



## AIRPORT GOVERNANCE AND OWNERSHIP

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### I. INTRODUCTION

As of January 2008, there were almost 20,000 airports in the United States.<sup>1</sup> While the vast majority of these airports are privately owned and privately used, 4,150 airports are publicly owned and publicly used. These publicly-owned airports serve scheduled passenger operations, cargo operations, general aviation, or a combination of these operations. The principal focus of this report is on the governance of publicly-owned airports providing scheduled passenger service.

There are relatively few federal and state constraints on the type of public entity that can own, manage, and operate an airport. As a result, airports are governed by virtually every type of public entity. General-purpose governments at the federal, state, county, and municipal levels all have governed or currently govern airports. In other instances, special-purpose entities such as airport authorities and port authorities have been established and given responsibility for the operation and development of airports.

In spite of the multiplicity of governance models, there has been relatively little analysis of the advantages and disadvantages of different governance structures and how well different types of public entities perform the function of governing airports. Although some communities have examined this issue in detail, either as a means to improve airport performance or to consider an alternative governance structure, there has been only limited consideration of this issue on an industry-wide level.<sup>2</sup>

Theories abound as to the optimal governance model. Conventional wisdom has often provided that governance by airport authorities with a high degree of autonomy is superior in many respects to direct control by a general-purpose government. A somewhat complementary theory is that formal integration of regional interests in airport decision-making, such as through a multi-jurisdiction authority, is beneficial.

Another theory is that selling or leasing a public airport to a private operator can optimize airport performance. The benefits of privatization in the United States are largely anecdotal, because only a few communities have attempted to fully privatize commercial service

airports. Despite this small set of cases, a literature review reveals that the theoretical benefit of privatizing airports has received far greater attention than consideration of the advantages, disadvantages, and opportunities for improving the traditional airport governance structures that have been and continue to be used in this country.

This report is intended to serve two principal purposes: 1) to detail the laws and legal principles affecting airport governance; and 2) to correlate airport governance and the governing body's ability to perform particular functions. The results of this and subsequent analysis may serve communities attempting to evaluate their own governance structures and to decide whether any changes are warranted and feasible.

Section I describes the different governance structures currently in use. Section II describes the legal principles under state and federal law affecting airport governance and the initial choice of a governance structure. Section III describes the opportunities for and legal constraints on transfers and delegations of power over airports. Section IV examines the extent to which different governance models serve or impede airport goals and performance. Section V presents conclusions and considerations for any community examining whether to change its approach to airport governance.

The appendices attached to this report provide further information and identify additional resources on the subject of airport governance. Appendix A identifies the operators of the approximately 150 commercial service airports that each account for more than 0.05 percent of enplaning passengers in the United States. Appendix B identifies the operative statutory provisions in each of the 50 states on airport governance. Appendix C is an index of state and federal case law on the issue of airport governance. Appendix D is a bibliography of legal, technical, and scholarly resources on airport governance. Appendix E contains data on airport performance using various metrics.

### II. AIRPORT GOVERNANCE TODAY

#### A. Brief History

There is no single path by which the publicly-owned airports in the United States came to their present governance form. It was quite common during the 1920s and 1930s for local governments to purchase airports previously in private ownership and to acquire vacant property to construct public airports. The U.S. Government constructed several airports during World War II and transferred the airfields to local governments after

<sup>1</sup> FED. AVIATION ADMIN. (FAA), REPORT TO CONGRESS: NATIONAL PLAN OF INTEGRATED AIRPORT SYSTEMS (NPIAS) 2009–2013, at 1 (2008), available at [http://www.faa.gov/airports\\_airtraffic/airports/planning\\_capacity/](http://www.faa.gov/airports_airtraffic/airports/planning_capacity/) (Last visited May 4, 2009).

<sup>2</sup> Books, articles, and reports focusing on the subject of airport governance are listed in App. D.

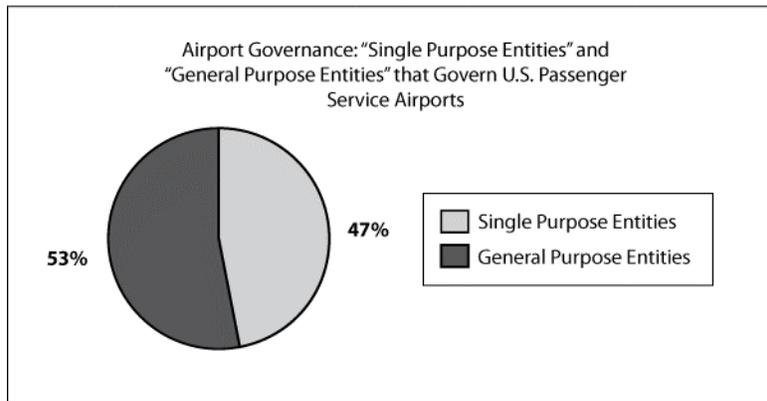
the war pursuant to the Surplus Property Act.<sup>3</sup> During the 1950s and 1960s, several airport authorities were established to assume control over public airports. Changes in airport governance continue to occur as a result of transfers of military airfields for commercial or joint (military and commercial) use, construction of new airports, and transfers and delegations of power over existing airports.

**B. Overview of Governance Types**

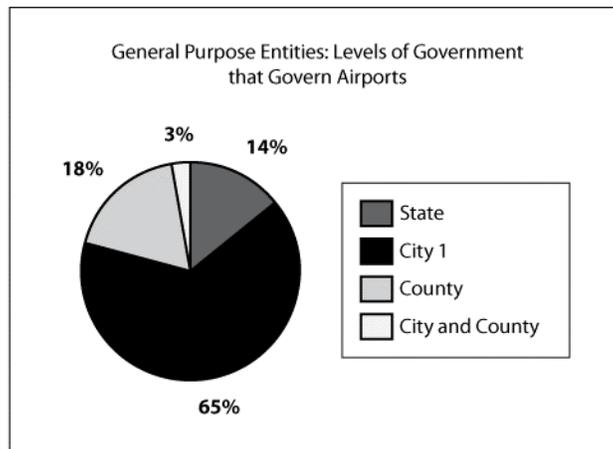
Myriad public entities govern airports in the United

States. Airports Council International–North America (ACI-NA) conducts a general information survey of North American airports, including basic statistics on governance. The most recent ACI-NA survey, conducted in 2003 primarily among larger airports, revealed that 38 percent of the airports responding to the survey were owned and operated by a city, 25 percent by a regional/airport authority, and 17 percent by a single county. The remaining airports participating in the survey were governed by multiple jurisdictions, states, unified port authorities, and other public entities.<sup>4</sup>

**Fig. 1**



**Fig. 2**



<sup>3</sup> The Surplus Property Act of 1944, 78 P.L. No. 457, 58 Stat.

765, 50 U.S.C. § 1611.

<sup>4</sup> AIRPORTS COUNCIL–N. AMERICA (ACI-NA), HIGHLIGHTS OF THE 2003 GEN. INFO. SURVEY, at 1 (2003).

These results are consistent with the previous ACI-NA survey conducted in 1997.<sup>5</sup> A 2005 survey conducted in the course of another project for the Transportation Research Board (TRB) Cooperative Research Program categorized airports differently, but with similar results.<sup>6</sup>

In an effort to gather additional data on airport governance, the authors examined publicly-available information on the commercial service airports identified as small, medium, and large hubs in the current National Plan of Integrated Airport Systems (NPIAS). These are airports that account for at least 0.05 percent of enplaning passengers. Appendix A identifies the operators of the approximately 150 hub airports. Figure 1 and Figure 2 summarize these data.

The ACI-NA survey, our review, and other research examined in preparing this report reveal considerable variability in airport governance. The following are some examples of this variety in governance structures:

- Two airports, Dulles and Reagan National Airports, are owned by the federal government and operated by an airport authority, the Metropolitan Washington Airports Authority, created by a compact between the Commonwealth of Virginia and the District of Columbia.

- The following state governments operate individual commercial service airports: Alaska, Arizona, Connecticut, Hawaii, Maryland, Minnesota, New Hampshire, and Rhode Island.

- State and local governments have delegated decision-making responsibility for many airports to an airport authority. This includes airport authorities representing more than one general-purpose government. While the definition of an airport authority varies, this model rivals direct control by cities as the most common form of governance structure. Examples of state- and locally-created airport authorities include the San Diego County Regional Airport Authority (California), the Greater Orlando Aviation Authority (Florida), the Indianapolis Airport Authority (Illinois), the Wayne County Airport Authority (Michigan), and the Memphis Shelby County Airport Authority (Tennessee).

- Several public entities operate multi-airport systems, including the Metropolitan Airports Commission (Minnesota), the Metropolitan Washington Airports

Authority (Virginia), the Port Authority of New York and New Jersey, the Massachusetts Port Authority, Clark County (Nevada), Sacramento County (California), the City of Los Angeles (California), the City of Chicago (Illinois), and the City of Phoenix (Arizona). As reflected in this list, multi-airport systems are governed by all types of public entities that operate commercial service airports.

- Some public entities are responsible for modes of transportation in addition to airports, including the Port of Seattle, Port of Portland, Port of Oakland, the Massachusetts Port Authority, the Metropolitan Washington Airports Authority, and the Port Authority of New York and New Jersey.

- The U.S. Department of Defense participates in governing several airports used for joint military and commercial purposes. Examples of former military airfields converted for joint military and commercial use include Palmdale Airport (California) (part of Air Force Plant 42), Charleston International Airport (South Carolina) (part of Charleston Air Force Base (AFB)), Northwest Florida Regional Airport (part of Eglin AFB), Wichita Falls Municipal Airport (Texas) (part of Sheppard AFB), Waynesville Regional Airport (Missouri) (part of Forney Army Airfield (AAF)), Killeen/Ft. Hood Regional Airport (Texas) (part of Gray AAF), Sierra Vista Municipal Airport (Arizona) (part of Libby AAF), and Yuma International Airport (Arizona) (part of Marine Corps Air Station Yuma).

- Some airports are governed by public entities that are unique (or at least extremely rare) and do not fit perfectly with other members of the same general category. The Metropolitan Washington Airports Authority is unique in that it leases two airports from the federal government and rare in that it exists pursuant to a two-state compact (along with the Port Authority of New York and New Jersey and the Chicago/Gary Regional Airport Authority). A few state universities, including the University of California and the Ohio State University, operate general aviation airports. Special districts also have been formed to own and operate airports, including the Truckee Tahoe Airport District (California) and the Monterey Peninsula Airport District (California).

There are no obvious correlations between airport governance structure and other attributes. Similarly-situated airports, such as airports with high passenger volumes, airline hubs, or airports primarily serving low-cost carriers, are governed by all types of public entities. Although not examined in detail for purposes of this report, general aviation airports are governed by the same variety of governance structures as commercial service airports. Airports within similar geographic regions, including densely populated areas with multiple airports (e.g., Florida, California, and the Northeast), are governed by all types of public entities. Although professionals and academics from multiple disciplines have attempted to extract commonalities

<sup>5</sup> See FAA/OST TASK FORCE STUDY, AIRPORT BUS. PRACTICES AND THEIR IMPACT ON AIRLINE COMPETITION, at 2–3 (1999) (summarizing the results of the 1997 General Information Survey), <http://ostpxweb.dot.gov/aviation/Data/airportsbuspract.pdf>.

<sup>6</sup> See TRANSP. RESEARCH BD., ACRP SYNTHESIS 1: INNOVATIVE FINANCE AND ALTERNATIVE SOURCES OF REVENUE FOR AIRPORTS, at 6 (2007) (“The form of governance for the 100 busiest airports in the United States is as follows (the top 100 airports were determined based on numbers of enplaned passengers in 2005): Authority—39%, City—33%, Regional—5%, County—13%, State—7%, Other—3%.”), [http://onlinepubs.trb.org/onlinepubs/acrp/acrp\\_syn\\_001.pdf](http://onlinepubs.trb.org/onlinepubs/acrp/acrp_syn_001.pdf).

among airport governance structures, no associations have been definitively established.<sup>7</sup>

### C. Creating an Airport Governance Typology

One of the fundamental problems in attempting to categorize airport governance in a meaningful way is that governance is a multifaceted concept. There are many dimensions to governing an airport that together constitute an airport's governance structure.

A comprehensive typology of airport governance would need to account for at least the following variables, presented as questions that might be asked for each airport:

1. *Does primary decision-making responsibility for airport operations and development reside in a general-purpose government or special purpose authority?*

1.A. *If a general-purpose government, what are the level of government (federal, state, county, municipal) and form of government (e.g., strong legislative, strong executive)? What role do elected officials play in day-to-day airport decision-making? Is there a delegated body that exercises some authority or oversight for the airport? To what extent is the airport subject to generally applicable rules (e.g., civil service, contracting)?*

1.B. *If a special-purpose authority, what is the nature of the authority (port authority, airport authority) and what is the ongoing role, if any, of a general-purpose government in decision-making (e.g., appointment of authority commissioners, etc.)? Who chooses the commissioners or board members, and how are they selected?*

2. *Has significant decision-making power or operational control been commercialized or privatized?*

3. *How many transportation assets are under the public entity's control? Does the public entity operate multiple airports as a system? Does the public entity control modes of transportation in addition to airports?*

4. *Does the entity with primary decision-making responsibility for the airport own the underlying property?*

5. *Does the entity with primary decision-making responsibility maintain land use and zoning jurisdiction over the airport? Over the surrounding areas?*

These variables in airport governance can have significant legal and practical consequences. The following examples are intended to be illustrative of the more significant implications of these variables in governance structure; several of these legal issues are examined in subsequent sections of this report:

- General-purpose governments can call upon general-fund revenues to subsidize airport operations and capital development. The larger the population and geographic scope, the greater the tax base that may be

available for this purpose.<sup>8</sup> General-purpose governments may subsidize airport authorities, but seldom have a legal obligation to do so. Operators of a multi-airport system may be able to distribute funding to airports other than the airport at which the revenue was generated.<sup>9</sup> Port authorities may be able to call upon revenue from other modes of transportation for airport purposes. For example, the Port Authority of New York and New Jersey may be able to use nonairport revenue in its effort to make the Stewart International Airport carbon-neutral.<sup>10</sup>

- Aside from these important differences related to financing, most airport operators, regardless of governance structure, will have similar legal authority to pay for airport operations and development through traditional means: bond indebtedness, federal grant funding from the Federal Aviation Administration (FAA) through the Airport Improvement Program (AIP) and from the Transportation Security Administration (TSA) for security projects, local fees on enplaning passengers known as Passenger Facility Charges (PFC), revenues from nonaeronautical activities such as concessions and rates and charges imposed on airport users. Equally significant, airport revenue, grant funds, and PFC revenue can be used only for airport purposes. Regardless of the nature of the airport governance structure, the diversion of airport revenue for nonairport purposes is prohibited.<sup>11</sup>

- Several airport authorities lease the airport from a general-purpose government. The respective rights of the general- and special-purpose entities commonly will be prescribed in the lease and the authority's enabling legislation. These respective powers vary considerably from airport to airport. The general-purpose government may retain indirect power over airport decision-making such as, for example, the power to appoint and remove airport authority commissioners.

- A public entity that operates a multi-airport system has limited legal authority to allocate traffic within the airport system. While the full scope of this power

<sup>8</sup> The actual need to impose such taxes may be offset to a small or large degree by the concentration of airport passengers who may be able to fund capital improvements directly through, for example, Passenger Facility Charges.

<sup>9</sup> This general rule is subject to important limitations. See FAA Policy Regarding Airport Rates and Charges, 61 Fed. Reg. 31,994 (1996), *vacated in part by* Air Transport Ass'n of Am. v. Dep't of Transp., 119 F.3d 38 (D.C. Cir. 1997), *amended by* 129 F.3d 625 (D.C. Cir. 1997); FAA Notice of Amendment to Policy Statement, 73 Fed. Reg. 40,430 (2008).

<sup>10</sup> See Press Release, Port Auth. of N.Y. and N.J., Port Authority Aims to be Carbon Neutral by 2010 Through Emission Reductions and Carbon Offsets (Mar. 27, 2008), available at <http://www.panynj.gov/abouttheportauthority/presscenter/pressreleases/PressRelease/index.php?id=1049>. (Last visited May 4, 2009).

<sup>11</sup> The relevant statute, 49 U.S.C. § 47107(b)(2), provides a narrow exception for airports that were required to use airport revenue for nonairport purposes beginning prior to Congress's imposition of the prohibition.

<sup>7</sup> We recommend readers to the scholarly articles listed in App. D.

has not been defined, FAA guidance suggests that it exceeds the power of individual airport operators working cooperatively to allocate traffic within a region.<sup>12</sup>

- Some airports are located within the jurisdiction of a public entity that is not directly responsible for airport decision-making. These host jurisdictions may have legal authority to regulate land use but are preempted from regulating aircraft operations and safety. A few states, including Texas and Washington, have attempted to immunize airports from certain local regulations; in other states, airport operators may be entitled to intergovernmental immunity. Numerous conflicts and considerable litigation have arisen between airport operators and their host jurisdictions. A prominent example that has engendered considerable litigation is the Bob Hope Airport in Burbank, California, which is operated by the Burbank-Glendale-Pasadena Airport Authority but located in the cities of Burbank and Los Angeles. Similar controversy over the application of local land use regulation by host jurisdictions has occurred in connection with the Dallas/Ft. Worth International Airport and the Lambert-St. Louis International Airport.<sup>13</sup>

- In addition to airports located within other jurisdictions, many airports are located immediately adjacent to or near areas that are under the jurisdiction of entities that are not directly or indirectly responsible for airport decision-making. The lack of control by the host or neighboring jurisdiction may present few opportunities to influence airport decision-making and may account for the numerous lawsuits historically filed by surrounding communities challenging airport development and growth. Advisory boards have been created in some instances to channel input from these communities, creating another layer of airport decision-making. In other cases, host or neighboring communities may be given seats on airport authority commissions. However, it is unclear whether and to what extent such mechanisms temper local concerns about airport operations or facilitate the development of additional airport capacity. Long-running disputes between the airport operator and surrounding communities have occurred in Seattle, Los Angeles, Cleveland, Chicago, St. Louis, Atlanta, New Orleans, and Ft. Lauderdale, to name but a few prominent examples.<sup>14</sup>

- Private participation in airport decision-making and management is thought to lead to greater cost cer-

tainty and efficiency, albeit with a loss of public control over airport assets. At the same time, public entities generally cannot avoid satisfying their state and federal obligations by delegating responsibility to private entities. The subject of partial and full airport privatization is addressed in detail below.

- The Department of Defense and the local airport operator may have somewhat conflicting missions and obligations when operating joint-use airports. For example, the Department of Defense may be interested in limiting commercial or general aviation operations to preserve the airfield and surrounding airspace for military use, while the local airport operator is contractually obligated to the FAA to make the airport available for all types of aeronautical activities.<sup>15</sup> This has caused considerable tension during the transition of several military airfields to joint military and commercial use.

## D. Degrees of Control Over Airport Decision-making

A common consideration and source of controversy is the degree to which public and private entities control airport decision-making, both in absolute terms and relative to other entities. In some instances, direct control by a general-purpose government may be an end unto itself. More frequently, direct control may be seen as enabling a general-purpose government to ensure that the airport is serving the public entity's goals, including aspirations such as providing low-cost air service to multiple destinations and furthering economic development. Direct control by elected officials of a general-purpose government also promotes accountability by giving the electorate a chance to vote on the governing body's airport-related decision-making.

The benefits of direct control often are balanced against the belief that greater autonomy can lead to improved performance and greater efficiency. For example, it is often noted that airport authorities avoid many of the civil service, contract approval, and other constraints of general-purpose governments. Management may have greater knowledge and expertise regarding the specialized aviation industry. Thus, several communities have determined that ceding control to special-purpose authorities (port authorities and airport authorities) is better, all things considered, than reserving decision-making power.

<sup>12</sup> See FAA Order No. 5190.6A, Airports Compliance Requirements, § 4-8(d) (1989).

<sup>13</sup> See *City of Irving v. Dallas/Ft. Worth Int'l Airport Bd.*, 894 S.W.2d 456 (Tex. App. 1995); *City of St. Louis v. City of Bridgeton*, 705 S.W.2d 524 (Mo. Ct. App. 1985).

<sup>14</sup> See, e.g., *Airport Cmty. Coalition v. Graves*, 280 F. Supp. 2d 1207 (W.D. Wash. 2003) (Seattle-Tacoma International Airport); *City of Bridgeton v. FAA*, 212 F.3d 448 (8th Cir. 2000) (Lambert-St. Louis International Airport); *City of Cleveland v. City of Brook Park*, 893 F. Supp. 742 (N.D. Ohio 1995) (Cleveland-Hopkins International Airport); *City of Grapevine v. DOT*, 17 F.3d 1502 (D.C. Cir. 1994) (Dallas/Ft. Worth International Airport).

<sup>15</sup> Compare 32 C.F.R. § 855.20(b) ("Operational considerations will be based on the premise that military aircraft will receive priority handling (except in emergencies), if traffic must be adjusted or re-sequenced.") with 49 U.S.C. § 47107(a) ("The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that—(1) the airport will be available for public use on reasonable conditions and without unjust discrimination.").

