competing interests.

The chaos theory's utility was to identify the interrelationships among the preferences of legislators, the strategies of these legislators adopted for attaining these preferences, the legislative rules under which these strategic choices were made, and the final legislative outcomes that resulted. The main actors were legislators, particularly House Transportation Committee Chair Bud Shuster and Senate Transportation Chair John McCain. Shuster and McCain acted as directors, grouping and leading both the proponents and opponents through the legislative process. Specifically, they crafted language that would facilitate both of their goals of providing full funding for aviation programs. At every point in the formulation of legislation to provide special treatment for the Aviation Trust Funds, Shuster and McCain harnessed the power of their supporters particularly interest groups and reined in opponents by placing the opposition up against the need to fund ailing aviation infrastructure programs. Shuster and McCain's directorial skills would have been useless if it were not for the rules and procedures used throughout the legislative process to move their policies through Congress.

It was the rules and procedures of the legislative process that gave Shuster and McCain the context in which they sought to attain their preferences, specifically budget rules and procedures. Although the FAA's budget process starts when it begins internal deliberations on funding levels—about 18 months prior to the start of the fiscal year—McCain and Shuster crafted and redrafted budget proposals throughout the formulation of FAA's goals for the Aviation Trust Funds. The FAA formulated its budget request and submitted it to the Office of the Secretary of Transportation (OST) approximately 15 months prior to the start of the fiscal year. After several rounds of negotiations, Shuster and McCain created their own assessments without the formal benefit and input of the FAA. OMB negotiated and developed the President's plan for FAA funding, particularly the Aviation Trust Funds, but the President's plan was not viewed as the beginning or ending of negotiations.

The President's budget was simply a proposal to Congress. In most cases requests that the President makes are ultimately included in the final budget; however, in this case very little was included in the final legislation. McCain and Shuster used the congressional budget process to dictate what funds should be raised and how they should be spent. The various assumptions used to determine spending priorities were made available by Shuster's goal of providing special treatment to the Aviation Trust Funds.

The spending priorities tell each committee how much money it will need to raise and how much money can be spent. Although revenue raising is almost exclusively within the jurisdiction of the tax-writing committees—the House Ways and Means Committee and the Senate Finance Committee, Shuster and McCain used political and interest group pressure to influence those committees to shape spending plans around Shuster and McCain's priorities. Specifically, since the collection of monies in the form of user fees is primarily within the jurisdiction of authorizing committees, such as the House and Senate Transportation committees, Shuster and McCain were poised to provide Congress with the legislation needed to address many of their spending priorities. Even as Shuster and McCain utilized the budget rules and procedures to pave the way for their spending priorities, it was the activity of interest groups that applied the needed pressure to get Shuster and McCain's policies through Congress.

Interests groups representing the proponents and opponents of special treatment of the Aviation Trust Funds were influential to the extent to which they were able to persuade various legislators to consider a variety of policy preferences. Consequently, the policy choice became a measure of utility for the Congressmen. Competing interest groups representing the airlines, consumers, travel agents, airports, port authorities and the railroads used their political capital to create an environment of competing interests. Congress, confronted with the problem of deciding whether to use special purpose trust funds for other purposes, initiated the chaos theory by forcing legislators to provide some form of tangible or symbolic assurances to all in order to protect all interests and ensure an outcome.

Further more, the necessity of passing legislation to authorize funding for the Aviation Trust Funds—in light of the need to provide improved aviation infrastructure for the imminent increase in passenger traffic—helped to force compromise among members who fear the consequences of stopping or even disrupting the flow of payments to non-aviation and aviation projects. As was illustrated in earlier chapters, chaos theorem illustrates that no majority can dominate all other possible majorities in most distributions with two or more dimensions.

It took Chairman Shuster and other managers of the bill to provide special treatment to the Aviation Trust Funds almost two years to fashion a bill that could accommodate all interests. For over two years, the bill almost unraveled on the House and Senate Floor and in committees as members attempted to add additional discrete issues and attempted to derail the entire process. To keep this from happening, the managers of the bill postponed, revised and finally crafted a compromise, which sought to protect all interests.

