



General Aviation Airport Access Act (S. 1847) Myth vs. Fact

Myth #1: This bill requires airports to provide free parking for general aviation planes.

Fact: This claim is demonstrably false. Page 2, line 9 of the General Aviation Airport Access Act states “[a] covered airport may assess a fee on a transient general aviation aircraft for using the transient apron described in subsection (a).”¹ This provision explicitly allows an airport to charge a fee, so long as the fee is fair, reasonable, and transparent.

Myth #2: The term “fair and reasonable fee” is ambiguous and it will be impossible for airports to determine whether a given fee is reasonable.

Fact: Federally funded public use airports are already required to charge fair and reasonable prices for services. The term “fair and reasonable prices” has been used to limit airport fees for the past 50 years. The federal Anti Head Tax Act of 1973 first required airports owned or operated by a state or local government to charge reasonable fees.² The Supreme Court explained a fee is “reasonable” under the Anti Head Tax Act if the fee “(1) is based on some fair approximation of use of the facilities, (2) is not excessive in relation to the benefits conferred, and (3) does not discriminate against interstate commerce.”³ Congress further refined these rules as they apply to air carriers and created a dispute resolution process in section 113 of the FAA Authorization Act of 1994 (codified at 49 U.S.C. § 47129). No specific dispute resolution process currently applies to general aviation parking areas, making it difficult for pilots to challenge unreasonable fees.

Furthermore, all airports covered by this bill are subject to FAA’s Airport Improvement Program (AIP) grant assurances⁴ or surplus property conveyance conditions⁵ that require fair and reasonable prices. AIP grant assurance #22 requires both airports and fixed-base operators to “[c]harge reasonable, and not unjustly discriminatory, prices for each unit or service.”⁶ This AIP

¹ General Aviation Airport Access Act, S. 1847, 118th Cong. (2023) (adding 49 U.S.C. § 40131(b)).

² 49 U.S.C. § 40116(e) (“a State or political subdivision of a State may levy or collect . . . reasonable rental charges, landing fees, and other service charges from aircraft operators for using airport facilities of an airport owned or operated by that State or subdivision.”). The General Aviation Airport Access Act only applies to public use airports (as defined at 49 U.S.C. § 47102). *See* § 2(a) (adding 49 U.S.C. 40131(d)(2)). Nearly all public use airports are owned by a state or local government.

³ *Nw. Airlines, Inc. v. Cnty. of Kent, Mich.*, 510 U.S. 355, 369 (1994).

⁴ FEDERAL AVIATION ADMINISTRATION, ASSURANCES: AIRPORT SPONSORS 10–11 (May 2022) (hereafter “AIP Grant Assurances”), available at https://www.faa.gov/sites/faa.gov/files/airports/new_england/airport_compliance/assurances-airport-sponsors-2022-05.pdf.

⁵ *Id.*; 49 U.S.C. § 47102(a)(1).

⁶ 49 U.S.C. § 47152(2).

grant assurance has required airports to charge fair and reasonable rates since Congress created the program in 1982.⁷ However, FAA has failed to closely monitor this grant assurance requirement and has declined to investigate violations unless an airport is accumulating excessive surplus revenue.⁸ This has led Congress to create specific enforcement mechanisms (such as 49 U.S.C. § 47129, which applies to air carriers) in previous FAA Reauthorization acts.

To implement 49 U.S.C. § 47129 (which applies to air carriers) and Grant Assurance #22 (which applies to all airports that receive AIP grants), the Department of Transportation issued a *Policy Regarding Airport Rates and Charges*.⁹ The policy applies rates and charges for all aeronautical uses of an airport—not just those imposed on air carriers.¹⁰ The policy explains that “[r]ates, fees, rentals, landing fees, and other service charges (“fees”) imposed on aeronautical users for aeronautical use of airport facilities (“aeronautical fees”) must be fair and reasonable.”¹¹ Further, the policy explains that “Federal law does not require a single approach to airport rate-setting. . . . as long as the methodology used is applied consistently to similarly situated aeronautical users.”¹² This fee regulation is familiar to all airports covered by this bill and is supposed to presently cover general aviation parking areas. But FAA’s underenforcement of this grant assurance may have led airports to forget this longstanding requirement.

Myth #3: This bill requires airports to provide costly services that pilots will not have to pay for.

Fact: Under current law airports must provide services at fair and reasonable prices.¹³ This bill’s new requirements only oblige airports to ensure there is parking with fair, reasonable, and transparent rates for aircraft that do not need extra services. The bill does not change the status quo as to other airport services, such as fuel, oil, concierge services, a passenger waiting area, baggage handling, or maintenance.

Myth #4: This bill regulates prices set by private businesses.