Across the country, communities have attempted to find the right balance between reserving and releasing control, as reflected in the following examples:

- There are numerous airports at one end of the control spectrum in which primary decision-making responsibility is reserved by a general-purpose government. The cities of Atlanta, Denver, Chicago, Cleveland, New Orleans, and Houston (to name just a few) govern their airports directly. Clark County (Nevada), Broward County (Florida), and Sacramento (California), also directly govern airports in their communities. States, including Alaska, Hawaii, and Connecticut, do likewise.

- Public entities have created boards and commissions to operate airports while retaining some degree of oversight and control. For example, the City of Los Angeles retains decision-making authority over key aspects of four airports (Los Angeles International, Ontario, Van Nuys, and Palmdale Airports), but has delegated considerable decision-making responsibility to the Los Angeles World Airports, with its own Board of Airport Commissioners. The State of Minnesota created the Metropolitan Airport Commission to operate airports within the Minneapolis-St. Paul metropolitan area and has adjusted the appointment of commissioners on several occasions to alter the relative degree of control that the state and the local entities have over airport decision-making. In a unique but illuminating example, the U.S. Congress endeavored to retain direct and indirect control over Dulles and Reagan National Airports, such as by creating a Board of Review comprised of members of Congress with veto power over airport decisions, while delegating operational control to the Metropolitan Washington Airports Authority.

- Commercialization and privatization present further relaxation of public control but generally do not reflect abandonment of control by the public entity with primary decision-making responsibility. Virtually all private participation in airport governance or management is subject to detailed agreements, leases, or similar contracts that prescribe and constrain actions by the private entity. In the case of several airports that have been commercialized under management agreements, operational control may be delegated to a private entity, but the governing body remains active and publicly accountable in terms of airport decision-making. Even in the case of airport privatization, discussed below, the private operator's authority over key decisions is often constrained by the long-term lease agreement with the airport owner and the continued application of commitments to the federal government.

- Airport authorities and port authorities may be subject to varying levels of oversight and control by a general-purpose government. Again, a state or local government may retain ownership of the underlying airport property, may appoint authority commissioners, may be authorized to veto authority decisions, and may exercise control in other direct and indirect ways. Conversely, some airport authorities have been structured and operate as separate and independent bodies from

the public entities that created them, from the host jurisdictions in which the airports are located, and from the airport owners.

## E. Conclusion

Airport governance defies easy categorization. While airports may share common features, no two airports likely share all of the attributes described in this section. Further, even if airports shared the same or similar structural characteristics, the political, economic, and other contexts in which they operate could lead to substantially different outcomes.

The multitude of variables that together comprise airport governance dramatically affects the inquiry into whether particular governance structures enable airports to perform better than similarly-situated airports. As explored further below, this variability has the following implications, at a minimum: 1) a thorough analysis would have to account or control for each of these variables; 2) the multiplicity of variables makes definitive conclusions as to the optimal governance model extremely difficult; and 3) communities contemplating a change in governance structure have many different variables to adjust or recalibrate that would be more modest than dramatic changes such as transfer of operational control to an airport authority or private operator.

## III. LEGAL PRINCIPLES AFFECTING AIRPORT GOVERNANCE

### A. Introduction

The essential purpose of an airport is to provide transportation infrastructure in support of aviation. Yet, a community's need for transportation infrastructure typically is related to broader needs, particularly support of the local economy.<sup>16</sup> Airports often serve as the physical gateway to a community, may be integrally connected to a healthy business environment, and may have a significant economic impact in terms of fiscal revenue and employment. As discussed throughout this report, airports are not profit centers for local governments, because federal law precludes the use of airport revenue for nonairport purposes, at least with respect to airports that are not grandfathered under the relevant statutory provisions.<sup>17</sup>

The governing body of an airport must have certain powers in order for the airport to perform its dual roles as transportation infrastructure and an economic asset. These powers roughly can be divided between powers

<sup>16</sup> Community goals in operating airports are described in detail at § IV.

<sup>17</sup> 49 U.S.C. § 47107(b). For a thorough explication of the law of revenue diversion, see TRANSP. RESEARCH BD., ACRP LEGAL RESEARCH DIGEST 2: THEORY AND LAW OF AIRPORT REVENUE DIVERSION (2008), [http://onlinepubs.trb.org/onlinepubs/acrp/acrp\\_lrd\\_002.pdf](http://onlinepubs.trb.org/onlinepubs/acrp/acrp_lrd_002.pdf).

that are essential and powers that are desirable, although the precise dividing line plainly is debatable.

There are certain powers that a governing body simply could not do without and still function as a sustainable organization. These essential powers include the ability to maintain and construct infrastructure; generate revenue; obtain adequate financing and incur debt for operations and development; regulate airport operations, tenants, and users; provide a safe and secure facility; hire staff, execute contracts, lease property, and perform similar administrative functions; acquire and dispose of property; and sue and be sued.

While this list reflects powers that a governing body could not do without and remain viable in the long-term, there is a considerably longer list of powers that, while not absolutely required, enable airports to perform their functions as transportation infrastructure and economic assets more effectively and efficiently. These desirable powers include the ability to, for example, promote health, safety, and welfare through the exercise of police powers; acquire property by condemnation (eminent domain); control land uses beyond its boundaries; control liability exposure (tort, inverse condemnation, federal antitrust); control management and employee hiring and salaries; mitigate environmental impacts; maximize aeronautical and nonaeronautical revenues; market the airport; adapt to changed circumstances; and delegate or transfer power.

## B. State Law

All public entities operating airports in the United States do so pursuant to statutory authority granted by the state legislature or recognized under a state constitution. Any delegations of power from the state and exercise of “home rule” authority must be made within limitations set forth in each state’s constitution. In particular, state constitutions often restrict taxing and spending to “public purposes”; prohibit or limit “special legislation” (laws that are not generally applicable across the state); and restrict the delegation of legislative authority to executive agencies.

To support further inquiry and research into state-specific requirements on the subject of airport governance, the authors have compiled and briefly summarized the statutes in each state on the creation and operation of airports and airport authorities. This compilation is presented as Appendix B. This compilation does not include enabling legislation creating individual airport authorities, generally-applicable legislation on intergovernmental agreements and the joint exercise of power, or state regulation of airports and aviation.

State laws authorizing political subdivisions to establish and operate airports and state laws authorizing or creating airport authorities tend to include a number of common elements.<sup>18</sup> While not all statutes delegate

<sup>18</sup> It is important to consider that the state enabling statutes may or may not reflect the full authority that local jurisdictions may have to operate airports within the states.

the same power or structure its exercise in the same way, most state statutes have common features, including the following:

- Declaration of the right of counties and municipalities to acquire, operate, develop, and regulate airports.
- Declaration of the right of counties and municipalities to acquire property for airport purposes, including by eminent domain.
- Declaration that operation of an airport is a public and governmental function and a matter of public necessity.
- Delegation of police power and other authority to regulate airports.
- Delegation of zoning authority, including land use, noise regulation, and control over airport hazards.
- Delegation of authority to issue bonds, and description of terms by which the governing body can issue and service debt.
- Delegation of authority for two or more counties and municipalities to operate an airport jointly, and the provision for intergovernmental and joint-exercise-of-powers agreements.
- Delegation of power to create airport authorities and to transfer an airport to an airport authority.
- Description of how airport authorities will be governed, including the number of commissioners, the appointment process, term, officers, meetings, etc.
- Description of how airport authorities may generate revenue and incur debt.

## C. Legal Challenges to the Creation and Delegation of Power Over Airports

In the first part of the 20th century, states began enacting statutes explicitly authorizing political subdivisions to establish and operate airports. These statutes prompted a wave of lawsuits from nearby communities, from other political subdivisions competing for control of the new airport, and from taxpayers challenging the use of tax revenues or bonding authority to build and operate airports. By and large, the statutes survived these challenges.

As states experimented with different forms of governance, state legislatures both created individual airport authorities and authorized local governments to create their own airport authorities. These statutes also prompted a number of legal challenges, which were equally unsuccessful.

Appendix C contains a compilation of reported decisions concerning airport governance. This compilation does not include every reported decision that implicates governance in some manner, but rather those cases involving direct attacks on governance based on principles of state and, to a lesser extent, federal law.

Early challenges to municipal airport ownership and operation included claims that the statutorily granted power of owning and maintaining an airport could not be considered a “public purpose” under the state consti-

tution<sup>19</sup> or under the city charter,<sup>20</sup> that an airport was not a legitimate use of a public park<sup>21</sup> and that eminent domain could not be exercised for purposes of acquiring land to be used as an airport.<sup>22</sup>

Use of public funds also provided a source of challenge, often via claims that operation of a public airport was not a public purpose. Taxpayers challenged the City of Cleveland's decision to issue bonds without voter approval to finance the purchase of land outside the city for an airport.<sup>23</sup> The court held that the airport was established for a public purpose and fit the definition of a public utility such that a statute allowing cities to purchase land and construct public utilities outside their boundaries applied to the airport. Other plaintiffs challenged whether a city could issue bonds and levy taxes to pay for an airport<sup>24</sup> and whether a city could use taxpayer funds for construction, operation, or maintenance of a city airport without first seeking voter approval under a constitutional provision limiting taxing and spending to public purposes.<sup>25</sup> Overwhelmingly, courts have found municipal airport projects to be "governmental" or "public" where questions of public financing are presented.<sup>26</sup>

Courts also have rejected claims that cities were exceeding the power granted to them by statute when they went beyond the specific authority enumerated by the legislation.<sup>27</sup> In one such case, the court held that,

<sup>19</sup> *McClintock v. Roseburg*, 127 Ore. 698, 273 P. 331 (1929); *Went v. Philadelphia*, 301 Pa. 261, 151 A. 883 (1930) (finding airport was public purpose in both cases). *See also* 8A AM. JUR. 2D *Aviation* § 89 (2008).

<sup>20</sup> *Krenwinkle v. Los Angeles*, 4 Cal. 2d 611, 614–15, 51 P.2d 1098, 1100 (1935) (holding that airport was public purpose).

<sup>21</sup> *Wichita v. Clapp*, 125 Kan. 100, 107, 263 P.12, 16 (1928) (holding that airport was legitimate use of public park).

<sup>22</sup> *Burnham v. Beverly*, 309 Mass. 388, 392, 35 N.E.2d 242, 245 (1941) (finding proper use of eminent domain).

<sup>23</sup> *State ex rel. Hile v. Cleveland*, 26 Ohio App. 265, 160 N.E. 241 (1927).

<sup>24</sup> *Dysart v. St. Louis*, 321 Mo. 514, 527, 11 S.W.2d 1045, 1049 (1928) (holding that, under statute authorizing municipalities to establish airports, airport was legitimate purpose for use of bonding and taxing authority); *Ragsdale v. Hargraves*, 198 Ark. 614, 618–19, 129 S.W.2d 967, 969 (1939) (same, but for airport jointly held and controlled by two cities).

<sup>25</sup> *Goswick v. Durham*, 211 N.C. 687, 191 S.E. 728 (1937); *Sing v. Charlotte*, 213 N.C. 60, 67–68, 195 S.E. 271, 275–76 (1938). Both cases held cities could use taxpayer funds without voter approval.

<sup>26</sup> *Hesse v. Rath*, 249 N.Y. 436, 164 N.E. 342 (1928); *see also* *Aviation Servs., Inc. v. Bd. of Adjustment*, 20 N.J. 275, 279, 119 A.2d 761, 764 (1956) (providing extensive list of cases finding airports qualify as public use).

<sup>27</sup> *Wentz v. Philadelphia*, 301 Pa. 261, 271–72, 151 A. 883, 887 (1930); *see also* *Magee v. Mallett*, 178 Miss. 629, 174 So. 246 (1937) (finding that statute authorizing municipality to own and operate airports and to "do all things and perform all acts necessary, proper or desirable to effectuate the full intent and purpose of this act" included authority to contract and pay for any engineering work necessary for airport).

under the state constitution, a grant of power to a municipal corporation "necessarily includes all appropriate means for the carrying out of the purpose specified." This means that, not only could the city condemn land and use taxpayer funds for an airport, but it also could construct a terminal, landing fields, hangars, utilities, and other infrastructure necessary to accomplish the purpose of operating an airport.<sup>28</sup>

Another ground for challenge involved whether a city could sublet its airport to a private party to operate the airport. An early Kansas case held that although cities had general statutory authority to establish and operate airports, cities could not sublet the airport to a private entity in the absence of a specific statutory grant:

A city, which has acquired a municipal aviation field or airport under authority of [state statute], has no corporate power to sublet such airport to a private individual, and...the fact that the city does not yet find it practicable to...manage the airport itself [cannot] justify a disposition of [the airport] not authorized by statute.<sup>29</sup>

Courts in other states reached similar conclusions.<sup>30</sup> In the Kansas case, however, a month after the court issued its opinion holding that the city lacked authority to sublet the airport for management purposes, the state legislature responded by enacting a statute expressly providing such power.<sup>31</sup> More recently, courts have been more willing to accommodate municipalities contracting with private parties for the operation of an airport.<sup>32</sup>

Other courts were asked to consider whether a city can acquire and own land for an airport outside its boundaries. Most, following statutory provisions, upheld the right of municipal corporations to establish and operate airports outside their boundaries.<sup>33</sup>

After courts had resolved most of the challenges to public airports in favor of the cities and airports during the early part of the 20th century, a new wave of cases arose contesting the governance of airports by airport authorities. During the 1930s and 1940s, states began creating airport authorities to own and operate air-

<sup>28</sup> *Wentz*, 151 A. at 887–88.

<sup>29</sup> *State v. Coffeyville*, 127 Kan. 663, 274 P. 258 (1929).

<sup>30</sup> *See, e.g., Reid v. Fulton*, 181 Misc. 711, 712, 47 N.Y.S.2d 185, 186 (1944) (The municipality had no proprietary rights in the airport distinct from the public purpose, and in the absence of statutory authority, the airport could not be appropriated for any other use. "The property...was acquired by the City for a public airport. It cannot now dispose of the possession of the entire property for the term of ten years for private purposes.").

<sup>31</sup> *See Concordia-Arrow Flying Serv. Corp. v. Concordia*, 131 Kan. 247, 248, 289 P. 955, 956 (1930).

<sup>32</sup> *S. Airways Co. v. De Kalb County*, 102 Ga. App. 850, 854–56, 118 S.E.2d 234, 239–40 (1960) (holding that county owner of airport could contract with private party for operation of airport).

<sup>33</sup> *McLaughlin v. Chattanooga*, 180 Tenn. 638, 645, 177 S.W.2d 823, 826 (Tenn. 1944) (upholding municipality's right to establish airport outside its boundaries); *see also* *Hanover Twp. v. Town of Morrison*, 4 N.J. Super. 22, 66 A.2d 187 (1979).

ports, and in many cases authorized municipalities to create their own airport authorities if they so chose. Some of the issues raised against airport authorities were similar to those raised earlier against traditional municipal corporations such as cities and counties establishing and operating airports, but others were specific to airport authorities.<sup>34</sup>

The establishment of an airport authority usually entails the establishment of a separate governmental unit that, as a general rule, is given powers to tax or create public indebtedness. Against the initial wave of challenges, courts generally upheld the creation of these new political units<sup>35</sup> with taxing and bonding authority<sup>36</sup> and held repeatedly that airports would be considered to serve public, rather than private, purposes.<sup>37</sup> A number of airport authorities were challenged under constitutional provisions prohibiting “special” legislation, but these challenges were also largely unsuccessful.<sup>38</sup>

Challenges within the last several decades continue to raise many of the same issues first raised against general-purpose governments and airport authorities from the 1920s through the 1950s. These claims have been equally unavailing and include claims that the airport does not serve a public purpose such that its

property is not exempt from taxation and that funds expended on it are being used for a private or commercial purpose;<sup>39</sup> claims that an airport authority act is “special legislation” because it applies only to one airport or one city or county;<sup>40</sup> claims that delegation of power to operate airports is an unconstitutional delegation of legislative authority or an unconstitutional delegation of legislative authority to private persons or entities;<sup>41</sup> and challenges to use of eminent domain by municipal corporation or airport authority.<sup>42</sup>

While airport operator liability is complex and beyond the scope of this report, the issue warrants brief mention in this context. Public entities commonly have been sued in connection with their ownership and operation of airports for 1) aircraft accidents,<sup>43</sup> 2) anti-competitive behavior,<sup>44</sup> and 3) inverse condemnation (based principally on noise)<sup>45</sup> and/or common law equivalents (i.e., nuisance and trespass).<sup>46</sup> In many cases, the threshold question is whether the public entity is immune from suit,<sup>47</sup> which, in many jurisdictions, turns upon whether the public entity’s operation of the airport constitutes a governmental or proprietary func-

<sup>34</sup> See, e.g., *Bailey v. Evansville-Vanderburgh Airport Auth. Dist.*, 240 Ind. 401, 411, 166 N.E.2d 520, 525 (1960). Where city and county jointly created airport authority, taxpayers challenged the constitutionality of the airport authority district on a variety of grounds, including a claim that issuance of general obligation bonds by the board of the authority would, when added to the existing indebtedness of the city and county, exceed constitutional debt limitations for both governments. The court rejected the argument: “it is now well settled that the debts of such [municipal] corporations [created for special public purpose like an airport] are not to be included with the debts of other municipal corporations in the same geographical area in order to determine whether [the debt limit has been infringed].”

<sup>35</sup> *Berry v. Milliken*, 234 S.C. 518, 524–26, 109 S.E.2d 354, 356–57 (1959) (holding that creation by the Legislature of a special-purpose district for the purpose of establishing and maintaining a public airport is a lawful exercise by the General Assembly of its plenary power to create special-purpose districts).

<sup>36</sup> See, e.g., *Bailey v. Evansville-Vanderburgh Airport Auth. Dist.*, 240 Ind. 401, 411, 166 N.E.2d 520, 525 (1960).

<sup>37</sup> See, e.g., *State ex rel. Gibbs v. Gordon*, 138 Fla. 312, 189 So. 437 (1939); *People ex rel. Greening v. Bartholf*, 388 Ill. 445, 58 N.E.2d 172 (1944).

<sup>38</sup> See, e.g., *Monaghan v. Armatage*, 218 Minn. 108, 109–10, 15 N.W.2d 241, 242–43 (1944) (finding creation of Airport Commission was not special legislation); *Wayne County Bd. of Comm’rs v. Wayne County Airport Auth.*, 253 Mich. App. 144, 658 N.W.2d 804 (2002); *Monterey Peninsula Airport Dist. v. Mason*, 19 Cal. 2d 446, 121 P.2d 727 (1942) (challenging creation of airport district as special legislation); *Reno v. County of Washoe*, 94 Nev. 327, 580 P.2d 460 (1978) (same); *Bailey v. Evansville-Vanderburgh Airport Auth. Dist.*, 240 Ind. 401, 166 N.E.2d 520 (1960) (same); *Geneva v. DuPage Airport Auth.*, 193 Ill. App. 3d 613, 550 N.E.2d 261 (1990) (same).

<sup>39</sup> *Nolte v. Paris Air, Inc.*, 975 So. 2d 627, 628 (Fla. Dist. Ct. App. 2008) (holding that airport lease to fixed-base operators did not involve public funds being used for private purpose).

<sup>40</sup> *Monaghan*, 15 N.W.2d 241 (regarding the Minnesota Airports Commission); and later, *Wayne County Bd. of Comm’rs*, 658 N.W.2d 804; *Monterey Peninsula Airport Dist.*, 121 P.2d 727 (challenging creation of airport district as special legislation); *Reno*, 580 P.2d 460; *Geneva*, 550 N.E.2d 261; *Irving v. Dallas/Fort Worth Int’l Airport Bd.*, 894 S.W.2d 456 (Tex. App. 1995).

<sup>41</sup> *In re Advisory Opinion to the Governor* (R.I. Airport Corp.), 627 A.2d 1246 (R.I. 1993); *State ex rel. McElroy v. Baron*, 169 Ohio St. 439, 443–45, 160 N.E.2d 10, 13–14 (1959) (holding Toledo-Lucas County Port Authority Act did not involve illegal delegation of legislative power); *Meisel v. Tri-State Airport Auth.*, 135 W. Va. 528, 64 S.E.2d 32 (W.Va. 1951).

<sup>42</sup> *Burbank-Glendale-Pasadena Airport Auth. v. Hensler*, 83 Cal. App. 4th 556, 561–64, 99 Cal. Rptr. 2d 729, 733–34 (2000) (finding that cities may delegate their eminent domain powers to a joint-power airport authority created by the cities pursuant to a joint-powers agreement).

<sup>43</sup> See, e.g., *Coleman v. Windham Aviation, Inc.*, No. KC 2004-0985, 2006 R. I. Super. LEXIS 143 (2006 WL 3004071) (R.I. Super. Ct. Oct. 19, 2006); see also *McMahon Helicopter Servs., Inc. v. United States*, No. 04-74133, 2006 U.S. Dist. LEXIS 51819 (2006 WL 2130625, at \*8) (E.D. Mich. July 28, 2006).