Most important, the dissertation illustrates how interest group activity and pressures created multi-policy preference dimensions close to the legislators' preferences, which in turn forced Congress to authorize and appropriate funds in the Aviation Trust Fund that would protect the Aviation Trust Fund while supplying funds to other competing interests.

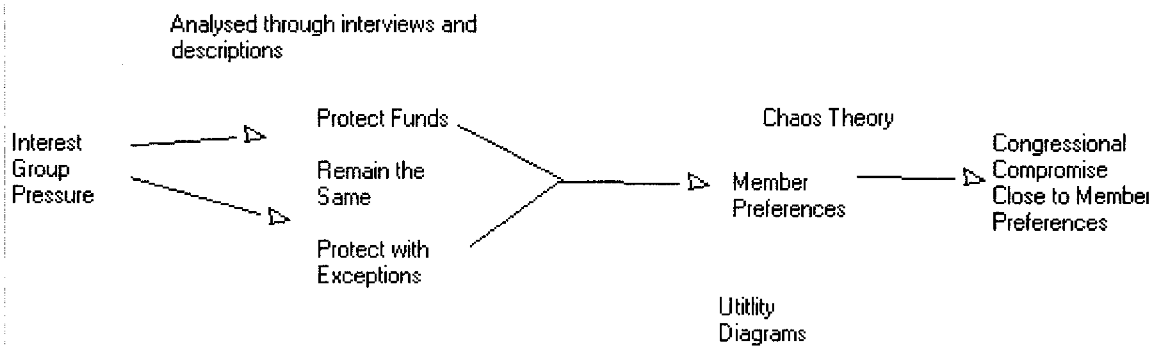

Figure 16 Dissertation Model

What was learned from Congress, Interest Groups and Funding Goals?
Congress' role

The competition amongst interest groups for scarce resources has created constant pressure on Congress. This dynamic has in recent times impelled Congress to create budgetary mechanisms that would ensure specific funds are used for specific purposes, and in turn, protect specific interests from groups who are competing for those funds.

Over the last century, Congress has developed several artificial budgetary mechanisms to ensure that specific funds are used for a specific purpose. The most popular of these artificial budgetary mechanisms is the special purpose trust fund. Special purpose trust funds were developed by Congress to ensure that funds raised for a specific purpose are housed in an account where they can be used exclusively for a specific project or use. Examples of special-purpose trust funds are Social Security, Medicare and Aviation and Highway. These trust funds are financed through taxes collected for either the use of services employed by the trust funds or taxes collected for future use of these services. The demand for funds for new and larger government programs and services has grown with the Federal Government.

Congress has withheld funding and used the Aviation Trust Funds to mask the full dimension of the federal budget deficit and have used these funds to pay for other transportation programs. As was indicated in previous chapters, this clearly violates original assurances given to users when the funds were created that money collected from the aviation taxes and fees would be applied fully to transportation infrastructure improvements. In 2000, Congress and the Administration were successful in providing some sort of protections to Aviation Trust Funds. However, the increasing cost of security will be the number one barrier preventing adequate and full funding for transportation infrastructure projects.

It seems clear that Congress will have to address how it authorizes and appropriates funds from trust funds, particularly funds like the Aviation Trust Fund where funding is crucial to maintain increasingly dependent transportation programs. Congress should look to better defining the difference between mandatory and discretionary spending. As was pointed out in this dissertation, aviation spending to accommodate the demand for aviation transportation became a mandatory service for the nation's economy. However, aviation spending is viewed as discretionary which has made authorizing and appropriating funds for these programs ambiguous. In the future, Congress should work closely with the Administration and proactively identify those programs that are "mandatory" to providing a stable economy, rather than "mandatory" to accommodate a specific program.

Interest Groups' Role

As was indicated in previous chapters, proponents and opponents of providing special treatment for the Aviation Trust Funds had open access to the policy process. Open access was demonstrated when the competing sides in the policy process were able to have their views taken into account during the policy process. House and Senate Transportation chairmen Shuster and McCain were willing to represent the interests of the various groups in favor of providing special treatment for the trust funds. Members of the House and Senate Appropriations and Budget committees were willing to represent the interests of those who felt there should be no special treatment for aviation program.