Fact: This bill does not alter the current law requirements for private businesses who provide aeronautical services (such as FBOs) at a federally-funded airports. These businesses have been required to charge fair and reasonable prices since the beginning of the Airport Improvement Program.¹⁴ The only private business service this bill covers is accessing the parking area at a

⁷ Airport and Airway Improvement Act of 1982 § 511(a)(1), Pub. L. No. 97–248, 96 Stat. 324, 686.

⁸ FEDERAL AVIATION ADMINISTRATION, AIRPORT COMPLIANCE MANUAL, ORDER 5190.6B p. 17-3 (2022) [hereinafter “Airport Compliance Manual”, available at <https://www.faa.gov/documentLibrary/media/Order/Order-5190-6B-Change2-rev.pdf> (“The FAA will not ordinarily investigate the reasonableness of a general aviation airport’s fees absent evidence of a progressive accumulation of surplus aeronautical revenues.”)].

⁹ 78 Fed. Reg. 55,330, 55,332 (Sept. 10, 2013).

¹⁰ *Id.* at 55,331.

¹¹ *Id.*

¹² *Id.* at 55,333.

¹³ See AIP Grant Assurances, *supra* note 4.

¹⁴ See Grant Assurances and Agreement for Airport Improvement Program, 53 Fed. Reg. 3,104, 3,108 (Feb. 3, 1988).

controlled access airport. At controlled access airports, this bill requires the airport operator to provide a method for a pilot to access the designated parking area. This may require using a FBO's facilities if that is the closest access point to the designated ramp space. While the pilot may not be charged an additional access fee, the bill does not prohibit an FBO from seeking a reimbursement from the airport for this service.

Myth #5: This bill undermines the federal policy requiring airports to be self-sustaining.

Fact: Since the AIP's inception, the program's grant assurances have required airports to both charge fair and reasonable rates as well as operate in a self-sustaining matter.¹⁵ These policies have worked hand-in-hand for the past 41 years. FAA's Airport Compliance Manual explains that an airport may "charge fees that exceed total airport costs" but that airports should not use their market power "to create revenue surpluses that exceed the amounts to be used for airport system purposes."¹⁶ DOT and FAA have made it clear that the self-sustaining requirement does not supersede the fair and reasonable rate requirement.¹⁷ This bill simply reinforces the requirements in law by requiring airports to designate a parking area where pilots will be charged a fair, reasonable, and transparent fee when they do not need extra services. As explained further in Myth #6, that rate can include the full range of expenses and capital costs an airport incurs to operate the parking area.

Myth #6: This bill does not allow airports to recoup indirect costs that are necessary to provide a transient parking area.

Fact: This bill allows airports to recoup both direct and indirect costs of operating a parking area in the form of parking fees, so long as those fees are fair, reasonable, and transparent. While some separate provisions in the Senate's FAA Reauthorization Act limit the method airports may use to calculate parking fees,¹⁸ this bill does not specify a particular method to calculate a reasonable rate. Thus it will be calculated under DOT's generally applicable Rates and Charges Policy. As stated in the response to Myth #2, that policy explains that "Federal law does not require a single approach to airport rate-setting. . . . as long as the methodology used is applied consistently to similarly situated aeronautical users."¹⁹ The policy recognizes that airports may use a compensatory approach, which involves an airport covering the costs to provide and

¹⁵ See Airport and Airway Improvement Act of 1982 § 511(a)(1), (a)(9), Pub. L. No. 97-248, 96 Stat. 324, 686-87 (codified at 49 U.S.C. § 47101(a)(1), (a)(13), respectively).

¹⁶ Airport Compliance Manual, *supra* note 8, at 17-3.

¹⁷ *Id.* at 17-1; Policy Regarding Airport Rates and Charges, 78 Fed. Reg. 55,330, 55,335 (Sept. 10, 2013) [hereafter "Rates and Charges Policy"] ("Absent agreement with aeronautical users, the obligation to make the airport as self-sustaining as possible does not permit the airport proprietor to establish fees for the use of the airfield that exceed the airport proprietor's airfield costs.").

¹⁸ FAA Reauthorization Act of 2023, S. 1939, 118th Cong. § 620 (2023) (adding a paragraph (23) to 49 U.S.C. § 47107(a)).

¹⁹ Rates and Charges Policy, *supra* note 17, at 55,333.

maintain a service upfront and recovering the costs through user fees.²⁰ The FAA’s Airport Compliance Manual states that allowable costs for an airfield service include operating costs (including direct personnel, maintenance, and equipment) and indirect costs such as administrative overhead, utility infrastructure, and fire/crash rescue.²¹ The Manual also allows capital costs, including reserve and contingency funds, to be included in the rate calculation.²²

Myth #7: This bill imposes an unfunded mandate on airports.