<sup>44</sup> See, e.g., *Commonwealth v. Susquehanna Reg’l Airport Auth.*, 423 F. Supp. 2d 472 (M.D. Penn. 2006); see also *Fine Airport Parking, Inc. v. City of Tulsa*, 71 P.3d 5, 12 (Okla. 2003).

<sup>45</sup> See, e.g., *Biddle v. B.A.A. Indianapolis, L.L.C.*, 860 N.E.2d 570 (Ind. 2007).

<sup>46</sup> See, e.g., *Burchfiel v. Gatlinburg Airport Auth.*, No. E2005-02023, 2006 Tenn. App. LEXIS 747 (2006 WL 3421282) (Tenn. Ct. App. Nov. 28, 2006).

<sup>47</sup> See, e.g., *Du Page Aviation Corp. v. Du Page Aviation Auth.*, 594 N.E.2d 1334, 1339–40 (Ill. Ct. App. 1992).

tion.<sup>48</sup> Several courts have deemed operation of an airport to constitute a governmental function, thus immunizing the public entity from liability, elevating the standard of liability, or imposing a cap on damages.<sup>49</sup> Most importantly for present purposes, courts typically have not distinguished between general-purpose governments and special-purpose authorities in considering immunity; once it is determined that a special-purpose authority is a political subdivision or unit of government generally covered by the relevant statute, the authority will enjoy the same level of protection as general-purpose governments.<sup>50</sup> A notable exception is where the state legislature has conferred immunity to counties and cities in their operation of an airport but did not correspondingly confer immunity upon airport authorities.<sup>51</sup>

#### D. Federal Law

In general, public entities do not govern airports pursuant to any specific grant of power from the federal government. Thus, federal law does not control the manner in which airports are governed in the same way as state law. However, federal law influences airport governance by, for example, directly and indirectly requiring that a governing body have the powers necessary to satisfy obligations to the federal government, particularly the FAA and TSA. Equally important, federal law precludes public entities that are not directly responsible for the airport from taking various actions to regulate or derive revenue from the airport and its users.

*Airport Improvement Program and Grant Assurances.* The FAA administers the AIP, the grant funding program for airport planning and development. Both public and private entities may be eligible to receive grants under the AIP. However, the entity seeking grant funding must have certain attributes and must be empowered to carry out the obligations assumed in exchange for a grant, known as “grant assurances” or “sponsor assurances.” This entity is referred to as the “airport sponsor.”

Among these requirements, the entity applying for an AIP grant must have “legal authority to apply for the grant, and to finance and carry out the proposed project.”<sup>52</sup> Further, the governing body must assure that

<sup>48</sup> See, e.g., *Ludwig v. Learjet, Inc.*, 830 F. Supp. 995, 998 (E.D. Mich. 1993); see also *Gen. Aviation, Inc. v. Capital Reg. Airport Auth.*, 569 N.W.2d 883, 884 (Mich. Ct. App. 1997).

<sup>49</sup> See, e.g., *Zimomra v. Alamo Rent-a-Car, Inc.*, 111 F.3d 1495, 1501 (10th Cir. 1997) (holding that public entity was immune from antitrust liability).

<sup>50</sup> See, e.g., *Coleman v. Windham Aviation, Inc.*, No. KC 2004-0985, 2006 R. I. Super. LEXIS 143 (2006 WL 3004071 at \*2-3) (R.I. Super. Ct. Oct. 19, 2006).

<sup>51</sup> *Spencer v. Greenwood/Leflore Airport Auth.*, 834 So. 2d 707 (Miss. 2003); see also *Anderson v. Jackson Mun. Airport Auth.*, 419 So. 2d 1010 (Miss. 1982).

<sup>52</sup> Fed. Aviation Admin., Updated Grant Assurances (“Grant Assurances”), Program Guidance Letter No. 05-03, Attachment 1: Airport Sponsor Assurances, § C(2)(a) (June 3, 2005),

it “holds good title, satisfactory to the Secretary [of Transportation], to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.”<sup>53</sup> This typically includes fee simple title; however, the FAA considers a lease satisfactory so long as the lessor is a public agency, the lease term is greater than 20 years, the lease does not impede the sponsor’s ability to comply with the Grant Assurances, and rent is paid in advance or the sponsor can assure future payments.<sup>54</sup>

There are very few instances in which an entity that is not the airport sponsor can seek and obtain AIP grant funding. This generally is limited to certain planning and noise mitigation efforts.<sup>55</sup>

A key commitment under the Grant Assurances is that the airport sponsor is required to use airport revenue only for the airport, local airport system, or another “local facility that is owned and operated by the person or entity that owns or operates the airport that is directly and substantially related to the air transportation of passengers or property.”<sup>56</sup> The use of airport revenue for nonairport purposes, known as revenue diversion, is strictly prohibited and subjects the airport sponsor to onerous penalties.<sup>57</sup> Airport operators that had certain financial arrangements in effect at the time Congress enacted the prohibition can continue to divert airport revenue.<sup>58</sup>

The prohibition on revenue diversion applies to all federally-obligated airports regardless of the airport governance structure. As explored further below, this greatly reduces any financial incentive to transfer an airport or decision-making responsibility for an airport because, in general, no profits can be realized from such a transaction. Privatization, under an FAA-administered pilot program, presents an important exception to this general rule.

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[http://www.faa.gov/airports\\_airtraffic/airports/aip/guidance\\_letters/media/PGL\\_05-03.pdf](http://www.faa.gov/airports_airtraffic/airports/aip/guidance_letters/media/PGL_05-03.pdf).

<sup>53</sup> Grant Assurances, § C(4)(a); See also 49 U.S.C. § 47106(b)(1) (2006).

<sup>54</sup> FAA Order No. 5100.38C, Airport Improvement Program Handbook, ¶ 711 (2005), available at [http://www.faa.gov/airports\\_airtraffic/airports/aip/aip\\_handbook/](http://www.faa.gov/airports_airtraffic/airports/aip/aip_handbook/) (select appropriate Part). (Last visited May 4, 2009).

<sup>55</sup> *Id.* ¶ 207.

<sup>56</sup> 49 U.S.C. § 47133(a)(3); see also 49 U.S.C. § 47107(b)(1)(C); Grant Assurance, § C(25).

<sup>57</sup> See FAA Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696 (Feb. 16, 1999).

<sup>58</sup> 49 U.S.C. § 47107(b)(2)

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

The Grant Assurances impose several additional obligations, including the obligations to 1) make the airport “available for public use on reasonable conditions and without unjust discrimination,”<sup>59</sup> 2) refrain from granting an “exclusive right” to conduct an aeronautical activity,<sup>60</sup> and 3) “maintain a fee and rental structure for the facilities and services at the airport, which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection.”<sup>61</sup>

Airport sponsors may have varying levels of authority to carry out the Grant Assurances as a result of the diffused power described in Section I. For example, Grant Assurance requires the airport sponsor to clear and protect the airspace surrounding the airport from hazards to air navigation.<sup>62</sup> Grant Assurance 21 requires the airport sponsor to promote land uses within the surrounding area that are compatible with airport operations.<sup>63</sup> As described above, public entities with primary decision-making responsibility for an airport may lack control over the surrounding area. Thus, the airport sponsor may not have authority to prohibit the construction of hazards or to ensure compatible land use, and instead must make recommendations and encourage other public entities to do so.

*Passenger Facility Charges.* In addition to being eligible for AIP grant funds, the public agency that controls a commercial service airport may be authorized to impose, collect, and use PFCs on enplaning passengers.<sup>64</sup> Conversely, public entities that do not control the airport may not tax, regulate, prohibit, or control PFCs. As required under the AIP, in applying for authority to impose, collect, or use a PFC, the public entity must certify that it “has legal authority to impose a PFC and to finance and carry out the proposed project.”<sup>65</sup>

<sup>59</sup> 49 U.S.C. § 47107(a)(1) (2006); see also Grant Assurances, § C(22).

<sup>60</sup> 49 U.S.C. §§ 40103(e), 47107(a)(4).

<sup>61</sup> 60 Grant Assurances, § C(24); see also 49 U.S.C. § 47107(a)(13).

<sup>62</sup> Grant Assurances, § C(20)

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

<sup>63</sup> Grant Assurances, § C (21) (“Compatible Land Use. It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft.”).

<sup>64</sup> 49 U.S.C. § 40117(b) (2006).

<sup>65</sup> FAA Passenger Facility Charges, 14 C.F.R. pt. 158, app. A, § B(1) (2008).

*Rates and Charges.* Federal law recognizes the right of a state or subdivision that owns or operates an airport to impose “reasonable rental charges, landing fees, and other service charges from aircraft operators for using airport facilities.”<sup>66</sup> Conversely, a state or subdivision that does not own or operate an airport is expressly prohibited from collecting such fees and charges.<sup>67</sup>

*Airport Operating Certificates.* Federal law requires that an airport operator must maintain an airport operating certificate if the airport serves 1) aircraft designed for at least 31 passenger seats operated by an air carrier, or 2) aircraft designed for more than nine seats conducting scheduled passenger operations of an air carrier.<sup>68</sup> To maintain their certificate, airport operators must satisfy numerous obligations for maintaining, operating, and improving the airport.<sup>69</sup> Although the airport operator does not have to certify that it has the power to carry out the certificate requirements, the operator clearly must have the requisite authority to, for example, hire, equip, and train personnel to perform the specific duties and otherwise carry out the requirements imposed upon certificate holders.

*Airport Security Programs.* Federal law generally requires that an airport operator develop and implement a security program if the airport serves aircraft subject to prescribed security requirements.<sup>70</sup> Airport operators may be required to develop and implement a complete, supporting, or partial security program depending on the nature of aircraft operations at the airport. Although not prescribed explicitly in TSA regulations, the airport operator must have the requisite powers to perform its security-related obligations. For example, an airport operator required to maintain a complete or supporting security program must provide “law enforcement personnel in the number and manner adequate to support its security program.”<sup>71</sup>

*Surplus Property and Deed Restrictions.* Federal law prescribes a process by which the federal government can transfer surplus federal property to a “State, political subdivision of a State, or tax-supported organization” for a public airport.<sup>72</sup> The federal government made extensive use of these provisions to convey many World War II-era airfields to local governments after the war. The conditions of transfer include obligations similar to the Grant Assurances, discussed above, including the requirement to make the airport publicly available, to refrain from granting exclusive rights, and the obligation to prevent and mitigate hazards to air navigation.<sup>73</sup>

<sup>66</sup> 49 U.S.C. § 40116(e).

<sup>67</sup> 49 U.S.C. § 40116(b).

<sup>68</sup> 49 U.S.C. § 44706(a).

<sup>69</sup> See 14 C.F.R. pt. 139.

<sup>70</sup> See 49 C.F.R. § 1542.1 (2008).

<sup>71</sup> 49 C.F.R. § 1542.215(a)(1); see also 49 U.S.C. § 44903(c) (2006).

<sup>72</sup> 49 U.S.C. § 47151(a).

<sup>73</sup> See 49 U.S.C. § 47152.

*Proprietary Powers.* Federal law also recognizes a public entity's ability to exercise "proprietary powers and rights" for an airport that it owns or operates.<sup>74</sup> States and subdivisions that do not own or operate an airport are expressly preempted from enacting or enforcing laws "related to a price, route, or service of an air carrier."<sup>75</sup> Like other powers, the "proprietary powers and rights" of the airport operator are not a delegation or grant from the federal government but rather a recognition of power, in contrast to other entities that have been stripped of such authority.<sup>76</sup>

The precise nature and scope of these proprietary powers and rights have not been delimited.<sup>77</sup> The so-called "proprietor's exception" most often has been called upon to recognize an airport proprietor's authority to restrict or prohibit particular types of aircraft operations in the interest of reducing noise<sup>78</sup> and addressing congestion.<sup>79</sup> The Grant Assurances also recognize the right of an airport sponsor to "prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public."<sup>80</sup>

In stark contrast, the U.S. Supreme Court has determined that a local government that is not the airport proprietor is expressly preempted from restricting aircraft operations through the exercise of its police power.<sup>81</sup> Likewise, a federal court has declared that a state is preempted from attempting to use its regulatory authority to compel the airport proprietor to restrict aircraft operations.<sup>82</sup>

<sup>74</sup> 49 U.S.C. § 41713(b)(3).

<sup>75</sup> 49 U.S.C. § 41713(b)(1).

<sup>76</sup> See, e.g., *Arapahoe County Pub. Airport Auth. v. Centennial Express Airlines, Inc.*, 956 P.2d 587 (Colo. 1998) (court held that airport proprietor's ban on scheduled commercial passenger service was not preempted but rather a valid exercise of power conferred by state law).

<sup>77</sup> *Am. Airlines v. Dep't of Transp.*, 202 F.3d 788, 806 (5th Cir. 2000).

<sup>78</sup> *British Airways Bd. v. Port Auth. of N.Y. and N.J.*, 558 F.2d 75 (2d Cir. 1977).

<sup>79</sup> *W. Air Lines v. Port Auth. of N.Y. and N.J.*, 817 F.2d 222, 223 (2d Cir. 1987); *Houston v. FAA*, 679 F.2d 1184, 1186 (5th Cir. 1982).

<sup>80</sup> FAA Updated Grant Assurances, Program Guidance Letter No. 05-03, Attachment 1: Airport Sponsor Assurances, § C(22)(i) (June 3, 2005), [http://www.faa.gov/airports\\_airtraffic/airports/aip/guidance\\_letters/media/PGL\\_05-03.pdf](http://www.faa.gov/airports_airtraffic/airports/aip/guidance_letters/media/PGL_05-03.pdf).

<sup>81</sup> *City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624, 633, 93 S. Ct. 1854, 1859–60, 36 L. Ed. 2d 547, 553–54 (1973).

<sup>82</sup> *San Diego Unified Port Dist. v. Gianturco*, 651 F.2d 1306, 1317 (9th Cir. 1981) ("These criteria (ownership, operation, promotion, and the ability to acquire necessary approach easements) comprise a federal definition of proprietors for pre-emption purposes."); see also *Pirola v. City of Clearwater*, 711 F.2d 1006 (11th Cir. 1983).

While these federal laws and regulatory programs cover a variety of subjects, they reflect a common legal principle of airport governance: there is a critically important distinction between the entity with decision-making responsibility for the airport and other state and local governments. This entity may be labeled for different purposes as the airport "sponsor," "proprietor," and "operator." This status, regardless of the label, carries with it tremendous responsibility to the federal government and airport users, principally through the Grant Assurances, the obligations attendant to the airport operating certificate, and implementation of an airport security program. Whether explicitly required or not, this entity generally must have requisite and sufficient powers to carry out the obligations and satisfy the requirements imposed by the federal government.

At the same time, carrying this label empowers the public entity to take certain actions to the exclusion of states and local governments. The ability, for example, to impose PFCs, impose rates and charges on airport users, and restrict aircraft operations resides only with the airport sponsor/proprietor/operator. While these powers plainly must be balanced against the responsibilities and liabilities attendant to governing an airport, they present powerful tools to control an airport.

As a related and final note on the issue of state and federal law, conspicuously absent from this discussion has been mention of any legal authority requiring the airport sponsor/proprietor/operator to take any particular action to develop or improve an airport. While the Grant Assurances require the airport sponsor to make the airport publicly available, neither federal nor state law generally dictate that any particular capital improvements be constructed. Control of an airport carries with it the exclusive power to decide whether to grow the airport or not. For many communities, this fundamental power constitutes the greatest incentive to be the public entity with control over the airport. As described in the next section, among the very few options to overcome what are perceived to be bad decisions about airport development is for the state legislature to compel an involuntary change in airport governance.

## E. The Effects of State and Federal Law on the Initial Choice of Governance Structure

### 1. State Law Constraints

As a general matter, state statutes and constitutions provide for some combination of state agencies, counties, municipalities, joint-exercise-of-power authorities, port authorities, and airport authorities to operate airports. Multiple types of airport operators often occur within a single state or region. For example, in California, airports are operated by state agencies (University of California), counties (Sacramento County), cities (Los Angeles and San Francisco), port authorities (Port of Oakland), and joint-exercise-of-powers authorities (Burbank-Glendale-Pasadena Airport Authority).

State law constrains the initial choice of airport governance structure in some instances. In particular,

state law may mandate particular governance structures for particular airports or types of airports. For example, Minnesota law specifically identifies the governance structure for the Metropolitan Airports Commission (MAC) (the operator of the Minneapolis–St. Paul International Airport (MSP) and other reliever airports), and the state took the operation and ownership of MSP from the City of Minneapolis.<sup>83</sup> Minnesota state law also puts the operation and development of airports within the metropolitan Minneapolis–St. Paul area within the jurisdiction of the MAC, which would either operate or license such airports.

State law does not appear to create any explicit impediments to the operation of smaller private airports by individuals, partnerships, and corporations. This is evidenced in part by the fact that roughly three-quarters of the almost 20,000 airports in the United States are privately owned. Liability or other considerations may steer operators of public use airports towards certain corporate structures, but they generally do not deter the creation or operation of these airports.

Nonetheless, general state laws may have practical effects that skew the choices of governance. For example, as discussed above, the sovereign immunity and public liability or immunity provisions often create protections from tort liability (e.g., higher standards for culpability, liability caps, and procedural requirements) that are not generally available for private entities. State and local land use and other regulatory requirements may also be tougher on private entities than public ones, some of which may enjoy intergovernmental immunity from local land use regulation. While these types of provisions may create some advantages for public entities, they must be offset against the public process, political, and other burdens associated with public operations.

## 2. Federal Law Constraints

Federal law provides essentially no constraint on the choice among different types of public entities that might operate an airport. None of the federal statutes, regulations, Grant Assurances, or guidance documents discriminates meaningfully among different types of public entities in terms of funding eligibility or compliance issues. Sponsors of larger, multi-airport systems have some limited advantages over single-airport proprietors due to the ability to share revenues and costs among airports, as well as to designate airports for certain types of aeronautical uses.<sup>84</sup> However, there are few legal deterrents to adding airports to create or expand an airport system.

Federal law does shape the incentives relating to the choice between public and private airports, especially for airports that may be eligible for federal funding. Federal law treats privately-owned airports in a nominally identical way to public airports for purposes of

obligations, subjecting them to the same requirements on revenue diversion, rates and charges, and other principles. However, the revenue diversion prohibition has some deterrent effect on setting up an airport as a wholly private entity if the sponsor anticipates needing federal grant assistance or surplus property. While the revenue diversion principles allow the collection of fair market rents for the use of the land *ab initio* and the collection of management fees by private entities, such profit-making opportunities are more limited than the potential profits associated with running an entire airport as a profit-generating enterprise.

Further, federal law favors publicly-owned airports in their ability to acquire or use federal funding and PFCs. For example, under the AIP, entitlement funds are available for publicly-owned airports providing commercial service that are not available to similarly-situated private airports.<sup>85</sup> Similarly, a publicly-owned airport can rely on statutory provisions to require airlines to collect PFCs on their behalf.<sup>86</sup> However, a privately-owned airport would have to negotiate with airlines to get their agreement to collect such fees.

Federal law requires potential airport sponsors to choose between the potential benefits of federal grant assistance—which could be useful in the initial development of an airport—and an unfettered ability to make a profit on the airport's operations as a business (as opposed to supplying an input into the airport's operation, such as management or land) once it is a going concern, the ability to subsidize commercial flights directly, and the potential ability to discriminate among airport users.

It is uncertain just how significant this factor is in the real world. Most new commercial service or large general aviation airports are built by existing airport proprietors (e.g., City of Denver (Colorado), Panama City (Florida), and Clark County (Nevada)) that appear to be more interested in the public benefits of an airport for general economic development and transportation purposes than airport-specific profits. The large capital costs associated with planning, permitting, and constructing a new airport make federal grant assistance extremely attractive in these contexts. Further, the use of existing airport revenues are often critical to the funding of these start-up costs.

The development of a pure "greenfield" airport not designed to replace an existing airport or built by an existing sponsor is exceptionally rare. Indeed, it provides such a small sample that it is hard to draw any meaningful conclusions. One current project, the Branson Airport in Missouri, shows that federal law does not completely deter or bar the private development of a new commercial service airport. The Branson Airport is a privately-financed and -operated facility with a 7,150-

<sup>83</sup>See FAA Order No. 5100.38C, *Airport Improvement Program Handbook*, at 5-11 (2005), available at [http://www.faa.gov/airports/airtraffic/airports/aip/aip\\_handbook/](http://www.faa.gov/airports/airtraffic/airports/aip/aip_handbook/) (select appropriate part). (Last visited May 4, 2009).

<sup>86</sup>See 49 U.S.C. § 40117.

<sup>83</sup> MINN. STAT. §§ 473.601–473.679 (2008).

<sup>84</sup> See FAA Order No. 5190.6A, *Airports Compliance Requirements*, § 4-8(d) (1989).

ft runway and a four-gate terminal building that is currently under construction just south of Branson's commercial center.<sup>87</sup>

The private operators have been in negotiations with commercial airlines and, unconstrained by the Grant Assurances, are offering "initial development rights" (i.e., noncompete agreements) for particular city pairs.<sup>88</sup> These "initial development rights" may make commercial service more likely by protecting the pioneer airline(s) from competition for some period. The private operator of the Branson Airport is not using any federal funds or revenues from an existing airport. The airport opened in May 2009. The airport has announced agreements with Sun Country Airlines and Air Tran to provide service to Minneapolis, Milwaukee, and Atlanta. While it is unclear whether current turmoil in the economy and airline industry will affect this airport, the Branson Airport certainly shows that it is possible to secure approvals and financing for a purely private, for-profit airport.