The fragmentation of Congress—competition between the Transportation, Appropriations and Budget committees—allowed those interests to have an impact on the balance of intergovernmental power. These turf battles provided additional leverage points in the process for those opposed to the process. Interest groups, particularly those opposed to the policy, were able to utilize Shuster and McCain's dictatorial legislative actions to insight those members on the House and Senate budget and spending committees who viewed McCain and Shuster as bullies. Another component of the impact of interest groups in this process was the central arguments.

Interest groups—in political competition with each other—apply pressure on the government to produce policies favorable to them. In the end, the pressure that was applied by both groups, pro and con, produced a final outcome that satisfied both interests. This outcome could ultimately be viewed as the best outcome or the "real" public interest because all views were capsulated in the final policy. In the end, the final policy provided special treatment for the Aviation Trust Funds but with assurances that other programs would not suffer at the expense of aviation programs. What is most interesting about the compromise in this case was the manner in which the competing interest groups were able to receive some rewards in the end although they represented distinct sets of problems and agendas.

Although the competing groups represented a distinct set of problems and separate set of political agendas, agents and forces, the final policy reflected the relative influence of the different interests. The basic elements of the group theory are multiple centers of power and optimum policy developments through competing interests. Robert Dahl[307] wrote that the fundamental axiom in the theory and practice of American pluralism is, instead of a single center of sovereign power there must be multiple centers of power, none of which is or can be wholly sovereign. The belief is that the existence of multiple centers of power, none of which sovereign will help to tame power, such as a majority, ought to be absolutely sovereign. Because one center of power (airlines, consumer groups, travel agents, and airports) were set against another (representing the Coast Guard, Amtrak and other federal programs) power itself was tamed. Despite the proponents' influence and solid argument for providing essential services to aviation programs, the opponents were able to harness their own political capital and influence to create a balance of power. In the presence of a balance of power, the only result could be a sort of bargaining for the final outcome.

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[307] Robert Dahl, *Who Governs* (New Haven: Yale Press, 1961).

The vital component of the group theory is the bargaining component. Constant negotiations among different centers of power were necessary in order to make decisions. While the overt negotiating may appeared to be in the House and Senate Conference Committee negotiations, the covert negotiations were between competing interests who used their influence to inform Congress on whether congressional proposals were in accord with interest group priorities. Throughout the public policy formulation of the Aviation Trust Fund bill, constant bargaining and negotiating between the competing interest groups and their legislative supporters was evident. The results were that interest groups and congressional leaders were able to utilize the precious art of dealing with their conflicts and not merely to the benefit of one partisan or group but to the mutual benefit of all the parties.

Political strategies and public polices were shaped by a series of bargains and concessions among the competing interest groups and governmental institutions. The importance of each group in society—airlines' importance to travel, Coast Guard's importance to national security and Amtrak's importance to intercity travel—explains the extent to which a group achieves effective access to the institutions of government.

Vital national transportation modes and programs or federal services placed groups in a strategic position of power. Each mode, program or services was also driven by very organized and influential organizations, i.e. Air Transport Association, AAA and National Business Travel Association etc. Most important, the operating structure of the Congress, where programs and services are divided by committee issue jurisdictions, allowed interest groups to find caretakers of their specific issues. These caretakers would eventually become the spokespersons and champions of the interest groups' cause. The

House and Senate Transportation committees became the spokespersons for the causes of the proponents of legislation to provide special treatment for aviation programs. Conversely, the House and Senate Budget and Appropriations committees became the champions for those groups who opposed special treatment for aviation programs. After evaluating all of the factors noted above, it is clear how and in what role interest groups played in this process.

Interest groups' role was to build support through bargaining, providing assistance to legislatures, and even providing their own political capital to get their policy approved. The frequency of interest group activity within the policy process of the Aviation bill contributed to how quickly the bill became law. The constant interaction and competition of various fiscal priorities—how to pay for aviation programs, how to pay for Amtrak, Coast Guard and other programs—created an atmosphere where policy formulation became incremental. Shuster and McCain had to find short-term spending solutions for aviation programs while they attempted to craft a long-term spending bill. Although legislators abhor nasty disagreements, these disagreements normally occur during budget standoffs. In the end, interest groups were successful in providing information and communicating their position to a degree where Congress eventually sought to find solutions for all.