Fact: This bill allows an airport to recoup the full cost of operating and maintaining the parking area in the form of fair, reasonable, and transparent parking fees. As stated in the response to Myth #6, DOT policy considers the full cost of operating and maintaining this parking area as a reasonable fee. Furthermore, this bill only applies to airports that have received AIP grant funds in the past 20 years or received a federal property conveyance (which is typically provided at no cost).²³ As explained in the response to Myth #9, the new requirements in this bill can be met by using the existing parking area with fair, reasonable, and transparent rates for aircraft that do not need services.

It is worth noting that the FAA Reauthorization Act of 2023 as proposed in the Senate and House provide \$4 billion per year in AIP grants to the same airports that are covered by this bill.²⁴ This represents a \$650 million or 19% increase each year.

Myth #8: This bill shifts costs from transient aircraft to other airport users.

Fact: As stated in the response to Myth #6, an airport may recoup the full cost to operate and maintain the parking area in the form of parking fees. This means airports will be able to recover the full cost of providing parking. If airports are recovering the cost to provide parking there will be no reason to shift costs to other airport users.

Myth #9: This bill requires airports to construct and/or operate new parking areas for transient aircraft.

²⁰ *See id.*; Airport Compliance Manual, *supra* note 8, at 18-5-6. Contrast the compensatory model with the residual model where airport operators and users share operational costs up front. *See id.*

²¹ Airport Compliance Manual, *supra* note 8, at 18-6. The term “airfield” includes public parking ramps and aprons. *Id.* at 18-3.

²² *Id.* at 18-6.

²³ General Aviation Airport Access Act, S. 1847, 118th Cong. (2023) (adding 49 U.S.C. § 40131(d)(2)); *see also Surplus Property and Military Base Conversions for Airport Purposes*, FEDERAL AVIATION ADMINISTRATION, https://www.faa.gov/airports/airport_compliance/surplus_property_conversion (last visited July 5, 2023) (“[surplus] property is generally transferred at no cost if it is used for airport purposes.”).

²⁴ FAA Reauthorization Act of 2023, S. 1939, 118th Cong. § 101(a) (2023); Securing Growth and Robust Leadership in American Aviation Act, H.R. 3935, 118th Cong. § 101(a)(3) (2023).

Fact: Most airports already have a place for transient aircraft to park. Many small airports operate this parking area directly. Other airports contract with FBOs to manage some or all of the transient ramp space at the airports. This bill allows airports to designate existing ramp space—rather than constructing new ramp space—as the area where aircraft that do not need services may park and be charged a fair, reasonable, and transparent fee. The bill also allows airports to contract with FBOs to operate and maintain these parking areas, but the responsibility is on the airport to meet the fair, reasonable, and transparent price requirement.

Myth #10: This bill poses a security risk at TSA-regulated airports.

Fact: This bill does not weaken the badging and escort requirements for transient pilots operating at commercial service airports. Rather, it requires airports to provide a method for pilots to access their aircraft if there is not a self-service gate. At TSA-regulated airports the general aviation ramp is part of the “Air Operations Area” which is regulated separately from the commercial airline terminal and ramp and is the lowest level security area inside the airport fence.²⁵ It is up to the airport to provide this access (which it may provide through a contractor, see response to Myth #9) in compliance with existing TSA regulations. The cost for providing this service can be included in the parking fee so long as the fee remains fair, reasonable, and transparent.

Myth #11: The FAA is not equipped to investigate and determine fair and reasonable prices.

Fact: The Department of Transportation and FAA already have processes in place to enforce the fair and reasonable price requirements in the Anti Head Tax Act and AIP grant assurances. DOT has a specific process in place to adjudicate claims from air carriers that an airport’s fees are unreasonable.²⁶ But general aviation pilots are not eligible to use that program to resolve fee disputes with airports. Instead, pilots may file with the FAA a formal complaint under Part 16 or an informal complaint under Part 13.²⁷ But FAA has previously stated that the agency will not “investigate the reasonableness of a general aviation airport’s fees absent evidence of a progressive accumulation of surplus aeronautical revenues.”²⁸ The fair, reasonable, and transparent standard in this bill is meant to revert FAA’s enforcement posture to the standard enacted into federal law 50 years ago²⁹ without needing to create a completely new adjudication process.

²⁵ See 49 C.F.R. § 1540.5.

²⁶ 49 U.S.C. § 77129; 14 C.F.R. Part 302, Subpart F.

²⁷ *Complaints about Airport Compliance*, FEDERAL AVIATION ADMINISTRATION, https://www.faa.gov/airports/airport_compliance/complaints (last visited July 5, 2023).

²⁸ Airport Compliance Manual, *supra* note 8, at 17-3.

²⁹ As explained in the response to Myth #2, the Anti Head Tax Act of 1973 has required airports owned or operated by a state or local government to charge reasonable fees. 49 U.S.C. § 40116(e).