## F. Conclusion

State and federal law undeniably constrain the governance of commercial service airports. However, in general, neither state nor federal law meaningfully distinguishes among governance models.

Public entities operate airports pursuant to powers delegated by the state legislature and/or pursuant to limits set forth in the state constitution; however, very few courts have found that a particular action was beyond a public entity's delegated or reserved powers. Equally significant, airport authorities have an equally successful track record in suits contesting the particular exercise of power. Where deemed necessary, the state legislature simply has changed state law to authorize a particular action.

Federal law has a fundamentally different effect on airport governance. Rather than convey powers, federal law operates to, for example, bind public entities to long-term commitments in exchange for federal grant funding; regulate the operation of particular types of airports, such as through the airport operating certificate and airport security program; and deny rights to public entities that otherwise might seek to intervene in airport operations and decision-making. As explored below, while federal law may create incentives and disincentives to take particular actions, such as seeking federal grant funding or transferring control to a private operator, federal law does not compel the use of any particular governance structure.

<sup>87</sup> See Branson Airport Home Page, <http://www.flybranson.com/about> (Last visited May 4, 2009).

<sup>88</sup> See Branson Airport, *Branson Airport Background*, <http://www.flybranson.com/wp-content/downloadables/BransonAirportBackgrounder.doc> (Last visited May 4, 2009).

## IV. TRANSFER AND DELEGATION OF POWER

### A. Forms of Transfer and Delegation

As described in the preceding section, most public entities operating airports are imbued with sufficient powers under state law to operate an airport and satisfy their obligations under federal law. Public entities that have considered and implemented a transfer or delegation of power over an airport have done so not because of a lack of power but rather based on an indication or sense that the transfer or delegation would enable the airport to perform better.

These transfers and delegations have taken many forms. Historically, several communities have transferred power over airports from a general-purpose to a special-purpose entity. Prominent examples in recent decades include the creation and transfer of power to the Metropolitan Washington Airports Authority (1987), Allegheny County Airport Authority (1999), Wayne County Airport Authority (2002), and the San Diego County Regional Airport Authority (2003). The Louisiana legislature created the Southeast Regional Airport Authority in 2008 to potentially operate the Louis Armstrong New Orleans International Airport. Several other communities have looked closely at whether to transfer power to an airport authority, but either decided not to pursue such a transfer or have not yet made a final decision.<sup>89</sup>

As discussed further below, some transfers have been prompted by dramatic events and perceived needs. The Michigan Legislature created and transferred power to the Wayne County Airport Authority after a legislative committee identified "improper procedures for airport contracts, auditing discrepancies, a management culture with questionable ethical conduct, and difficulties with the airport police."<sup>90</sup> The California legislature created the San Diego County Regional Airport Authority in large part to select a site and build a replacement airport for the San Diego International Airport, a feat that proved beyond the capacity of the previous airport operator, the Unified Port District of San Diego (and so far has been beyond the Airport Authority's reach as well).

More commonly, general-purpose governments have transferred power to an airport authority when the airport was perceived to be failing or in need of considerable improvement. The individuals involved may have desired to limit the public entity's financial responsibility for a failing asset and, more optimistically, to help turn the airport around. This sentiment prompted the creation of the Allegheny County Airport Authority in 1999 and transfer of Pittsburgh International Airport.

<sup>89</sup> App. D includes several reports prepared for or on behalf of public entities considering a change in governance structure. This list is not comprehensive.

<sup>90</sup> *Wayne County Bd. of Comm'rs v. Wayne County Airport Auth.*, 253 Mich. App. 144, 152, 658 N.W.2d 804, 813-14 (2002), citing *Report of the Michigan Senate Detroit Metro Airport Review Comm.* (Oct. 25, 2001).

Historically, several airport authorities were created and assumed responsibility for airports under similar conditions, including the City of Naples Airport Authority (Florida).

Privatization, as a means of transferring power over an airport, has received considerable attention.<sup>91</sup> For present purposes, the legal framework for airport privatization can be summarized succinctly.

- Although common internationally, privatization has not taken hold in the United States.<sup>92</sup> Historically, the greatest disincentive to privatization was the prohibition on revenue diversion. Under the principles summarized above and explored further below, sale and lease proceeds generally would have to be recycled into the airport, as would any profits derived by the private operator. In a 1996 study, the U.S. General Accounting Office—now the Government Accountability Office—identified this prohibition and others as significant obstacles to privatization.<sup>93</sup>

- Congress attempted to address revenue diversion and other legal barriers to privatization by creating an Airport Privatization Pilot Program<sup>94</sup> in the Federal Aviation Reauthorization Act of 1996.<sup>95</sup> The statute authorizes the FAA to approve the lease of up to five airports, including one general aviation airport and, at most, one large hub airport. Under the statute: 1) airport sponsors are exempt from the prohibition on revenue diversion upon receiving the consent of 65 percent of air carriers at a primary airport (by number of carriers and landed weight) or 65 percent of based aircraft owners at a nonprimary airport;<sup>96</sup> 2) airport sponsors are exempt from repaying past grants or returning property previously conveyed by the federal government;<sup>97</sup> 3) private operators are exempt from the prohibition on revenue diversion;<sup>98</sup> and 4) fees charged to air carriers cannot increase faster than the rate of inflation unless a higher amount is approved by 65 percent of the air carriers (by number of carriers and landed weight).<sup>99</sup>

<sup>91</sup> For further sources containing information and analysis of airport privatization, see App. D.

<sup>92</sup> The myriad differences between the United States and most other countries in terms of airport operation and management, and the resultant prospects for privatization, have been examined in detail by others. We commend readers to the scholarly articles on this subject listed in App. D. In short summary, most experts to consider this issue agree that airports in most other countries are structured in such a way that privatization is more likely to confer dramatic benefits than in the United States.

<sup>93</sup> U.S. GEN. ACCOUNTING OFFICE, GAO/RCEd-97-3, AIRPORT PRIVATIZATION: ISSUES RELATED TO THE SALE OR LEASE OF U.S. COMMERCIAL AIRPORTS (1996).

<sup>94</sup> 49 U.S.C. § 47134 (2006).

<sup>95</sup> 104 P.L. No. 264, 110 Stat. 3213.

<sup>96</sup> *Id.* § 47134(b)(1)(A).

<sup>97</sup> 49 U.S.C. § 47134(b)(2) (2006).

<sup>98</sup> *Id.* § 47134(b).

<sup>99</sup> *Id.* § 47134(c)(4).

- The FAA has published detailed application procedures, which entail a preliminary application to reserve one of the five spots in the program, selection of a private operator, coordination with airlines and other airport users, a final application to the FAA, public comment, and a final decision by the FAA.<sup>100</sup>

To date, only one airport operator has received approval to privatize under the Privatization Pilot Program. In 2000, the State of New York received FAA approval to lease the Stewart International Airport to the National Express Group (NEG). The terms of the 99-year lease included an initial payment of \$35 million, plus lease payments beginning in year 10 of the lease totaling 5 percent of gross airport income. The state did not receive an exemption from the prohibition on revenue diversion and thus recycled the rent into Stewart and other state-operated airports. While the private operator generally performed satisfactorily, NEG transferred its leasehold interest to the Port Authority of New York and New Jersey in 2007 for \$78.5 million.

Airport operators filed preliminary applications in efforts to privatize the New Orleans Lakefront Airport (Louisiana), Niagara Falls International Airport (New York), Brown Field Municipal Airport (California), and Rafael Hernandez Airport (Puerto Rico). For a variety of reasons, each peculiar to the circumstances at the individual airport, the FAA either rejected these applications or the airport operator withdrew the applications.

In 2004, the FAA reported to Congress on the status of the Privatization Pilot Program and explained the perceived reasons for the low participation in the program:

First, local governments are reluctant to give up control of the airport to a private entity. Second, airlines have traditionally opposed airport privatization based on their perception that the loss of governmental control may produce higher costs. Finally, and perhaps most importantly, the public sector has access to tax-exempt financing, and other low cost financing options that may not always be available to the private sector.<sup>101</sup>

The FAA likely will decide on the City of Chicago's final application under the Privatization Pilot Program to lease Midway Airport some time in 2009. The city submitted its preliminary application in 2006, reached agreement with a supermajority of airlines in order to obtain the exemption from the prohibition on revenue diversion, solicited bids and reached agreement with a private operator to lease the airport for \$2.5 billion, and, in October 2008, submitted a final application to the FAA.

<sup>100</sup> FAA Airport Privatization Pilot Program: Application Procedures, 62 Fed. Reg. 48,693 (Sept. 16, 1997).

<sup>101</sup> FED. AVIATION ADMIN., REPORT TO CONGRESS ON THE STATUS OF THE AIRPORT PRIVATIZATION PILOT PROGRAM 6 (2004), available at [http://www.faa.gov/airports\\_airtraffic/airports/airport\\_obligations/privatization/](http://www.faa.gov/airports_airtraffic/airports/airport_obligations/privatization/) (Last visited May 4, 2009).

Importantly, the City of Chicago has been direct that a driving interest in privatizing Midway Airport is to make up a funding shortfall at the municipal level, specifically in the municipal employee pension program. State law authorizing the lease, the Illinois Local Government Facility Lease Act,<sup>102</sup> expressly recognizes use of lease proceeds for this purpose.

Several other airport operators, including Milwaukee County (operator of the General Mitchell International Airport), the City of New Orleans (operator of the Louis Armstrong New Orleans International Airport), and Kansas City (operator of the Kansas City Airport), seriously have considered privatization under the Privatization Pilot Program.

A full assessment of the policy considerations in favor of or against privatization is beyond the scope of this digest. Certainly, the difficult financial conditions that many local governments face make the prospect of selling or leasing their airports in exchange for up-front cash quite attractive. The City of Chicago's effort to privatize Midway Airport is a good example: pressing pension fund requirements pushed the city to value up-front cash over long-term control. At the same time, there is increasing concern about the need to protect public control over critical pieces of infrastructure that reflect considerable local and federal investment and serve essential purposes. As a practical matter, the current economic downturn has decreased access to private capital for purposes of making a lease payment and constructing required capital improvements and raised questions about the long-term viability of any private operator.

While transfer to airport authorities historically has been common and privatization may become more common in the future, there are many other ways in which public entities transfer or delegate power over airports. These options for partial privatization have been catalogued elsewhere<sup>103</sup> and include the following:

*Management Contract.* The public entity may contract with a private company to take responsibility for some or all of the day-to-day operation of the airport. Both the Indianapolis Airport Authority and the Susquehanna Area Regional Airport Authority (operator of the Harrisburg International Airport) entered into 10-year agreements with BAA plc to manage and operate their airports day-to-day and to upgrade or develop new facilities.<sup>104</sup> Bob Hope Airport (Burbank, California) is managed by Thomas Bailey Investment, which is in charge of airport administration, operations, and maintenance. A few other airports are privately managed.

<sup>102</sup> 50 ILL. COMP. STAT. 615/20 (2006).

<sup>103</sup> These examples are taken principally from TRANSP. RESEARCH BD., ACRP SYNTHESIS 1: INNOVATIVE FINANCE AND ALTERNATIVE SOURCES OF REVENUE FOR AIRPORTS 35 (2007), [http://onlinepubs.trb.org/onlinepubs/acrp/acrp\\_syn\\_001.pdf](http://onlinepubs.trb.org/onlinepubs/acrp/acrp_syn_001.pdf).

<sup>104</sup> Harrisburg terminated BAA's contract in 2001 (6 years early), and Indianapolis terminated its contract in 2007 (1 year early).

*Project Finance Privatization.* A public entity may contract with a private company to build or redevelop, and then operate, an airport or a specific airport facility, such as a terminal. The contract will be for a set period of time, after which ownership reverts to the government. This arrangement typically does not require an upfront payment from the private entity, but rather a commitment to bear all the costs of building or redeveloping the project. Once it is built, the private entity must cover the operating costs and assume all related financial risks, but may reap the revenues until ownership of the property reverts to the government owner. Airlines have built and operated terminals at numerous airports around the country (e.g., Terminals A, C, and E at Dallas–Fort Worth International Airport (DFW), Terminal A at Logan International Airport (BOS), and Terminal 4 at Los Angeles International Airport (LAX)), and, in other instances, third parties have built terminals for multiple airlines (e.g., Terminal B at BOS and the International Arrivals Building at John F. Kennedy International Airport (JFK)).

*Concessions and Other Services.* Airlines, rental car companies, hotels, retailers, and ground transportation, parking, and cleaning companies make up the vast majority of personnel at an airport. These companies also are responsible for a majority of the customer service provided to the traveling public. Some airport operators have negotiated agreements with private entities to oversee entire programs, such as terminal concessions and parking. Airport operators may pay a management fee for these services or share in the revenue generated by these companies.

*Airlines and Bondholders.* Public entities indirectly delegate decision-making authority, especially in the area of capital development and expenditures, through, for example, majority-in-interest clauses in airline use and lease agreements and bond covenants.

## B. State and Federal Constraints on Transfers and Delegation

As detailed above, many states authorize local governments to establish airport authorities and/or create airport authorities to operate specific airports. The following are notable examples of recent challenges to the creation and transfer of power to airport authorities and other special-purpose public entities:

*Dulles and Washington National Airports.* In 1987, Congress authorized the transfer of operating control of Dulles and National Airports.<sup>105</sup> The Metropolitan Washington Airports Authority was created by a compact between the Commonwealth of Virginia and the District of Columbia to lease and operate the two airports. Congress attempted to condition the transfer on creation of a Board of Review that would be comprised of Members of Congress and vested with veto power over the Airport Authority's Board of Directors. The U.S. Supreme Court declared that the Board of Review violated the constitutional principle of separation of

<sup>105</sup> See 49 U.S.C. §§ 49101–49112 (2006).

powers.<sup>106</sup> The U.S. Court of Appeals later struck down a modified version of the Board of Review on the same grounds.<sup>107</sup> Congress thereafter abolished the Board of Review.<sup>108</sup>

*Detroit Metropolitan Airport.* In 2002, the Michigan Legislature created a public airport authority, the Wayne County Airport Authority, to assume responsibility for the management of Detroit Metropolitan Airport. This largely involuntary transfer was prompted by an investigation conducted by a legislative committee examining alleged mismanagement by Wayne County. Wayne County thereafter leased the airport to the Wayne County Airport Authority; however, the Wayne County Board of Commissioners sued the Airport Authority on grounds that the transfer violated the state constitution and federal law. Among the challenges, the county asserted that the transfer would impair its ability to repay bonds issued for the airport and that the involuntary transfer was an uncompensated taking. The Michigan Court of Appeals rejected each of the county's claims.<sup>109</sup>

*Rhode Island Airports.* In the early 1990s, the Rhode Island Department of Transportation contemplated the transfer of T.F. Green Airport and five general aviation airports to the Rhode Island Airport Corporation (RIAC), a subsidiary of the Rhode Island Port Authority and Economic Development Corporation. The Governor sought an advisory opinion from the Supreme Court of Rhode Island on whether the state had the requisite statutory authority to lease the airports to RIAC, delegate the power to operate the airport system to RIAC, and delegate the duty to supervise and regulate aeronautical activities to RIAC. The court answered each of these questions in the affirmative,<sup>110</sup> and the state thereafter leased the airports and granted the contemplated powers to RIAC.

Federal law imposes both procedural and substantive constraints on transfer and delegation of power. Grant Assurance 5 prohibits an airport sponsor from taking any action that would render it unable to carry out its Grant Assurance obligations or to transfer its interest in property subject to the Grant Assurances without the approval of the Secretary of Transportation.<sup>111</sup> Grant Assurance 5 also requires that the airport

sponsor reserve such rights and authorities as necessary to comply with federal law and the Grant Assurances.<sup>112</sup>

For a public entity to transfer all of its interest in an airport, the FAA would have to release the airport sponsor from the Grant Assurances, determine that the public entity assuming control has the requisite property interest and authority to become the airport sponsor, and authorize the transfer of Grant Assurance and other obligations to the new airport sponsor. The FAA must publish notice in the *Federal Register* of its intent to rule on any such application and provide an opportunity for public comment.<sup>113</sup> Among many details, the FAA also would need to approve the transfer of an Airport Operator Certificate, and TSA would need to approve transfer of obligations under the airport security program. These actions likely would be categorically excluded from environmental review under the National Environmental Policy Act.<sup>114</sup> Because airport transfers occur infrequently, the FAA has not been called upon to publish detailed procedures.<sup>115</sup>

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(a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary... b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary.)

[http://www.faa.gov/airports\\_airtraffic/airports/aip/guidance\\_letters/media/PGL\\_05-03.pdf](http://www.faa.gov/airports_airtraffic/airports/aip/guidance_letters/media/PGL_05-03.pdf).

<sup>112</sup> Grant Assurances, § C(5)(f)

(If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance [with] Title 49, United States Code, the regulations and the terms, conditions and assurances in the grant agreement and shall insure that such arrangement also requires compliance therewith.)

<sup>113</sup> 49 U.S.C. § 47107(h) (2006)

(Subject to paragraph (2), before modifying an assurance required of a person receiving a grant under this subchapter and in effect after December 29, 1987, or to require compliance with an additional assurance from the person, the Secretary of Transportation must—(A) publish notice of the proposed modification in the Federal Register; and (B) provide an opportunity for comment on the proposal.)

<sup>114</sup> See FAA Order No. 1050.1E, Environmental Impacts: Policies and Procedures, § 307m (2004) (providing categorical exclusion for “FAA administrative actions associated with transfer of ownership or operation of an existing airport, by acquisition or long-term lease, as long as the transfer is limited to ownership, right of possession, and/or operating responsibility.”).

<sup>115</sup> See FAA Order No. 5190.6A, Airports Compliance Requirements, ch. 7 (1989).

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<sup>106</sup> *Metro. Wash. Airports Auth. v. Citizens for the Abatement of Aircraft Noise*, 501 U.S. 252, 111 S. Ct. 2298, 115 L. Ed. 236 (1991).

<sup>107</sup> *Hechinger v. Metro. Wash. Airports Auth.*, 36 F.3d 97, 308 U.S. App. D.C. 283 (D.C. Cir. 1994).

<sup>108</sup> Metropolitan Washington Airports Amendments Act of 1996, 104 P. L. No. 264 tit. IX, 110 Stat. 3274 (1996).

<sup>109</sup> *Wayne County Bd. of Comm'rs v. Wayne County Airport Auth.*, 253 Mich. App. 144, 658 N.W.2d 804 (2002).

<sup>110</sup> *In re Advisory Opinion to the Governor (Rhode Island Airport Corporation)*, 627 A.2d 1246 (R.I. 1993).

<sup>111</sup> FAA Updated Grant Assurances (“Grant Assurances”), Program Guidance Letter No. 05-03, Attachment 1: Airport Sponsor Assurances, § C(5) (June 3, 2005)

Substantively, one of the biggest impediments to transferring control over an airport is the prohibition on revenue diversion. Although the FAA has not been called upon to issue definitive guidance on this issue, the transfer of an airport from one public entity to another generally is subject to the prohibition on revenue diversion, meaning that a public entity theoretically should not be able to profit from the sale of an airport.

The reasoning is as follows. The FAA defines airport revenue broadly to include proceeds from the sale or lease of airport property.<sup>116</sup> Airport revenue specifically includes proceeds from the sale or lease of airport property *not* acquired with federal assistance; proceeds from the transfer of airport property acquired with federal assistance must be used according to the terms of the agreement with the federal government and may be treated as equivalent to airport revenue.<sup>117</sup> Further, the FAA considers the allowance to extract sale proceeds under the Privatization Pilot Program to be an exception to the general definition of airport revenue and the prohibition on revenue diversion. Importantly, FAA policy is to treat sale proceeds from transfers to private operators not pursuant to the Privatization Pilot Program to be airport revenue subject to the general prohibition.<sup>118</sup> The broad definition of airport revenue and the narrow exception for airport privatization pursuant to the pilot program strongly suggest that the transfer of an airport to another public entity (e.g., an airport authority) would be subject to the prohibition on revenue diversion.

A somewhat more challenging issue is whether the prohibition on revenue diversion applies to rent payments, such as where the public owner of the underlying property leases the property to an airport authority or other public operator. Again, the FAA recognizes that

<sup>116</sup> See FAA Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696, 7716, Policy Statement § II(B) (Feb. 16, 1999) (airport revenue includes “[r]evenue from air carriers, tenants, lessees, purchasers of airport properties, airport permittees making use of airport property and services, and other parties. Airport revenue includes all revenue received by the sponsor for the activities of others or the transfer of rights to others relating to the airport....”).