What is the future for the Aviation Trust Fund?

Prior to September 11, aviation users were expected to pay about $10 billion into the Aviation Trust Fund. The FAA has predicted that September 11 will not change this number. Of the $10 billion, only $8 billion will be spent on aviation programs. The rest will be used to fund other programs within the federal budget. In Fiscal Year 1999, only about $4 billion of the $8 billion was to be spent on sustaining runways, and taxiways, the rest was to be spent on new runways, and air traffic control modernization. The cash balance in the Trust Fund is expected to grow to $63 billion in 10 years.

Table 7: Airport and Airway Trust Fund: Cash Flow and Balance 2000-2004E
Source: Office of Management and Budget

The Federal Aviation Administration (FAA) provides services to commercial, private, corporate, and military aircraft. In large part, the General Fund of the U.S. Treasury supports the FAA's non-commercial aviation functions. The balance of FAA's budget is funded primarily by commercial airlines and their customers through the Airport and Airway Trust Fund, which Congress established in 1970 "to provide for the expansion and improvement of the nation's airport and airway system." The Trust Fund initially aimed to address capital needs, such as runways and taxiways at airports and new computers and radar equipment for the air traffic control (ATC) system. Since then, however, Congress has used Trust Fund revenues to cover much of FAA's operating budget and most recently security. The decline in the cash balance of the fund after 2001 reflects a decline in travel Post-September 11th. Passenger fees and taxes represent the largest contributor to the trust fund. Most importantly, there was a dramatic decline in the uncommitted balance owing to the drawing out of Aviation Trust funds for additional security needs.

(All dollars in millions, for Fiscal Years)	2000	2001	2002	2003E	2004E
Cash Balance (Beginning)	**$12,446**	**$13,934**	**$14,482**	**$12,642**	**$12,340**
Cash Income:					
Receipts:					
Passenger Ticket Tax	5,103	4,805	4,726	4,655	5,180
Passenger Flight Segment Tax	1,655	1,556	1,532	1,888	2,032
Waybill Tax	500	493	474	433	461
Fuel Tax	887	769	789	748	778
International Departure/Arrival Tax	1,349	1,336	1,282	1,426	1,526
Rural Airports Tax	86	82	80	75	83
Frequent Flyer Tax	159	150	148	155	158
Intragovernmental Transactions:					
Interest on Cash Balance	805	882	860	708	709
Offsetting Collections:					
FAA Operations (Trust Fund Share)	77	-	2	-	-
Facilities and Equipment	64	72	172	120	120
Research, Engineering, and Development	3	4	4	16	16
Total Cash Income	**$10,688**	**$10,149**	**$10,069**	**$10,225**	**$11,063**
Cash Outgo:					
Outlays:					
FAA Operations (Trust Fund Share)	(5,222)	(5,069)	(5,902)	(3,943)	(6,000)
Facilities and Equipment	(2,077)	(2,266)	(2,737)	(2,968)	(3,229)
Research, Engineering, and Development	(166)	(167)	(200)	(201)	(157)
Grants-In-Aid for Airports	(1,578)	(2,017)	(2,860)	(3,244)	(3,299)
Payments to Air Carriers	-	(6)	(34)	(30)	-
DOT Office of Airline Information	-	-	-	(4)	(4)
Offsetting Collections:					
FAA Operations (Trust Fund Share)	(77)	-	-	-	-
Facilities and Equipment	(64)	(72)	(172)	(120)	(120)
Research, Engineering, and Development	(3)	(4)	(4)	(16)	(16)
Total Cash Outgo	**($9,198)**	**($9,601)**	**($11,909)**	**($10,526)**	**($12,825)**
Cash Balance (Ending)	**$13,934**	**$14,482**	**$12,642**	**$12,341**	**$10,578**
Obligated Balance	(5,687)	(6,368)	(7,282)	(7,330)	(7,010)
Unobligated Balance	(1,173)	(799)	(573)	(443)	(494)
Total Commitments	**($6,860)**	**($7,167)**	**($7,855)**	**($7,773)**	**($7,504)**
Uncommitted Balance	**$7,074**	**$7,315**	**$4,787**	**$4,568**	**$3,074**

Amtrak, NASA and the Coast Guard have also benefited from the excess funds within the Aviation Trust Fund, and from Congress' not restricting the funds for aviation purposes. Since 1971, the federal government has provided Amtrak with $23 billion in financial support. This includes funds that were earmarked for other purposes but were used on acquiring capital improvements and maintaining existing equipment in intercity passenger rail service, among other things.[308]This has occurred because Amtrak has not had a capital plan since 1997. Yet it has important capital needs that must be met and has identified a few of them. For example, Amtrak has stated that about $12 billion (in 2000 dollars) through 2025 will be needed to modernize the infrastructure between Washington, D.C., and New York City. In addition, in recent years, it needed about $300 million annually in capital funds to replace facilities and equipment that were wearing out. In the future, the needs of Amtrak will not change or will its dependency on the federal government for assistance, and Congress will once again be faced with the need to tap into the Aviation Trust Funds to pay for Amtrak's needs. In the coming years, Amtrak will be the only non-aviation program Aviation Trust Fund beneficiary, it appears that two other programs—NASA and Coast Guard will have other funding sources. The former will be financed through its own revenue sources and the latter will be moved to another department.

During Congress' push to balance the federal budget, it was discovered that NASA was not utilizing funds appropriated by Congress. While assessing NASA's request for new budget authority and determining what adjustments, if any, to make to that request, the General Accounting Office (GAO)[309] focused on the total resources

[308]General Accounting Office Report to Congress "Intercity Passenger Rail," March 15, 2000.
[309] General Accounting Office Report to Congress. "NASA Budget," July 18, 1996.

NASA has available for their next fiscal year, not just the amount requested. Carryover balances, which represent available budgetary resources from prior years, along with new budget authority, provide the total budget resources available to a program. Some level of carryover balance is appropriate for government programs; however, the GAO discovered that NASA had a large number of carryover balances. As a result of these carryover balances, NASA will be forced to use these resources and may not need the assistance of the Aviation Trust Funds anymore. While NASA may not be a beneficiary of the Aviation Trust Fund because of new revenue streams, the Coast Guard will lose its benefits do to a transfer to another department.

The Coast Guard's transfer to the Department of Homeland Security from the Department of Transportation might remove itself from the benefits of the Aviation Trust Fund. As was discussed in previous chapters, fiscal constraints have dominated the U.S. Coast Guard budgeting priorities over the last decade. Since fiscal year 1992, the Coast Guard has assumed increased responsibilities while shrinking its workforce by nearly 10 percent and operating with a budget that has risen about 1 percent a year in actual dollars. The Commandant of the Coast Guard told the Congress in 1996 that funding was no longer sufficient to sustain the normal pace of operations over time.

The fiscal needs of the Coast Guard as well as its national security role made it crucial for the Coast Guard to be placed within the Department of Homeland Security. In the future the Coast Guard will compete with other national security programs for funding. These national security programs will be judged and assessed best on national security needs rather than their contribution to transportation needs. Undoubtedly, these new security programs will receive the funding attention they need to address the nation's security concerns. Yet the Coast Guard, like the federal government as a whole, faces the prospect of further budget cuts to meet deficit reduction targets over the next several years.