<sup>117</sup> FAA Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696, 7716, Policy Statement § II(B) (Feb. 16, 1999) (airport revenue includes revenue received

[f]or the sale, transfer, or disposition of airport real property (as specified in the applicability section of this policy statement) not acquired with Federal assistance or personal airport property not acquired with Federal assistance, or any interest in that property, including transfer through a condemnation proceeding.... While not considered to be airport revenue, the proceeds from the sale of land donated by the United States or acquired with Federal grants must be used in accordance with the agreement between the FAA and the sponsor. Where such an agreement gives the FAA discretion, FAA may consider this policy as a relevant factor in specifying the permissible use or uses of the proceeds.).

<sup>118</sup> *Id.* at 7716-17, Policy Statement § III(C).

lessees may be airport sponsors and further has found that public entities may be eligible for AIP grant funds to prepay a lease from another public entity so long as the payments do not exceed current fair market value.<sup>119</sup> Moreover, where the owner of the underlying property is not the airport sponsor and has not otherwise committed to be bound by the Grant Assurances, the FAA has limited control over the nonsponsoring government’s collection and subsequent use of the revenue; the FAA’s authority is limited to the airport sponsor’s use of its revenue. The Port Authority of New York and New Jersey pays a substantial amount annually to the cities of New York and Newark to lease JFK International, LaGuardia, and Newark Liberty International Airports. This is permissible in part because the Port Authority is grandfathered from the prohibition on revenue diversion for such payments. However, in the instance in which a city or county transfers power to an airport authority but continues to act as the airport sponsor, the prohibition on revenue diversion seemingly would apply and preclude use of rent payments for non-airport purposes.

Largely due to the disincentive created by the prohibition on revenue diversion, shifts from one public entity to another are likely only in a few specific contexts. First, a shift may be desirable when an airport requires continued subsidies from general tax revenues, and a general-purpose government desires to stem future expenditures on the airport. Several general-purpose governments transferred airports to special-purpose entities specifically to eliminate continuing financial responsibility for a money-losing enterprise. Many of these transfers occurred at no or nominal cost to the special-purpose entity. Somewhat ironically, many special-purpose entities have succeeded in making their airports self-sustaining, to the point that the general-purpose government has investigated means to try and secure higher rent or other revenues from the airport. Here again, the prohibition on revenue diversion may present a check on such attempts to extract profits from an airport.

Second, the governing body may perceive that the current management structure is not successful or as successful as it could be, such that a transfer or delegation will lead to more economic development, lower costs, easier access to capital, improved chances of approving needed infrastructure, or some other aim. Pittsburgh International Airport is an example of an airport at which the airport operator, originally Allegheny County, determined that its objectives would be better met through a transition from a general-purpose government to an airport authority. The Allegheny County Airport Authority has determined that the transition was a success insofar as it has better met airport objectives than previous direct management by the

<sup>119</sup> FAA Order No. 5100.38C, *Airport Improvement Program Handbook*, ¶ 725 (2005), available at [http://www.faa.gov/airports/airtraffic/airports/aip/aip\\_handbook/](http://www.faa.gov/airports/airtraffic/airports/aip/aip_handbook/) (select appropriate part). (Last visited May 4, 2009).

the County. However, other communities have evaluated a change in governance and determined not to change, including airports in Denver, Baltimore,<sup>120</sup> St. Louis, and Milwaukee. As examined in detail below, the evidence is equivocal regarding whether different governance models provide clear advantages in securing airport objectives.

Third, a change in governance may be imposed or induced from above. State legislatures (or the states' electorates if constitutional changes are needed) generally have the power to order state internal affairs, including what state subdivision controls an airport. Thus, while relatively rare, state legislatures have required or facilitated a shift in the ownership or operation of airports from one subdivision to another. For example, the Minnesota Legislature formed the MAC and took control of MSP from the City of Minneapolis. The Michigan Legislature compelled a shift from Wayne County to the Wayne County Airport Authority. In contrast, the Louisiana Legislature created an airport authority in 2008 that *could* take over the Louis Armstrong New Orleans International Airport, but only upon approval of the City of New Orleans.<sup>121</sup> So long as Grant Assurances and other requirements are met, federal law is unlikely to affect a state's ability to affect these changes.

Privatization is a special subset of these principles. Under current law, complete privatization of an airport or its major functions is difficult to achieve in light of the revenue diversion principles, outside of the Airport Privatization Pilot Program. If the public operator of an airport cannot recoup its investment in a facility for other governmental purposes, it is unlikely to cede significant control of a major public asset, unless the airport is a consistent drain on governmental resources or there is a clear perception that the public operation of the airport is failing to meet its objectives. Similarly, the existence of revenue diversion requirements limits the attractiveness of airports to private investors. Instead, forays into privatization outside of the Airport Privatization Pilot Program are likely to be limited to management agreements or leases of subcomponents of an airport, such as those at the Bob Hope Airport in Burbank, California (terminal operations); the Orlando Sanford Airport (terminal construction and operations); JFK International Airport (terminal construction and operations); or Westchester County, New York (airport operations, terminal operations, and ground services).

### C. Conclusion

There are several options for transferring or delegating power over airports. Historically, the two most common approaches have been the transfer of power from a general-purpose to a single-purpose government

<sup>120</sup> The Baltimore-Washington International Airport is operated by the Maryland Department of Transportation.

<sup>121</sup> The City of New Orleans has not approved any such take-over plan.

and the commercialization of airport functions and facilities. Privatization has a limited track record; however, the legal and administrative structures are in place to accommodate further privatization, and pending efforts may help shape its future.

Neither state nor federal law presents insurmountable obstacles to transfers and delegations of power. In several instances, state legislatures have specifically authorized the creation of an airport authority to assume control of an airport, and these laws almost universally have withstood challenge. While federal law imposes procedural and substantive constraints that create some disincentives to change governance, a motivated public entity almost certainly could navigate these obstacles.

Like the multiplicity of governance models described in Section I, the multiplicity of choices for changing governance yields its own lessons. Just as there is no one-size-fits-all governance model, there is no single solution to the problems that are perceived to exist with an existing governance structure. Indeed, as examined in detail in the next section, it may be exceedingly difficult to identify and isolate performance goals for an airport and to correlate airport governance with optimizing those goals.

## V. THE EFFECTS OF GOVERNANCE FORM ON AIRPORT PERFORMANCE

A particularly difficult question is determining whether the form of governance makes a significant difference in achieving the goals of airport operators and local communities. The question is complicated by the fact that public airport operators have a wide range of goals for their airports that are not always coextensive with the goals of other stakeholders. This section 1) identifies general categories of goals for airport operators; 2) discusses potential metrics for assessing performance of airports in meeting these goals; 3) identifies existing studies and theories regarding the performance of different forms of governance; and 4) examines airport governance models in a limited quantitative fashion. This report concludes that there is no clear evidence that one form of governance is superior to others, but that more research is warranted using more extensive data and more sophisticated statistical methods.

### A. Airport Performance Goals

One of the critical challenges in considering the suitability of airport governance structures is that airports provide a mixture of public goods (e.g., access to a city, general economic development, and public safety missions) and private goods (e.g., specific airline operations, particular consumer trips, and concessions). Different airport operators place different values on these different categories of goods. However, the following are some of the primary categories of goals that public airport operators have identified for their airports:

*Transportation Infrastructure/Access.* Airports are transportation assets that provide access to and from a

community. Thus, airports are regularly judged based on the adequacy of the capacity they provide to meet demand for aviation services. This assessment of adequacy can include an analysis of congestion stemming from insufficient runway or terminal capacity or the inability to use runways for certain aircraft (such as larger, heavily loaded aircraft for international flights). The provision of nonstop or one-stop access to as many regional, national, and international markets as possible is also critically important at many airports. For example, airports serving tourist destinations are often expected to help stimulate better service to more markets. Similarly, airports provide critical capacity for general aviation, cargo, and other aeronautical uses. The ability of reliever airports to provide relief to larger airports depends on their capacity both in the numbers and types of aircraft that may be served.

*Financial Performance.* One critical goal for a successful airport operation is to perform well as a business entity. Federally-obligated airports have an aspirational goal under the grant assurances to be self-sustaining, i.e., not to require subsidy from general-purpose funds.<sup>122</sup> Even without the federal grant assurances, local governments have a strong incentive to make an airport self-sufficient, because any general tax revenues or assets put into an airport that are not specifically characterized to be loans generally cannot be recovered as a result of the revenue diversion prohibition.<sup>123</sup> Also, tight budgets and increasing demands for other city services may limit opportunities for and interest in general-fund subsidies to airports.

Beyond the point of self-sufficiency, airports face primarily practical, rather than legal, incentives to minimize costs or increase revenues. Federal law requires that rates and charges on aeronautical uses be kept at levels that reflect reasonable costs for providing service, but it does not require minimization of costs. Nonetheless, airports face pressure from aeronautical customers (especially airlines) and the bond investment community to keep costs low. In addition, airports that are interested in maximizing economic development or access to their cities have an incentive to minimize airline rates and charges to make it more likely that airlines will expand services to the area.

*Economic Development.* General economic development is one of the most significant goals for many airports. The goal overlaps with the transportation goal of

access, because greater access to regional, national, and international destinations contributes to overall economic development. This is particularly the case for the location of corporate headquarters, shipping operations, and service jobs. Airports generate economic activity and jobs through direct airport activity; the operations of tenants, and businesses attracted to the vicinity of airports such as hotels, freight-forwarders, and manufacturing and service industries. To best understand how airport proprietors and others in a state or region judge an airport's performance, it is essential to understand both the gross levels of economic development generated by an airport and how these benefits are shared in a region.

*Environmental/Land Use.* Operation of airports with current technology necessarily involves significant environmental impacts, especially from noise, air pollution, and traffic. These impacts may be experienced by residents of the public entity operating the airport and by neighboring jurisdictions. Opposition to new projects based on an airport's environmental impacts can delay and complicate the ability to provide additional airport capacity, such as new runways. Airport environmental issues can also lead to litigation, and to regulatory and legislative efforts that affect the airport sponsor's ability to meet its objectives. Thus, airport sponsors generally have an incentive and a goal to minimize environmental impacts associated with their operation.

*Consumer Service/Consumer Protection/Social Goals.* Because the residents of and visitors to an area will be chief users of an airport, government operators have an interest in providing a reasonably high-quality experience for airport patrons and protecting them from perceived high charges. Thus, airport operators invest in comfortable and convenient terminal and other airport facilities. Airport operators also regularly conduct customer satisfaction surveys and studies to determine how well they are faring in keeping passengers happy. Some airport sponsors impose "street pricing" and other limitations on the cost of concessions at an airport, while other airports have had more interest in maximizing the concessions revenue from captive customers. Political pressures also constrain parking prices at a number of airports.

Airport operators often also seek to promote general social goals through employment and contracting at an airport. Thus, for example, equal opportunity programs have been a staple at airports for decades and are an element of the Grant Assurances. The City of San Jose approved "living wage" requirements for employees of certain airport contractors. San Francisco requires its contractors to provide health and other benefits to domestic partners of employees, regardless of sexual orientation. Obviously, control of the airport expands the pool of entities subject to these provisions aimed at accomplishing nonaeronautical social and political goals.

*Public Services.* Airports provide direct public service by hosting police, firefighting, rescue, National Guard, mosquito control, civil air patrol, and other public

<sup>122</sup> 49 U.S.C. § 47107(a)(13) (2006).

<sup>123</sup> See 49 U.S.C. § 47107(l) (2006); FAA Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696, 7718, Policy Statement § V(A)(4) (Feb. 16, 1999) (airport revenue may be used for

[t]he repayment of the airport owner or sponsor of funds contributed by such owner or sponsor for capital and operating costs of the airport and not heretofore reimbursed. An airport owner or operator can seek reimbursement of contributed funds only if the request is made within 6 years of the date the contribution took place.)

health and safety functions.<sup>124</sup> The provision of space for these services at some airports can constrain the facilities available for other uses, which oftentimes must be balanced against the important services provided to the airport and surrounding community.

*Security/Safety.* Protecting public health and welfare from accidents, terrorism, and crime is an important goal that airports share with the federal government, airlines, and police services.

*Accountability/Control.* Because of the public nature of most airport functions, public entities also place a high value on public accountability. This goal is complicated by the variety of constituencies served by an airport, including aeronautical users such as airlines, other aircraft owners, passengers, nonaeronautical tenants, immediate neighbors, bond holders, electors of the entity operating the airport if it is a general-purpose government or elected authority, and residents of the wider region that may benefit from the airport service and related business. An element of this goal is the need to detect and avoid corruption, conflicts of interest, and other practices that, like in many other government enterprises, adversely affect operations.

There are inherent tensions among some of the goals, as well as some synergies. Thus, for example, the desire to maximize financial performance (i.e., increase revenue) from nonaeronautical sources such as concessions or parking may run contrary to a goal to protect consumers from perceived overpricing. Maximizing access and economic development through additional flight operations can be contrary to the goal of minimizing environmental impacts associated with airport operations. Lean airport operations may reduce the number of local jobs created at an airport, but also may lead to lower operating costs for airport users, which, at least in the case of airlines, may lead to expanded service. Many of these tensions can reflect a distinction between the welfare of the airport as an airport, as opposed to general public welfare.

Different metropolitan areas, as well as different communities within a metropolitan area, value these different public goods differently. Thus, judging general airport performance on only one or two of these goals would likely be incomplete and misleading. Indeed, it is quite possible that there is no single method of airport governance that would maximize performance in all settings. Instead, the variety of airport governance structures may serve individualized needs based on a particular community's balance among goals for the airport.

It is also important to note that the attainment of these varied goals is only partly in the hands of the airport operator. Airline service to and from an airport primarily is a function of the overall economy and airline decisions, not the infrastructure decisions of the

airport proprietor. Perceptions of customer service at an airport are a function of services and facilities provided by, among others, the airport operator, airlines, FAA, the TSA, concessionaires, parking concession operators, and ground service providers. This makes it difficult to separate the effectiveness of airport proprietors from the other entities involved with the provision of airport-related services.

## B. Airport Performance Metrics

A number of different metrics are or can be used to assess how well airport sponsors are meeting their goals and to compare the performance of different governance models. Many of these metrics are straightforward and easy to calculate, particularly financial performance statistics. Others, such as environmental impacts and accountability, are more difficult to assess quantitatively. While it is valuable to evaluate airport performance based on available metrics, it is critical not to overly weight certain factors such as financial performance just because more statistics may be available.

*Transportation Infrastructure/Access Metrics.* Airports, the FAA, Airports Council International (ACI), and others regularly collect information that can be used to assess the extent to which an airport is supplying capacity that is necessary to meet demand. These data collection efforts start with basic information about the runway lengths, pavement strength, total operations, and other technical information, but can progress to detailed information about additional needed capacity based on demand projections.

Among metrics that are of interest in the assessment of airport performance are:

- Total operations.
- Enplanements.
- Number of destinations served with one or more stops.
  - International service.
  - Based aircraft.
  - Trends in airport use.
  - Access for new entries and competition.
  - Project completion (especially major airfield projects) and timing.
  - Congestion and delay (at a particular airport or as part of a system).

As an example of a provider of such statistics, ACI's Performance Benchmarking Program performs a number of ratings studies each year. ACI looks at total passenger traffic, cargo traffic, and total movements. The General Information Survey, or GIS, is a comprehensive survey of the general characteristics for approximately 130 North American airports. The GIS provides detailed information on airport ownership and governance, physical characteristics, activity statistics, airport/airline use and lease agreements, and financial and economic characteristics.

The FAA creates Terminal Area Forecasts annually that provide FAA's projections for future aeronautical

<sup>124</sup> Note that the provision of these services is still subject to limitations and guidance regarding the use of airport revenue and self-sufficient airports.

demand for airports and metropolitan areas. FAA also examines airport capacity and delay at many of the larger airports. For example, FAA's Future Airport Capacity Task (FACT) analyzed airport capacity needs by airport and by metropolitan area.<sup>125</sup> The FACT studies evaluate the adequacy of current airport infrastructure, both current facilities and planned improvements. These reports provide a means to evaluate which airports are keeping up with increases in demand.

*Financial Performance Metrics.* There are a number of ways to measure the success of an airport's financial performance. One threshold question is the extent to which an airport is self-sustaining, i.e., whether and how much of a subsidy is required for an airport from nonairport funds.

Beyond this threshold consideration, analysts often focus on either an airport's total revenue or, to adjust for airport size, the cost and revenue per enplaned passenger. Enplaned passengers serve as a measurement of the potential financial performance of airports, because passengers drive a commercial service airport's revenues through food and retail sales, parking fees, car rentals, facility use charges, passenger ticket taxes, and other services sold to a captive collection of customers.<sup>126</sup> Based aircraft and aircraft operations can serve as metrics for general aviation airports. As with operational information, ACI collects and publishes benchmarking information regarding airport financial matters.<sup>127</sup>

An airport's bond rating (or ratings) is another useful financial metric, because it reflects the underlying financial performance of the airport and indicates the extent to which the airport sponsor will be able to secure credit for necessary capacity expansions. There are three primary bond rating agencies that assess airports and related facilities: Fitch, Moody's, and Standard & Poor's. These agencies assess and grade the creditworthiness of companies and public entities—such as airport authorities and municipalities—that issue debt, as well as the debt itself. All three have teams of analysts who investigate airports' operations, finances, and management plans, then process the data to arrive at a rating.

<sup>125</sup> See FED. AVIATION ADMIN., CAPACITY NEEDS IN THE NATIONAL AIRSPACE SYSTEM 2007–2025: AN ANALYSIS OF AIRPORTS AND METROPOLITAN AREA DEMAND AND OPERATIONAL CAPACITY IN THE FUTURE (May 2007), <http://www.faa.gov/about/initiatives/nextgen/defined/why/cap%20needs%20in%20the%20NAS.pdf>.

<sup>126</sup> Ronald D. Utt, *FAA Reauthorization: Time to Chart Course for Privatizing Airports*, June 4, 1999, available at <http://www.heritage.org/research/budget/bg1289es.cfm> (Last visited May 4, 2009).

<sup>127</sup> See Airports Council International–North America Home Page, [http://www.acina.org/index/toolbox\\_benchmarking\\_main](http://www.acina.org/index/toolbox_benchmarking_main) (last visited Dec. 18, 2008); Airports Council International, *Airport Benchmarking to Maximize Efficiency*, July 6, 2006, at 5, [http://www.airports.org/aci/aci/file/Press%20Releases/Airport%20Benchmarking%20to%20Maximize%20Efficiency\\_final.pdf](http://www.airports.org/aci/aci/file/Press%20Releases/Airport%20Benchmarking%20to%20Maximize%20Efficiency_final.pdf)

These ratings determine the interest rate an entity must pay on its debt and the price at which its debt trades. Equity analysts and investors generally regard ratings as a key measure of an entity's financial health.<sup>128</sup> Indeed, airport bond ratings have been especially important in the recent credit crunch, as airports (like other entities) have struggled to secure credit for infrastructure improvements. For example, the Atlanta Hartsfield International Airport has indicated that it might have to suspend construction on international terminal facilities if it continued having difficulties securing financing in the bond market.<sup>129</sup>

The Air Transport Research Society (ATRS) is an international group that has an Airport Benchmarking Task Force focused heavily on airport efficiency and airport charge competitiveness. ATRS produces a yearly report on airports throughout the world. In 2007, 55 U.S. airports were included in the analysis. ATRS is focused more on the financial aspects of airport management, including “the main aspects of airport operations and management” such as labor productivity, soft cost input productivity, residual variable factor productivity, and revenue generation. ATRS evaluates the ownership and institutional forms of the subject airports.<sup>130</sup>

*Economic Development Metrics.* Assessing the economic development performance of an airport is of particular interest to public entities, because of airports' large potential for spillover economic benefits. Economic impact studies highlight the total economic benefit of an airport (in dollars and jobs) measured in terms of the amount of money spent because of the airport, the amount earned by local residents, and the number of full-time equivalent jobs generated due to the airport.<sup>131</sup>

*Customer Satisfaction / Consumer Protection Metrics.* Consumer satisfaction analyses are increasingly used to gauge the quality of the services provided to the traveling public at an airport, whether those services are pro-

<sup>128</sup> Amy Borrus, *The Credit-Raters: How They Work and How They Might Work Better*, BUSINESSWEEK ONLINE, Apr. 8, 2002, [http://www.businessweek.com/magazine/content/02\\_14/b37770\\_54.htm](http://www.businessweek.com/magazine/content/02_14/b37770_54.htm). (Last visited May 4, 2009).

<sup>129</sup> Benet Wilson, *New Hartsfield International Terminal Hurt by Bond Market Woes*, AVIATION DAILY, Nov. 24, 2008 (subscription needed).

<sup>130</sup> Air Transportation Research Society Home Page, <http://www.atrsworld.org/airportawards.html> (Last visited May 4, 2009); see also Tae-Hoon Oum, Jia Yan & Chunyan Yu, *Ownership Forms Matter for Airport Efficiency: A Stochastic Frontier Investigation of Worldwide Airports*, 64 J. URBAN ECONOMICS 422 (2008) (using ATRS database).