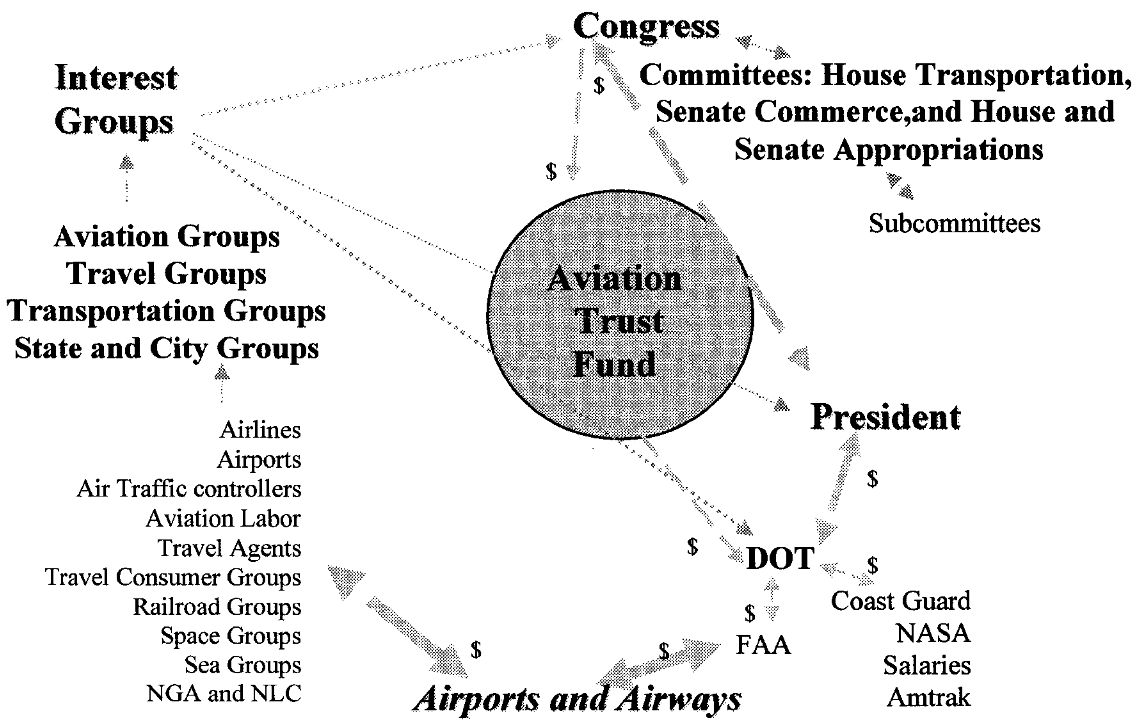
Congress has withheld funding and used Aviation Trust Fund revenue to mask the full dimension of the federal budget deficit and to pay for other transportation programs. As was indicated in previous chapters, this procedure violates assurances given to users when the funds were created that the money collected from the taxes and fees would be applied to transportation infrastructure improvements. In the next few years, Congress will once again seek to authorize the Aviation Trust Funds and other funds that were designed for specific purposes. The increasing cost of security and the reduction of tax revenue due to the slowing U.S. economy will be barriers preventing adequate and full funding for aviation projects and other beneficiaries of trust funds.

Trust funds have demonstrated that when government makes a commitment to address critical programs or services, the on-going dedicated source of revenue allows more intelligent planning to address the programs needs and for improved proposals for access to the funds. In conventional or commercial trust funds, increased revenue and other economic benefits have contributed to the positive operation of the fund. However, unlike other conventional or commercial trust funds, federal trust funds have been managed in a way by Congress that does not enable programs, services and jurisdictions to elevate trust fund funding levels or provide protections that ensure the funds are utilized in their intended purpose.

Facing a slowdown in the economy and the increasing cost of security, Congress must judge the adequacy of trust fund balances as benefit claims grow and tax revenue growth slows. This dynamic relates to every federal trust fund, including Social Security, Aviation, and Highway. In the future it will be important for Congress to use better judgment and risk assessment when it decides how to manage trust funds and whether to use their funds for other purposes. Based on the data presented in previous chapters, a basic principle for Congress to follow should be to use good economic times to build up the trust funds and protect them from uses outside of their statutory intent; however during poor economic times Congress should wall off adequate portions of the funds and use the difference to provide relief to other sectors of the economy. In the end, despite the statutory intent of any specific federal trust fund, all revenue is part of the general U.S. treasury, and thus, forms the overall account in which all programs—no matter their purpose—are dependent upon for funding.

APPENDIX

Public Policy Formulation of the Aviation Trust Funds



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