<sup>131</sup> American Society of Airport Executives, *GA Economic Impact Statements*, available at [http://www.aaae.org/federal\\_affairs/regulatory\\_affairs/general\\_aviation\\_office/ga\\_economic\\_impact\\_statements](http://www.aaae.org/federal_affairs/regulatory_affairs/general_aviation_office/ga_economic_impact_statements) (Last visited May 11, 2009). For a comprehensive treatment of the state of airport economic impact study today, see TRANSP. RESEARCH BD., ACRP SYNTHESIS 7: AIRPORT ECONOMIC IMPACT METHODS AND MODELS (2008), [http://onlinepubs.trb.org/onlinepubs/acrp/acrp\\_syn\\_007.pdf](http://onlinepubs.trb.org/onlinepubs/acrp/acrp_syn_007.pdf).

vided by the airport owner, by federal agencies like TSA, or by private companies that are tenants or agents of the airport owner. Factors often considered include customer satisfaction with airport accessibility, security check, baggage claim, check-in/baggage check, terminal facilities, immigration and customs control, and food and retail facilities.

A number of entities conduct consumer satisfaction surveys or studies across a number of airports. For example, J.D. Power and Associates released its eighth North America Airport Satisfaction Study in 2008. The company measures overall airport satisfaction in three segments: large airports (30 million or more passengers per year), medium airports (10 to 30 million passengers per year), and small airports (fewer than 10 million passengers per year). The study addresses attributes such as airport accessibility, baggage claim, check-in/baggage check, terminal facilities, security check, food and beverage, retail services, and immigration/customs control.<sup>132</sup>

There are also several airport rating services on the Internet that allow for public feedback and review of airports and airport services. These sites may provide an airport or service provider with unvarnished feedback regarding their services, even if it should be viewed with some skepticism. One, Skytrax, is found at [www.airlinequality.com](http://www.airlinequality.com). It claims feedback on more than 594 airports all over the world. Another, Flight-Stats, is found at [www.flightstats.com](http://www.flightstats.com), and offers feedback on a range of factors: airport user ratings, parking services, delayed flights, airport scorecards, and security wait times. Other travel Web sites offer similar rating services.

In addition, many airports either conduct their own customer satisfaction surveys or engage consultants to do so on their behalf. Such surveys may be conducted in person, in writing, or through focus groups.<sup>133</sup> However, these individual airport surveys are of limited value in comparing airports.

Average fares and concessions prices are of interest for assessing whether airlines or concessionaires are unreasonably impairing competition or taking advan-

<sup>132</sup> J.D. POWER AND ASSOCIATES, 2008 NORTH AMERICA AIRPORT SATISFACTION STUDY (2008); see J.D. Power and Associates, *Customer Satisfaction With Airports Declines Sharply Amid an Industry Fraught With Flight Delays*, May 20, 2008, available at <http://www.jdpower.com/corporate/news/releases/pressrelease.aspx?ID=2008050> (Last visited May 4, 2009); J.D. Power and Associates, *Airport Ratings*, <http://www.jdpower.com/travel/ratings/airport-ratings> (Last visited May 4, 2009).

<sup>133</sup> For two sample airport customer service surveys, see, e.g., SAN DIEGO INT'L AIRPORT, 2006 SAN DIEGO PASSENGER SATISFACTION SURVEY RESULTS (2006), available at [http://www.san.org/documents/airport\\_authority/advisory\\_committee/2006%20Passenger%20Satisfaction%20Survey%20Results.ppt](http://www.san.org/documents/airport_authority/advisory_committee/2006%20Passenger%20Satisfaction%20Survey%20Results.ppt) (Last visited May 4, 2009); see also DENVER INT'L AIRPORT, BENCHMARK NEEDS/WANTS PROFILE (2007), [http://www.flydenver.com/diabiz/bizops/documents/concessions\\_survey.pdf](http://www.flydenver.com/diabiz/bizops/documents/concessions_survey.pdf).

tage of a lack of competition. FAA and the U.S. Department of Transportation have tracked average fares and gate usage (exclusive, preferential, or common use) as part of their efforts to enhance competition among airlines across the United States. Local authorities have also examined concessions prices relative to "street prices" as part of efforts to keep airport concessions prices reasonable.

Finally, external special-interest groups sometimes provide comparisons of aspects of airport services in an attempt to promote particular consumer or airport changes. For example, the Physician's Committee for Responsible Medicine surveys food choices at large airports to determine the availability of vegetarian food at airport restaurants.<sup>134</sup>

*Environmental/Land Use Metrics.* FAA, airport sponsors, state environmental agencies, and other entities track a number of environmental metrics, including population exposed to greater than Day Night Level 65 decibels, air quality emissions, discharges to water supplies, and waste generation. However, these metrics are generally not used for comparison between airports with different types of airport governance. This is because the environmental performance is dependent on a host of factors that may be completely independent of the structure of airport governance, including the size of the airport footprint, historic land use, and airspace and carrier operations.

*Accountability/Control Metrics.* There are few useful metrics currently available that capture the need for public airport proprietors to provide accountable, transparent operations or assess the proper level of government control. These are inherently political judgments that appear more qualitative than quantitative.

### C. Theories and Available Assessments of Airport Governance Structures

A number of entities have assessed different forms of airport governance through a combination of statistics, anecdotal information, and theory, although only a few have done so in a systematic fashion. This subsection describes a sample of the research and opinions that have been identified regarding the advantages and disadvantages of different forms of governance structures.

*Statistical Studies.* A few researchers have conducted statistical analyses of different forms of airport governance. One of the most recent and comprehensive was a study conducted by Tae Oum, Jia Yan, and Chunyan Yu that was published in the *Journal of Urban Economics* in 2008.<sup>135</sup> The Oum study evaluated the

<sup>134</sup> See PHYSICIAN'S COMMITTEE FOR RESPONSIBLE MEDICINE, AIRPORT FOOD OFTEN HEALTHFUL: FIRST-PLACE TIE HIGHLIGHTS EFFORTS IN DALLAS AND DETROIT TO OFFER LOW-FAT VEGETARIAN OPTIONS; OTHER CITIES LAG BEHIND (2008), available at [http://www.pcrm.org/health/reports/Airport\\_Food\\_Review\\_08.html](http://www.pcrm.org/health/reports/Airport_Food_Review_08.html) (Last visited May 4, 2009).

<sup>135</sup> Tae-Hoon Oum, Jia Yan & Chunyan Yu, *Ownership Forms Matter for Airport Efficiency: A Stochastic Frontier In-*

effect that ownership structure has on airport efficiency (based on total airport outputs (operations, concessions, etc.) and inputs), using a sample of 109 airports from around the world. The study sought to test theories that private airports would be more efficient than public airports and that public airports with more autonomy would be more efficient than those with less. The study noted that neither empirical nor theoretical evidence had been conclusive on this front prior to the analysis.

The study concluded that:

- Airports owned or controlled by majority-interest private firms, autonomous public corporations, or independent authorities are more efficient than those owned or controlled by general-purpose governments or port authorities.
- “Although average efficiency of the airports owned and operated by cities/states are lower than those operated by independent airport authorities, the difference is not statistically significant. As such, this issue needs careful further examinations.”<sup>136</sup>

These results, while perhaps supporting conventional wisdom on this issue, should be viewed with some care. Most importantly, the focus on financial efficiency and performance does not account for the other goals of the airport sponsor and other stakeholders or other criteria for airport performance. In addition, the authors acknowledge the desire and need for more research on the potential efficiency differences between airport authorities and general-purpose governments. It appears that additional analyses using a variety of methodologies and with additional data may permit better assessments of the efficiency of various forms of airport governance.

In an unpublished study from November 2005, economists Steven Craig, James Airola, and Manzur Tipu also used airport financial data to assess how municipally-operated airports performed compared to airports operated by airport authorities.<sup>137</sup> In particular, the authors sought to compare how the two categories of airports performed with regard to their overall efficiency (i.e., costs per operation, per enplanement, and per unit of cargo); the allocation of costs among capital and labor; and their adoption of technological changes over time.

The authors set out to test theoretical propositions regarding the advantages or disadvantages of single-purpose versus multipurpose governments. For example, one hypothesis was that, because airport authori-

ties are specialized institutions that focus on managing airports, they may bring more specialization, prompt decision-making, and flexibility in decisions relating to worker employment and purchase of inputs.<sup>138</sup> However, the authors noted the potential that greater autonomy from the electorate and from a single accountable body may make authorities more prone to “greater rent seeking by bureaucrats in the authority, e.g., purchase of a favored input at a cost higher than opportunity cost, or at a quantity greater than optimal.”<sup>139</sup>

The authors also noted the theoretical potential that cities and other multipurpose governments may be more sensitive to voter demands than authorities and that multipurpose governments “may pursue more cost effective strategies, or provide levels of output in greater demand.”<sup>140</sup> However, the authors identified potential inefficiencies with municipal operations, including inefficiency in procurement and hiring practices, their lack of focus on airport issues, and their need to procure services (e.g., fire and police) from other departments of the same jurisdiction rather than the most cost-effective source.

Based on a statistical analysis of 52 airports, the authors concluded that airport authorities have a higher level of efficiency (i.e., they cost less per enplanement or operation) than municipal governments. However, the authors also found that airport authorities often directed a portion of these efficiencies into higher pay and other benefits for authority employees. On balance, they concluded that “authority run airports demonstrate cost savings of almost 20% per flight.”<sup>141</sup>

Here again, the study is inherently limited because it looked at only one factor in the portfolio of public interests in airport operations, i.e., financial efficiency. Perhaps more importantly, the data set covered only the years from 1979 to 1992 and may not well reflect current airport and airline industry conditions. Further, the data set omitted many of the large U.S. airports (including DEN, MIA, JFK, EWR, SEA, STL, SAN, BOS, PHX, PDX, and OAK) and contained only 9 of the 20 largest airports. As noted in the more recent Oum study, the Craig study looked only at one primary output (aircraft operations), which also requires more caution.

*Airport-Specific Studies.* A number of airports have considered shifting from one form of governance to another and identified considerations for or against making such a change. The analyses conducted as part of these processes are instructive regarding the possible strengths and weaknesses of different forms of governance.

The Allegheny County Airport Authority in Pittsburgh recently released a report detailing accomplishments at the airport since the authority was formed in 1999 after a shift in governance from direct county

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vestigation of Worldwide Airports, 64 J. URBAN ECONOMICS 422 (2008) (using ATRS database).

<sup>136</sup> *Id.* at 432; see also Tae-Hoon Oum, Air Transport Research Society, *Key Results of the 2008 ATRS Global Airport Performance Benchmarking Project* (2008), available at <http://www.atrsworld.org> (Last visited May 4, 2009).

<sup>137</sup> Steven Craig, James Airola & Manzur Tipu, *The Effect of Institutional Form on Airport Governance Efficiency* (Nov. 2005), <http://www.uh.edu/~scraig2/CraigAirolaTipu.pdf>.

<sup>138</sup> *Id.* at 2.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 3.

<sup>141</sup> *Id.* at 21.

management.<sup>142</sup> The Authority highlighted financial management, origin and destination passenger growth, air service development from new carriers (nearly all of whom are now out of business), lower fares, and economic development activities as major accomplishments. While the report notes the many accomplishments of the Authority since 1999, it does not demonstrate whether such accomplishments were the direct result of the change in governance or why.

In 2005, the City of Denver appointed a working group to evaluate the possible effects of a change from city management to an airport authority or other form of management. The city ultimately did not change the operation of the airport as a subdivision of city government. However, the city identified some benefits and disadvantages of the city-run airport approach.<sup>143</sup>

Among the advantages were:

- Lower costs of some services.
- Access to city expertise.
- No disruptions to the current political process.
- The lack of major problems requiring change.

Among the advantages cited for a more independent entity were:

- More authority to operate, purchase, plan, and hire expeditiously (the “authority to manage its purchasing, personnel and contractors and to react to market conditions is constrained by rules, policies and procedures that apply to all City departments”).
- Reduction of costs and increased efficiencies (“Current processes drive inefficiencies and slow reaction times that keep costs and fees unnecessarily high”).
- Better focus on the needs of the traveler and tenants.

The Denver working group subcommittee concluded from an assessment of other airports’ experience that “[g]overnance structure has not had an influence on levels of service or bond ratings in other cities” and that a “change in governance may or may not result in ability to lower cost of debt.”

In 1999, a nonprofit think tank in New Orleans assessed the potential benefits of changing the governance structure for the New Orleans International Airport in a thoughtful and extensive report.<sup>144</sup> The study

<sup>142</sup> ALLEGHENY COUNTY AIRPORT AUTHORITY, RESULTS AND ACHIEVEMENTS (March 2008), [http://www.pitairport.com/UserFiles/File/pdf/Success\\_Report.pdf](http://www.pitairport.com/UserFiles/File/pdf/Success_Report.pdf).

<sup>143</sup> DENVER INT’L AIRPORT, AIRPORT MANAGEMENT WORKING GROUP ON AIRPORT SUBCOMMITTEE REPORT (2005), available upon request from author at Kaplan, Kirsch & Rockwell, LLP.

<sup>144</sup> BUREAU OF GOV’T RESEARCH, NEW ORLEANS INT’L AIRPORT GOVERNANCE, REG’L COOPERATION AND AIRPORT (“BGR Report”) (1999), available at <http://www.bgr.org/reports/neworleans-international-airport> (Last visited May 4, 2009). It is worth noting that funding for the study was provided by business interests that were likely

found the following, primarily based on anecdotal evidence:

- The New Orleans airport had two major structural challenges that threatened its ability to provide needed capacity expansions: (1) expansion required land-use approvals from neighboring jurisdictions that opposed expansion; and (2) there was a lack of broad-based regional support for expansion and other airport initiatives, because entities outside the City of New Orleans were not engaged.

- The report concluded that city-owned airports were more liable to political interference than other forms of governance and that they were less efficient. As noted in the Denver assessment, the effectiveness of municipal management is also impaired by citywide hiring and procurement rules. Nonetheless, the report noted that “some very effective airports are operated on this model,” including Atlanta, Charlotte, and Miami.<sup>145</sup>

- The report found that state governments were less effective as airport managers, because they were more liable to be bureaucratic and management was more distant from the communities that airports serve. The report noted that state governments can be effective when they have the power to preempt local land use or other impediments to development, but noted that such power could be provided to authorities as well. While the report did not acknowledge it, such power can also be given to cities or counties. Thus, for example, the Illinois Legislature preempted efforts to block the O’Hare Modernization Project in Chicago.<sup>146</sup>

- The report identified a number of potential advantages for airport authorities, including: 1) less red tape, 2) a single purpose and focus, 3) greater freedom from politics, 4) the ability to run the airport like a business, 5) ability to develop more creative financing approaches, and 6) the ability to bypass local procurement and hiring provisions.<sup>147</sup>

- However, the report also stressed that

[t]he fact that an airport is owned and operated by an authority will not in and of itself result in better management and less political interference. The success of a given authority depends to a large extent on who the members are, what their true interests are, and the history and culture of the community. One of the critical aspects in the success or failure of an authority is the quality of the people appointed to the board. Politically motivated appointments leave an institution vulnerable to changes in administration and to the exertion of political decisions of a business nature.<sup>148</sup>

frustrated with City of New Orleans management of the airport.

<sup>145</sup> BGR Report at 11.

<sup>146</sup> See O’Hare Modernization Act, 620 ILL. COMP. STAT. 65/1-99 (2008).

<sup>147</sup> BGR Report at 11. Note that these advantages are not inherent in the authority model. Hiring and procurement provisions can be self-imposed or directed by state law, as well.

<sup>148</sup> BGR Report at 11.

- “A switch to an authority can eliminate patronage; it can merely change the source of patronage; or it can result in the continuation of an existing patronage scheme, with politicians acting through their appointees.”<sup>149</sup>

- Authorities can be particularly useful vehicles in a regional context, since they provide a framework for participation on a similar footing, if not in equal proportions, by multiple jurisdictions. A sense of ownership and participation by right, as opposed to participation through the largess of another, is added to the advantage provided by the more business-oriented framework.<sup>150</sup>

However, the authors noted counter examples—such as the Burbank-Glendale Airport Authority—where such an approach had not achieved regional peace and airport capacity expansion.

- The New Orleans report found that port authorities provided no particular advantage above and beyond airport authorities.

- The report also noted potential value with the use of private management contracts for all or part of airport operations, including the ability to operate as a business and the access to expertise from overseas. However, more recent experience, including the early termination of BAA airport management contracts in Indianapolis and Harrisburg, casts some doubt on the extent to which this model has provided unambiguous advantages in the United States.

- Finally, the study identified a number of mechanisms that could assist in providing broader-based management of an airport in order to overcome inter-jurisdictional constraints on construction, including placement of multiple jurisdictions on airport boards, the use of intergovernmental agreements, redistribution of zoning and eminent domain authority, more inclusionary master planning processes, use of metropolitan planning organizations to oversee airport development, and strategic use of noise and other environmental programs.

Almost 10 years later, New Orleans and other regional stakeholders are still wrestling with issues regarding the long-term management of the airport.

Recent changes in airport management, such as the creation of the Wayne County Airport Authority and the San Diego Regional Airport Authority, appear to be driven by distinct weaknesses in the incumbent management (based on perceived poor operations or the inability to develop new airport capacity). It is unclear whether these changes reflect more general lessons regarding airport management structures, as opposed to dissatisfaction with the particular management of the airports.

It is striking that all recent shifts in airport governance have been from general-purpose governments to

single-purpose (or at least limited-purpose) governments or private entities or from one single-purpose structure to another. This is suggestive of possible advantages of authority structures, but far from determinative. It is probably much more difficult politically to shift from an authority structure that may have members from multiple jurisdictions to consolidated authority in one jurisdiction. The flow of political control may be a one-way street.

#### D. Relationship of Airport Governance Structures to Some Performance Outcomes

Partly as a result of the limitations in prior studies noted previously, the authors identified data from a few of the performance metrics identified in Section V.B to determine if there are any clear patterns of performance between different types of airport governance structures. This assessment is very simple and preliminary in nature and should not substitute for more rigorous statistical studies that may be conducted in the future that could better control for factors other than governance structures. As discussed below, we do not discern any clear evidence from a facial review of different types of data that special-purpose authorities (including airport authorities and port authorities) perform differently than general-purpose governments that operate airports (including states, counties, and municipalities).<sup>151</sup>

*Airport Infrastructure and Capacity.* The FAA has analyzed airports in which capacity will be needed in 2025 and earlier through its FACT program. In its 2007 FACT report, FAA specifically assessed 56 airports in the largest metropolitan areas in the United States. Of these airports, 26 (46 percent) were operated by special-purpose entities and 30 (54 percent) were operated by general-purpose governments.

In comparison, the FACT study indicates that 11 airports had recently completed new runways or extensions or were building new runways or major extensions. Of these, seven airports (or 63 percent) were operated by special-purpose entities and four airports (37 percent) by general-purpose governments.<sup>152</sup> This shows an advantage for the special-purpose entities, but it is based on a small sample that makes it hard to draw meaningful conclusions.

For the assessment of needed capacity, the study identified six airports in 2015 that would need additional capacity beyond planned improvements, split

<sup>151</sup> There are different ways that airports could be categorized, such as providing different treatment to state agencies or port authorities. For the sake of simplicity and due to the small number of airports falling into these categories, we have relied on a dichotomy between special-purpose and general-purpose government entities.

<sup>152</sup> FED. AVIATION ADMIN., CAPACITY NEEDS IN THE NATIONAL AIRSPACE SYSTEM, 2007–2025: AN ANALYSIS OF AIRPORTS AND METROPOLITAN AREA DEMAND AND OPERATIONAL CAPACITY IN THE FUTURE (“FACT Report 2”) (2007), available at [http://www.faa.gov/airports\\_airtraffic/airports/resources/publications/reports/media/fact\\_2.pdf](http://www.faa.gov/airports_airtraffic/airports/resources/publications/reports/media/fact_2.pdf).

<sup>149</sup> *Id.* at 12.

<sup>150</sup> *Id.*

evenly with three airports operated by special-purpose entities and three operated by general-purpose governments.<sup>153</sup>

The study identified 14 airports that would need additional capacity beyond planned improvements. Of these, six airports (43 percent) were operated by special-purpose entities and eight airports (57 percent) were operated by general-purpose governments.<sup>154</sup> These percentages are almost the same as the percentages of special-purpose and general-purpose governments in the entire sample.

Again, given the relatively small number of airports involved, it does not appear that there is any obvious difference between these types of airport operators in terms of the ability or need to provide additional capacity.

Reviewing Bureau of Transportation Statistics (BTS) on-time percentages leads to the same conclusion. Appendix E reports recent (September 2008 year to date) arrival and departure on-time percentage statistics for BTS “major airports,” broken down for airports operated by special-purpose entities and general-purpose governments.<sup>155</sup> The averages for special-purpose and general-purpose governments show little difference and mixed results for arrivals and departures. For arrivals, the average on-time percentage for general-purpose government airports was slightly better, at 75.8 percent, as opposed to 74.3 percent for special-purpose entities. For departures, the averages were reversed: the on-time percentage was 77.3 percent for general-purpose governments and 78.3 percent for special-purpose entities. Use of the simple analysis of variation (ANOVA) statistical tool indicates that there is no statistically significant difference between these two samples.

These averages and simple comparisons should not be viewed as conclusive. Some elements of on-time performance are affected by the capacity of airfield and terminal. However, many other factors relating to on-time performance (e.g., weather, airspace, or airline networks) are not within the control of the airport proprietor and, therefore, unlikely to be affected by the choice of governance structure. Nonetheless, the averages are of interest because it is not obvious that either category of airports is disproportionately affected by weather, airspace, or other factors affecting delay. Further statistical research using different metrics and additional data would be useful to determine if there are meaningful differences. For example, it would be useful to compare the number of nonstop destinations served by airports, controlling for variables reflecting the host city’s size and economic conditions.

<sup>153</sup> FACT Report 2, at 11.

<sup>154</sup> FACT Report 2, at 17.

<sup>155</sup> See Bureau of Transportation Statistics, Airline On-Time Tables, [http://www.bts.gov/programs/airline\\_information/airline\\_ontime\\_tables](http://www.bts.gov/programs/airline_information/airline_ontime_tables) (Last visited May 4, 2009).

*Financial Condition.* As a simple summary means of evaluating the overall financial health of airports, we evaluated the Moody’s general airport revenue bond ratings of a sample of large airports identified in a publicly available Jacobs Consultancy general airport revenue bond rating analysis of 58 airports from August 2007.<sup>156</sup> That timeframe was chosen to predate the effects of recent credit market instability. To capture some of the variability in bond ratings, the Moody’s ratings were converted into a 2–10 scale, with Baa3 rating as 2 (lower rating) and Aa1 as 10 (higher rating). Some airports had more than one rating, based on different series of debt. These ratings are reflected in Appendix E.

The average rating of the bonds from airports operated by general-purpose governments was 6.4 (or between A1 and A2 on the Moody’s system), while airports operated by special-purpose entities scored 6.6 (also between A1 and A2 on the Moody’s system). These results are sufficiently close that it is impossible to identify any meaningful difference between them. Use of ANOVA also indicates that there is no statistically significant difference between these two samples.

As with delay and capacity issues, bond ratings reflect a number of factors beyond the control of the airport operator, including economic conditions in the airport region, the health of dominant carriers in a market, and the overall economy. However, again, it is not obvious that there is any systemic bias in these factors in favor of either category of governance.

As discussed above in Section V.B, additional statistical research regarding the efficiency of airports operated by general-purpose governments versus special-purpose entities would be necessary to conclusively establish a causal relationship between governance structure and performance.

*Customer Service.* We also compared airport customer service performance using the readily available 2008 J.D. Power airport surveys.<sup>157</sup> To maximize the amount of variation in the sample, we summed the seven categories of scores reported by J.D. Power for each airport in its large and medium airport categories for a possible range for each airport between 7 and 35 points.

Both for large airports by themselves and for the pool of large and medium airports, the average customer service score for the general-purpose government

<sup>156</sup> See Jacobs Consultancy, *Credit Update Airport Bond Ratings* (Aug. 2007), [http://www.jacobs-consultancy.com/pdfs/publications/AIRPORT\\_BOND\\_RATINGS\\_AUG2007.pdf](http://www.jacobs-consultancy.com/pdfs/publications/AIRPORT_BOND_RATINGS_AUG2007.pdf).

<sup>157</sup> See J.D. Power and Associates, *Airport Ratings*, <http://www.jdpower.com/travel/ratings/airport-ratings> (last visited Dec. 18, 2008). Note that the use of the J.D. Power ratings does not constitute an endorsement for the methodology of the survey or its results. It is chosen simply as an example with a large number of peer airports for which the same methodology has been applied to see if there are any appreciable differences between airports with different types of airport governance structures.

airports was slightly higher than the special-purpose airport scores. For large airports, the average score for general-purpose government airports was 24.5, versus 21.4 for special-purpose entities. For large and medium airports together, the average score for general-purpose airports was 24.2, versus 22.4 for special-purpose entities. Again, ANOVA testing suggests no significant difference between these groups.

As discussed above, customer satisfaction is only partly within the control of the airport sponsor, who can affect, but not control TSA, customs, airlines, and other front-line service providers at airports.

## E. Conclusion

A review of the available literature and different sources of data do not clearly reveal that any forms of airport governance are clearly better or worse than others. This is particularly the case in light of the multiple objectives governments seek to attain through their airports. While some studies suggest that airport authorities may have some efficiency advantages over general-purpose governments (and port authorities), financial efficiency is only one of a number of factors that airport proprietors must address when considering a change in the form of airport governance. Further, in light of the wide variation in the operation of airports within generalized categories (e.g., the forms of airport authorities and the degree of autonomy afforded to airports within general-purpose governments), it is exceptionally difficult to draw sweeping conclusions.

Indeed, the question may be academic for most airports, insofar as the governance structure for existing airports has already been chosen. As discussed above, relatively few airports change governance, and typically only do so in extreme cases of management or economic distress. Thus, for example, the Midway Airport privatization is being driven in large part by the pressing need by the City of Chicago to secure funds for pension and other municipal needs. Similarly, the shift of governance in Pittsburgh and Detroit was driven by perceived political and financial inadequacy by previous airport operators. In relatively few cases will the existing political management of an airport (or a state legislature) determine that they are doing so bad a job that they should cede control to another entity.

Nonetheless, because such cases have occurred and presumably will continue to occur, it would be useful to have additional detailed analyses of the benefits and weaknesses of different airport governance structures. In addition, such research could be valuable for the handful of new airports that may be built by entities other than an existing proprietor or ones obtaining surplus military bases.

## VI. CONCLUSION

By far the greatest challenge in evaluating airport governance is to translate the information presented throughout this report into meaningful suggestions for communities considering their governance structure

and the opportunities for change. As explained in detail herein, neither federal nor state law precludes transfers of control and, on the contrary, many states specifically recognize the use of myriad governance structures and grant comparable powers to each type of entity. Moreover, while the studies examined in Section V reveal loose correlations between governance structure and certain performance criteria, these studies do not account for the multitude of performance objectives that may be sought by airport stakeholders. Although the recognition that there is no one-size-fits-all approach to airport governance may help to dispel conventional wisdom, it provides little aid to communities looking for options and solutions.

Further compounding this challenge is the fact that the historical record does not necessarily provide guidance as to how communities might assess their options. To repeat, while it may be significant that most of the recent changes involved the transfer of power from a general-purpose government to a single-purpose authority, the conditions prompting a change are equally important. These conditions have included alleged mismanagement (in the case of Detroit, Michigan), the need for a replacement airport (in the case of San Diego, California), and the need for an infusion of money (in the case of privatization in Chicago, Illinois). In other words, most of the communities making a change had a singular *and dire* problem that was perceived to warrant a dramatic change. In at least a few instances, these circumstances were perceived to be sufficiently dire to warrant the involuntary transfer of power, at times over the objection of the airport operator.

Numerous communities across the country have examined airport governance. While a few communities have made significant voluntary changes to improve performance in the absence of a dramatic circumstance, there is a larger group of communities that have considered *but declined* to make such changes. Many studies proved inconclusive, or the political will was lacking to effect a large-scale change such as the transfer of power from a general-purpose government to a single-purpose authority.

These findings lead to three observations. The first is that a community must realistically examine the potential motivations for making a change in governance structure. A community would need to critically examine its objectives in operating its airport and its success in achieving identified objectives and pragmatically consider whether deficiencies are sufficiently serious to warrant such a herculean undertaking.

Upon determining that a dramatic change is warranted, the community would then need to consider which of the options for large-scale change would most likely address the perceived deficiencies. As described in Section III, the options include transfer of power from a general-purpose government to a single-purpose authority, full privatization by leasing the airport to a private operator, and commercialization of airport functions and facilities. Each of these options has multiple

permutations, particularly to account for the integration of regional interests such as through intergovernmental or joint-exercise-of-power agreements, the creation of a multijurisdiction authority, and the creation or expansion of airport systems within a metropolitan area or region.

At least some of the options can be considered to be a salve for specific problems. For example, full privatization under the FAA's Privatization Pilot Program may be an option for communities in need of a large cash infusion to support other municipal functions, and creation of a multijurisdiction authority can address a perceived lack of regional participation in airport governance.

The second observation is that communities should not neglect the full range of options short of a large-scale transfer of power. Again, airport performance may have as much to do with *how* an airport is run as with its governance form. The following list is intended to be illustrative of the types of actions that communities might consider, depending on their particular circumstances:

- Changes in airport management and personnel.
- Changes by a general-purpose government in airport-related procurement, contracting, and employment requirements.
- Creation by a general-purpose government of a board or commission to participate in airport decision-making.

- Creation of an advisory board by a general- or single-purpose government.
- Removal and reappointment of board members and commissioners.
- Reconstitution of an airport authority commission to adjust interests represented.
- Changes in qualifications required to serve on board, commission, or advisory panel.
- Commercialization of particular management functions.
- Commercialization of specific facilities.
- Intergovernmental agreements addressing land use, environmental, and other issues.

The third and final observation is that, whether contemplating large or small changes, communities should comprehensively evaluate their performance and success in achieving particular goals. The science and art of performance benchmarking is rapidly evolving and should give communities a far better grasp of their performance than has been previously available. By candidly looking at performance and the ways in which large and small changes in governance might further airport-specific goals, communities should be far better positioned to make those changes that are sensible and likely to lead to positive outcomes.

**APPENDIX A. OWNERSHIP AND OPERATION OF U.S. PASSENGER SERVICE AIRPORTS<sup>158</sup>**

<b>LOCATION</b>	<b>AIRPORT</b>	<b>CODE</b>	<b>HUB TYPE</b>	<b>OPERATOR</b>
Akron, OH	Akron-Canton Regional Airport	CAK	S	Akron Canton Regional Airport Authority
Albany, NY	Albany International Airport	ALB	S	Albany County Airport Authority
Albuquerque, NM	Albuquerque International Sunport	ABQ	M	City of Albuquerque
Allentown, PA	Lehigh Valley International Airport	ABE	S	Lehigh Northampton Airport Authority
Amarillo, TX	Rick Husband Amarillo International Airport	AMA	S	City of Amarillo
Anchorage, AK	Ted Stevens Anchorage International Airport	ANC	M	State of Alaska
Atlanta, GA	Hartsfield Atlanta International Airport	ATL	L	City of Atlanta
Atlantic City, NJ	Atlantic City International	ACY	S	South Jersey Transportation Authority
Austin, TX	Austin-Bergstrom International Airport	AUS	M	City of Austin
Baltimore, MD	Baltimore/Washington International Airport	BWI	L	Maryland Aviation Administration
Bangor, ME	Bangor International Airport	BGR	S	City of Bangor

<sup>158</sup> Information derived from the 2009–2013 National Plan of Integrated Airport Systems (NPIAS) Report, available at [http://www.faa.gov/airports/airtraffic/airports/planning\\_capacity/npas/reports](http://www.faa.gov/airports/airtraffic/airports/planning_capacity/npas/reports).

LOCATION	AIRPORT	CODE	HUB TYPE	OPERATOR
Baton Rouge, LA	Baton Rouge Metropolitan Airport, Ryan Field	BTR	S	Greater Baton Rouge Airport District
Billings, MT	Billings Logan International Airport	BIL	S	City of Billings
Birmingham, AL	Birmingham International Airport	BHM	S	Birmingham Airport Authority
Boise, ID	Boise Airport	BOI	S	City of Boise
Boston, MA	Logan International Airport	BOS	L	Massachusetts Port Authority
Buffalo, NY	Buffalo Niagara International Airport	BUF	M	Niagara Frontier Transp. Authority
Burbank, CA	Bob Hope Airport	BUR	M	Burbank-Glendale-Pasadena Airport Authority
Burlington, VT	Burlington International Airport	BTV	S	City of Burlington
Cedar Rapids, IA	The Eastern Iowa Airport	CID	S	City of Cedar Rapids
Charleston, SC	Charleston AFB/International Airport	CHS	S	U.S. Air Force & Charleston County Aviation Authority
Charlotte, NC	Charlotte/Douglas International Airport	CLT	L	City of Charlotte
Chicago, IL	Chicago Midway International Airport	MDW	L	City of Chicago
Chicago, IL	O'Hare International Airport	ORD	L	City of Chicago
Cleveland, OH	Cleveland-Hopkins International Airport	CLE	M	City of Cleveland
Colorado Springs, CO	City of Colorado Springs Municipal Airport	COS	S	City of Colorado Springs

LOCATION	AIRPORT	CODE	HUB TYPE	OPERATOR
Columbia, SC	Columbia Metropolitan Airport	CAE	S	Richland-Lexington Airport District
Columbus, OH	Port Columbus International Airport	CMH	M	Columbus Regional Airport Authority
Corpus Christi, TX	Corpus Christi International Airport	CRP	S	City of Corpus Christi
Covington, KY	Cincinnati/Northern Kentucky International Airport	CVG	L	Kenton County Airport Board
Dallas, TX	Dallas Love Field Airport	DAL	M	City of Dallas
Dallas/Ft. Worth, TX	Dallas/Ft. Worth International Airport	DFW	L	DFW Airport Board of Directors
Dayton, OH	James M. Cox Dayton International Airport	DAY	S	City of Dayton
Denver, CO	Denver International Airport	DIA	L	City of Denver
Des Moines, IA	Des Moines International Airport	DSM	S	City of Des Moines
Detroit, MI	Detroit Metropolitan Wayne County Airport	DTW	L	Wayne County Airport Authority
El Paso, TX	El Paso International Airport	ELP	S	City of El Paso
Fairbanks, AK	Fairbanks International Airport	FAI	S	State of Alaska
Fayetteville/ Springdale, AR	Northwest Arkansas Regional Airport	XNA	S	Northwest Arkansas Regional Airport Authority

LOCATION	AIRPORT	CODE	HUB TYPE	OPERATOR
Flint, MI	Bishop International Airport	FNT	S	Bishop International Airport Authority
Fort Lauderdale, FL	Ft. Lauderdale/Hollywood International Airport	FLL	L	Broward County
Fort Myers, FL	Southwest Florida International Airport	RSW	M	Lee County Port Authority
Fresno, CA	Fresno Yosemite International Airport	FAT	S	City of Fresno
Grand Canyon National Park, AZ	Grand Canyon National Park Airport	GCN	S	State of Arizona
Grand Rapids, MI	Gerald R. Ford International Airport	GRR	S	Kent County Dept. of Aeronautics
Green Bay, WI	Austin Straubel International Airport	GRB	S	Brown County
Greensboro, NC	Piedmont Triad International Airport	GSO	S	Piedmont Triad Airport Authority
Greer, SC	Greenville-Spartanburg International Airport	GSP	S	Greenville-Spartanburg Airport Commission
Gulfport, MS	Gulfport-Biloxi Regional Airport	GPT	S	Gulfport-Biloxi Regional Airport Authority
Harlingen, TX	Valley International Airport	HRL	S	City of Harlingen
Harrisburg, PA	Harrisburg International Airport	MDT	S	Susquehanna Regional Airport Authority
Hilo, HI	Hilo International Airport	ITO	S	State of Hawaii

LOCATION	AIRPORT	CODE	HUB TYPE	OPERATOR
Honolulu, HI	Honolulu International Airport	HNL	L	State of Hawaii
Houston, TX	George Bush Intercontinental/Houston Airport	IAH	L	City of Houston
Houston, TX	William P. Hobby Airport	HOU	M	City of Houston
Huntsville, AL	Huntsville International Airport	HSV	S	Huntsville-Madison County Airport Authority
Indianapolis, IN	Indianapolis International Airport	IND	M	Indianapolis Airport Authority
Islip, NY	Long Island MacArthur Airport	ISP	S	Town of Islip
Jackson, MS	Jackson-Evers International Airport	JAN	S	Jackson Municipal Airport Authority
Jacksonville, FL	Jacksonville International Airport	JAX	M	Jacksonville Aviation Authority
Juneau, AK	Juneau International Airport	JNU	S	City and Borough of Juneau
Kahului, HI	Kahului Airport	OGG	M	State of Hawaii
Kailua/Kona, HI	Kona International at Keahole	KOA	S	State of Hawaii
Kansas City, MO	Kansas City International Airport	MCI	M	City of Kansas City
Knoxville, TN	McGhee Tyson Airport	TYS	S	Metropolitan Knoxville Airport Authority
Lihue, HI	Lihue Airport	LIH	S	State of Hawaii
Little Rock, AR	Little Rock Adams Field National Airport	LIT	S	City of Little Rock

LOCATION	AIRPORT	CODE	HUB TYPE	OPERATOR
Las Vegas, NV	McCarran International Airport	LAS	L	Clark County
Lexington, KY	Blue Grass Airport	LEX	S	Lexington-Fayette Urban County Airport Corporation
Long Beach, CA	Long Beach Airport, Daugherty Field	LGB	S	City of Long Beach
Los Angeles, CA	Los Angeles International Airport	LAX	L	Los Angeles World Airports
Louisville, KY	Louisville International–Standiford Field Airport	SDF	S	Louisville Regional Airport Authority
Lubbock, TX	Lubbock Preston Smith International Airport	LBB	S	City of Lubbock
Madison, WI	Dane County Regional Airport, Truax Field	MSN	S	Dane County
Manchester, NH	Manchester Airport	MHT	M	Manchester Airport Authority
McAllen, TX	McAllen Miller International Airport	MFE	S	City of McAllen
Memphis, TN	Memphis International Airport	MEM	M	Memphis Shelby County Airport Authority
Miami, FL	Miami International Airport	MIA	L	Miami-Dade County
Midland, TX	Midland International Airport	MAF	S	City of Midland
Milwaukee, WI	General Mitchell International Airport	MKE	M	Milwaukee County

LOCATION	AIRPORT	CODE	HUB TYPE	OPERATOR
Minneapolis, MN	Minneapolis/St. Paul International	MSP	L	Metropolitan Airport Commission
Moline, IL	Quad City International Airport	MLI	S	Metropolitan Airport Authority of Rock Island County
Myrtle Beach, SC	Myrtle Beach International Airport	MYR	S	Horry County
Nashville, TN	Nashville International Airport	BNA	M	Metropolitan Nashville Airport Authority
New Orleans, LA	Louis Armstrong New Orleans International Airport	MSY	M	City of New Orleans
Newark, NJ	Newark Liberty International Airport	EWR	L	Port Authority of New York and New Jersey
Newport News, VA	Newport News/Williamsburg International Airport	PHF	S	Peninsula Airport Commission
Norfolk, VA	Norfolk International Airport	ORF	M	Norfolk Airport Authority
New York, NY (Queens)	John F. Kennedy International Airport	JFK	L	Port Authority of New York and New Jersey
New York, NY (Queens)	LaGuardia Airport	LGA	L	Port Authority of New York and New Jersey
Oakland, CA	Metropolitan Oakland International	OAK	M	Port of Oakland
Oklahoma City, OK	Will Rogers World Airport	OKC	S	Oklahoma City Airport Trust
Omaha, NE	Eppley Airfield	OMA	M	Omaha Airport Authority
Ontario, CA	Ontario International Airport	ONT	M	Los Angeles World Airports

LOCATION	AIRPORT	CODE	HUB TYPE	OPERATOR
Orlando, FL	Orlando International Airport	MCO	L	Greater Orlando Aviation Authority
Orlando, FL	Orlando Sanford International	SFB	S	Sanford Airport Authority
Palm Springs, CA	Palm Springs International Airport	PSP	S	City of Palm Springs
Pensacola, FL	Pensacola Regional Airport	PNS	S	City of Pensacola
Philadelphia, PA	Philadelphia International Airport	PHL	L	City of Philadelphia
Phoenix, AZ	Sky Harbor International Airport	PHX	L	City of Phoenix
Pittsburgh, PA	Pittsburgh International Airport	PIT	M	Allegheny County Airport Authority
Portland, ME	Portland International Jetport	PWM	S	City of Portland
Portland, OR	Portland International Airport	PDX	M	Port of Portland
Providence, RI	Theodore Francis Green State Airport	PVD	M	Rhode Island Airport Corporation
Raleigh-Durham, NC	Raleigh-Durham International Airport	RDU	M	Raleigh-Durham Airport Authority
Reno, NV	Reno/Tahoe International Airport	RNO	M	Reno-Tahoe Airport Authority
Richmond, VA	Richmond International Airport	RIC	S	Capital Region Airport Commission
Rochester, NY	Greater Rochester International Airport	ROC	S	Monroe County
Sacramento, CA	Sacramento International Airport	SMF	M	County of Sacramento

LOCATION	AIRPORT	CODE	HUB TYPE	OPERATOR
St. Louis, MO	Lambert-St. Louis International Airport	STL	M	St. Louis Airport Authority
Salt Lake City, UT	Salt Lake City International Airport	SLC	L	City of Salt Lake
San Antonio, TX	San Antonio International Airport	SAT	M	City of San Antonio
San Diego, CA	San Diego International Airport	SAN	L	San Diego County Regional Airport Authority
San Francisco, CA	San Francisco International Airport	SFO	L	City and County of San Francisco
San Jose, CA	Norman Y. Mineta San Jose International Airport	SJC	M	City of San Jose
Santa Ana, CA	John Wayne-Orange County Airport	SNA	M	Orange County
Santa Barbara, CA	Santa Barbara Municipal Airport	SBA	S	City of Santa Barbara
Sarasota/Bradenton, FL	Sarasota Bradenton International Airport	SRQ	S	Sarasota-Manatee Airport Authority
Savannah, GA	Savannah/Hilton Head International	SAV	S	City of Savannah
Seattle, WA	Seattle-Tacoma International Airport	SEA	L	Port of Seattle
Sioux Falls, SD	Joe Foss Field Airport	FSD	S	Sioux Falls Regional Airport Authority
South Bend, IN	South Bend Regional Airport	SBN	S	St. Joseph County Airport Authority
Springfield, MO	Springfield-Branson National Airport	SGF	S	City of Springfield

LOCATION	AIRPORT	CODE	HUB TYPE	OPERATOR
Spokane, WA	Spokane International Airport	GEG	S	Spokane Airport Board
Syracuse, NY	Syracuse Hancock International Airport	SYR	S	City of Syracuse
Tallahassee, FL	Tallahassee Regional Airport	TLH	S	City of Tallahassee
Tampa, FL	Tampa International Airport	TPA	L	Hillsborough County Aviation Authority
Tucson, AZ	Tucson International Airport	TUS	M	Tucson Airport Authority
Tulsa, OK	Tulsa International Airport	TUL	S	Tulsa Airport Authority
Washington, D.C. (Loudon & Fairfax Counties, VA)	Washington Dulles International Airport	IAD	L	Metropolitan Washington Airports Authority
Washington, D.C. (Arlington County, VA)	Ronald Reagan Washington National Airport	DCA	L	Metropolitan Washington Airports Authority
West Palm Beach, FL	Palm Beach International Airport	PBI	M	Palm Beach County
White Plains, NY	Westchester County Airport	HPN	S	County of Westchester
Wichita, KS	Wichita Mid-Continent Airport	ICT	S	Wichita Airport Authority
Windsor Locks, CT	Bradley International Airport	BDL	M	State of Connecticut

**APPENDIX B. COMPENDIUM OF STATE LAWS ON AIRPORT GOVERNANCE**

State	Statutes	Summary
Alabama	<p>Code of Alabama—Title 4—Aviation                      Chapter 1—General Provisions—Ala. Code § 4-1-1                      Chapter 2A—Alabama International Airport Authority—Ala. Code § 4-2A-1 to 4-2A-23.                      Chapter 3—Airport Authorities—Ala. Code § 4-3-1 to 4-3-80.                      Chapter 4—Municipal Airports and Regulations—Ala. Code § 4-4-1 to 4-4-16.                      Chapter 6—Airport Zoning—Ala. Code § 4-6-1 to 4-6-15.</p>	<p>Chapters 1 through 3 set out the general provisions governing aviation—they create a board of directors for each airport authority and set out the powers of the airport authorities. They also govern how bonds can be acquired and repaid. Chapter 4 gives all municipalities the authority to acquire, establish, construct, expand, own, control, equip, improve, maintain, operate, and regulate airports and landing fields. It sets out the general rules that municipalities must follow in establishing or running an airport. Chapter 6 governs all airport zoning.</p>
Alaska	<p>Alaska Stat. § 2-15-010 to 2-15-270—Alaska Aeronautics Act of 1949.                      Alaska Stat. § 2-25-010 to 2-25-120—Airport Zoning Act.</p>	<p>The purpose of the Alaska Aeronautics Act is to develop and operate a state system of airports through cooperation with municipalities and the federal government. It gives the department of transportation the authority to construct and operate airports and it governs the department’s operation of airports. The Airport Zoning Act governs all airport zoning and gives the department of transportation the power to adopt zoning regulations.</p>
Arizona	<p>Ariz. Rev. Stat. Ann. § 28-8201 to 28-8924—Aviation.</p>	<p>Chapter 25 governs all aviation—it creates an aeronautics division to cooperate with all state, local, and federal authorities to encourage and advance the development of aviation. It also gives cities, towns, and counties the authority to construct, own, and operate airports and governs their operation and regulation of airports. Zoning provisions are also included.</p>
Arkansas	<p>Ark. Code Ann. § 14-356-101 to 14-364-102—Airport Facilities Generally;                      § 27-114-101 to 27-114-104—Aeronautics—General Provisions;                      § 27-115-101 to 27-115-110—Arkansas Department of Aeronautics.</p>	<p>Subtitle 22 of Title 14 governs all public airports. It authorizes and regulates the establishment and operation of county and municipal and regional airports. It also governs airport zoning. Chapter 114 sets out the definitions and offenses of the statutes governing aeronautics. Chapter 115 creates and sets out the responsibilities of the Arkansas De-</p>

State	Statutes	Summary
		<p>partment of Aeronautics to develop airports in the state.</p>
<p>California</p>	<p>Cal. Pub. Util. Code § 21001 to 21707–State Aeronautics Act;                      Pub. Util. Code § 22001 to 22909–Airport Districts.</p>	<p>The purpose of the State Aeronautics Act is to further aeronautical progress in the state. It gives the department of transportation the authority to acquire airports. Cities and counties are also permitted to construct new airports or expand existing airports with approval from a local, regional, state, or federal agency. There are also rules governing airports owned by the state or by a city or county, including noise and zoning regulations. The Airport Districts statutes allow airport districts to be created by county resolution and govern the process of writing and voting on the resolutions. They also sets forth the rules governing the election and issuance of bonds and airport districts' taxation authority.</p>
<p>Colorado</p>	<p>Colo. Rev. Stat. § 41-3-101-108–Public Airport Authority Act;                      § 41-4-101-113–County Airports;                      § 41-4-201-205–Airports–Cities and Towns.</p>	<p>The Public Airport Authority Act authorizes cities, towns, counties, and the State of Colorado to create airport authorities for the purpose of acquiring and improving airports, etc. It sets out how airport authorities can be created, the powers of airport authorities, and the rules governing the Board of Commissioners for airport authorities. Parts 1 and 2 govern how counties and cities and towns can establish airports and the rules that regulate airports that are owned by counties or cities and towns.</p>
<p>Connecticut</p>	<p>Conn. Gen. Stat. Ann. § 15-34 to 15-101a–Aeronautics;                      § 15-101k to 15-101t–Bradley International Airport Improvements and Financing;                      § 15-101aa to 15-101ll–Property Taxation at Bradley International Airport;                      § 15-101mm to 15-101xx–Bradley International Airport Board of Directors;                      § 15-120g to 15-120o–Tweed-New Haven Airport Authority Act.</p>	<p>The Aeronautics sections direct municipalities to adopt airport zoning regulations to avoid airport hazards. The Bradley Financing sections set up all bonding authority and regulate how bonds can be used and repaid. The subsequent Bradley Airport provisions create the airport property tax structure and establish and set out the responsibilities of the Bradley airport authority. The Tweed-New Haven Airport Authority is established in the end of Title 15. The statute sets out the powers of the authority and governs how bonds are issued and repaid.</p>

State	Statutes	Summary
Delaware	Del. Code Ann. § 701 to 708—State Airports; § 901 to 948—Airports of Political Subdivisions.	Chapter 7 gives the department of transportation the authority to establish, acquire, and operate airports on behalf of the state. Chapter 9 gives all political subdivisions the authority to acquire property to establish and operate airports, and sets out the specific powers of political subdivisions in operating airports. It also creates the airport financing, taxing, and bonding structure.
Florida	Fla. Stat. Ann. § 330.01 to 330.53—Regulation of Aircraft, Pilots and Airports; § 332.001 to 332.14—Airports and other Air Navigation Facilities; § 333.01 to 333.—Airport zoning.	Chapter 332 gives the department of transportation the responsibility of planning airport systems and promoting the development of airports. It gives all municipalities and counties the authority to acquire property to establish or enlarge airports. Municipalities and counties are also given the authority to operate airports. Chapter 333 governs airport zoning.
Georgia	Ga. Code Ann. § 6-3-1 to 6-3-28—Powers of Local Governments as to Air Facilities; § 6-4-1 to 6-4-16—Georgia Airport Development Authority.	Chapter 3 gives the department of transportation the authority to construct and maintain airports. It also gives counties, municipalities, and other political subdivisions the authority to acquire, establish, operate, and regulate airports. Chapter 4 creates the Georgia Airport Development Authority for the purposes of locating, constructing, financing, operating, and developing any new airports within the state. It sets out the Authority's general powers and governs the issuance of bonds.
Hawaii	Haw. Rev. Stat. Ann. § 261-1 to 261-27—Airports; § 262-1 to 262-11—Airport Zoning Act	Chapter 261 directs the department of transportation to develop aeronautics and encourage the establishment of airports. It gives the department of transportation the authority to establish, operate, and maintain airports on behalf of the State, and governs the department's regulation of airports. It also gives the department the power to adopt rules and regulations related to aircraft and airports. Chapter 262 governs airport zoning and gives the department of transportation the authority to create airport zoning regulations.

State	Statutes	Summary
Idaho	Idaho Code Ann. § 21-501 to 21-520–Airport Zoning Act; § 21-801 to 21-814–Regional Airports	Chapter 5 governs airport zoning and gives the department of transportation the authority to create airport zoning regulations. Chapter 8 governs the establishment of regional airports and allows for the creation of a regional airport authority. It also allows bonds to be issued for airport development.
Illinois	620 Ill. Comp. Stat. Ann. § 5/1 to 5/83–Illinois Aeronautics Act; § 10/0.01 to 10/8–Military Emergency Aircraft Restriction Act; § 15/0.01 to 15/8–Aircraft Landing and Taking Off Restriction Act; § 20/0.01 to 20/7–Joint Airports Act; § 25/1 to 25/37–Airport Zoning Act; § 30/0.01 to 30/12–Zoning to Eliminate Airport Hazards Act; § 35/1 to 35/15–Permanent Noise Monitoring Act; § 40/0.01 to 40/15–General County Airport and Landing Field Act; § 45/1 to 45/20–County Airport Law of 1943; § 50/1 to 50/74–County Airports Act.	The purpose of the Aeronautics Act is declared as furthering aeronautical progress. The Act gives the department of transportation the authority to acquire land on behalf of the state to establish state airports. Act 25 governs airport zoning and gives every political subdivision having an airport hazard within its limits the authority to adopt, administer, and enforce zoning regulations. Act 30 governs airport hazards and requires a permit from the department of transportation before any structure contravening FAA regulation part 77(c) is constructed. Act 35 requires each airport in the state to establish a permanent noise monitoring system and to prepare annual noise monitoring reports. Acts 40 through 50 give every county the authority to purchase, establish, and operate airports. Counties are also given the authority to tax and issue bonds. Rules regarding the county's regulation of airports are also set out.
Indiana	Ind. Code Ann. § 8-22-1-1 to 8-22-5-4–Airports.	Article 22 creates local boards of aviation commissioners whenever a fiscal body of a government entity adopts an ordinance or a resolution in favor of the acquisition, improvement, operation, or maintenance of an airport. It also establishes local airport authorities and joint state airport authorities and gives them the authority to establish and regulate airports and to issue bonds to pay the costs of the airport.
Iowa	Iowa Code Ann. § 329.1 to 329.15–Airport Zoning; § 330.1 to 330.24–Airports.	Chapter 329 governs airport zoning. Chapter 330 authorizes cities and counties to acquire and operate airports—however, the plans and specifications for the airport must be submitted to the

State	Statutes	Summary
		state department of transportation for approval before an airport is acquired.
Kansas	Kan. Stat. Ann. § 3-113 to 3-171—Municipal Airports & Fields; § 3-301 to 3-324—County Airports; § 3-701 to 3-713—Zoning Regulations.	Article 1 governs municipal airports—it gives municipalities the power to acquire and regulate a municipal airport and to issue bonds for the associated costs and sets forth the municipality's power in regulating such airports. Article 3 only applies to counties that border on or are contiguous to two cities that each have a population of more than 115,000. These counties are authorized to establish airports and may issue and sell bonds for costs related to the acquisition, construction, and regulation of airports. Article 7 governs airport zoning and gives the political subdivision owning an airport the authority to establish airport zoning regulations.
Kentucky	Ky. Rev. Stat. Ann. § 183.010 to 183.990—Aviation.	Chapter 183 gives the Transportation Cabinet the authority to create rules and regulations to carry out the provisions of the chapter. The Cabinet may also acquire land to establish airports and may create a state airways system. Cities and counties may also establish local air boards to acquire and operate airports. The boards may apply to the Cabinet for loans for airport projects. Airport zoning provisions are also included.
Louisiana	La. Rev. Stat. Ann. Chapter 2—§ 81 to 364—Airports and Landing Fields. Chapter 3, § 381 to 390—Airport Zoning; Chapter 4, § 601 to 615—Airport Authorities Act; Chapter 5, § 650 to 661—Louisiana Airport Authority; Chapter 7, § 801 to 814—Airport Construction and Development Priority Program.	Chapter 2 gives the state, parishes, cities and towns, separately or jointly, the authority to acquire, establish, and operate airports. It also gives them the authority to issue bonds and incur debt for airport related activity—however, all bonds issued must first be authorized by vote of a majority of taxpayers. Chapter 3 governs airport zoning and gives parishes, cities, towns, and villages the authority to adopt, administer, and enforce airport zoning regulations. Chapter 4 gives political subdivisions the power to create airport authorities to govern airports within that subdivision. Chapter 5 establishes a state airport authority to acquire and operate airports and airport facilities. The authorities in both chapters can issue bonds. Chapter 7 creates a

State	Statutes	Summary
		system for allocating funds for airport projects.
Maine	Me. Rev. Stat. Ann. tit. 6, § 101 to 105–Airports; Tit. 6, § 241 to 246–Airport Zoning.	Sections 101 to 105 set out minimum standards for airport facilities. Sections 241 to 246 govern airport zoning and allow political subdivisions to adopt, administer, and enforce zoning regulations.
Maryland	Md. Code Ann., Transp. § 5-201 to 5-217– Maryland Aviation Commission; § 5-301 to 5-306–Licensing and Registration of Airports; § 5-401 to 5-427–Establishment and operation of State and Local Airports; § 5-501 to 5-511–Airport Zoning–By Administration; § 5-601 to 5-617–Airport Zoning–By Political Subdivision.	Subtitle 2 establishes the Maryland Aviation Commission. It also creates the Maryland Aviation Administration within the department of transportation to promote and assist in the development of aeronautics and the establishment of airports. The Administration is given the authority to adopt rules and regulations to govern airports. Subtitle 3 gives the Administration the authority to adopt rules and regulations providing for the licensing of public airports. Subtitle 4 gives the Administration (with approval of the Secretary of Transportation) the authority to establish and operate airports on behalf of the state. It also gives any political subdivision of the state the authority to establish and operate local airports and to issue bonds to build or improve airport facilities. Subtitles 5 and 6 govern airport zoning and allow the Administration and political subdivisions to adopt zoning regulations.
Massachusetts	Mass. Gen. Laws Ann. ch. 90, § 35 to 49A– Aircraft; Ch. 90, § 51 to 51N–Operation of Airports.	Sections 35 to 49A govern airport zoning. They also create an aeronautics commission, which shall prepare and periodically revise a plan for the development of airports in the state. Sections 51 to 51N authorize municipalities to acquire, establish, and operate airports and gives the airport commission of any city or town the power to adopt rules and regulations on the use of municipal airports.
Michigan	Mich. Comp. Laws Ann. § 259.101 to 259.107– Acquisition and Operation of State Airports; § 259.108 to 259.125c–Acquisition and Operation of Airports, Landing Fields, and Other Aeronautical Facilities by Public Airport Authorities; § 259.126 to 259.136–Acquisition and	Sections 259.101 through 259.136 govern the operation of airports by the state, by airport authorities, and by counties, cities, and municipalities. Airport authorities can be created by any local government that owns an airport. Any au-

State	Statutes	Summary
	<p>Operation of Airports, Landing Fields and Other Aeronautical Facilities by Political Subdivisions of This State; § 259.431 to 259.465–Airport Zoning.</p>	<p>thority created is to be governed by a 7-member board. Sections 259.126 through 259.136 govern the operation of airports by a political subdivision and give every political subdivision in the state the authority to acquire land for the establishment, construction, or enlargement of airports. The subdivision may acquire bonds but has to submit a request to voters through a regular or special election. Sections 259.431 through 259.465 govern airport zoning and allow any political subdivision where an airport hazard is partially or wholly located to adopt, administer, and enforce airport zoning regulations.</p>
<p>Minnesota</p>	<p>Minn. Stat. Ann. § 360.031 to 360.044–Establishing Airports;                      § 360.061 to 360.074–Airport Zoning;                      § 360.68 to 360.73–Jointly Owned Airports</p>	<p>Sections 360.031 to 360.044 allow any municipality to acquire property to establish, construct, operate, and regulate such airports. Bonds can be issued by a municipality for airport costs, and an election to approve the bonds is not required in certain situations. Sections 360.061 to 360.074 govern airport zoning. Municipalities that have an airport may adopt, administer, and enforce airport zoning regulations. Sections 360.68 to 360.73 govern airports that are jointly owned by two municipalities. It imposes additional requirements of revenue certificate funds so that the airport debt does not constitute an indebtedness of the issuing city or county.</p>
<p>Mississippi</p>	<p>Miss. Code Ann. § 61-3-1 to 61-3-85–Airport Authorities Law;                      § 61-5-1 to 61-5-49–Municipal Airport Law;                      § 61-7-1 to 61-7-29–Airport Zoning Law.</p>	<p>Chapter 3 sets out how airport authorities can be established and the powers of an airport authority. Airport authorities can issue bonds and incur debt for any corporate purpose with the approval of three-fifths of all members of the governing body. Chapter 5 gives every municipality the authority to purchase, establish, and regulate airports, and to issue bonds for airport costs; Chapter 7 governs airport zoning and allows any political subdivision with an airport hazard to promulgate zoning regulations.</p>
<p>Missouri</p>	<p>Mo. Ann. Stat. § 305.170 to 305.585–Aircraft and Airports.                      Part 1–Airports;</p>	<p>Chapter 305, Part 1, governs airports generally. It gives cities (including towns, villages, or cities under special charter)</p>

State	Statutes	Summary
	Part 2–County Airport Authorities; Part 3–Airport Zoning Law.	and counties the authority to purchase, establish, operate, and regulate airports. Part 2 allows the governing body of any county to create and appoint a board to govern its airports and to issue bonds. Chapter 3 governs airport zoning.
Montana	Mont. Code Ann. § 67-10-102 to 67-10-904 - Municipal Airports; § 67-11-102 to 67-11-401–Airport Authorities.	Chapter 10 governs municipal airports—it allows counties, cities, and towns to acquire, establish, operate, and regulate airports. It allows the municipality to create a board to govern the airport. It also gives the municipality the power to adopt ordinances, resolution, and rules for the management, government or use of the airport. Chapter 11 governs airport authorities. It allows any municipality to create a municipal airport authority. Two or more municipalities may also create a regional airport authority.
Nebraska	Neb. Rev. Stat. Ann. § 3-201 to 3-244–Airports and Landing Fields; § 3-301 to 3-333–Airport Zoning; § 3-501 to 3-514–City Airport Authority; § 3-601 to 3-622–County Airport Authority; § 3-701 to 3-716–Joint Airport Authority.	Article 2 governs the authority of municipalities with regard to the establishment and operation of airports. Municipalities may adopt rules and regulations for the management and use of airports and may issue bonds to pay for airport expenses. Article 3 governs airport zoning and allows any political subdivision with an airport hazard area to adopt and enforce airport zoning regulations. Article 5 allows any city to create an airport authority to be managed and controlled by an appointed board. Article 6 allows counties to acquire property to establish airports. It also gives the governing body of any county the power to enforce rules and regulations that it made to govern the airport. It also allows any county to create an airport authority to be managed and controlled by an appointed board that shall have exclusive control over all airport facilities. Article 7 authorizes any political subdivision to agree to jointly own or operate an airport with any other municipality.
Nevada	Nev. Rev. Stat. Ann. § 494.010 to 494.160–State Airports; § 495.010 to 495.210–City and County Airports; Acquisition of Property;	Chapter 494 authorizes the state to establish and operate airports within the state. Chapter 495 authorizes any city, county, or municipality to acquire land to

State	Statutes	Summary
	<p>§ 496.010 to 496.290–Municipal Airports;                      § 497.010 to 497.270–Zoning.</p>	<p>establish or expand airports, and to incur indebtedness for airport purposes. Chapter 496 authorizes municipalities to construct, operate, and regulate airports. Municipalities may also adopt ordinances for airport management, government, and operation. Chapter 497 governs airport zoning.</p>
<p>New Hampshire</p>	<p>N.H. Rev. Stat. Ann. § 422:10 to 422:19–New Hampshire Aeronautics Act;                      § 423:1 to 423:11–Municipal Airports;                      § 424:1 to 424:10–Airport Zoning.</p>	<p>Chapter 422 authorizes the state and municipalities to acquire, construct, maintain, and operate airports. The approval of the department of transportation is required before the acquisition of an airport. Chapter 423 authorizes municipalities to construct, own, and manage airports. Chapter 424 governs airport zoning.</p>
<p>New Jersey</p>	<p>N.J. Stat. Ann. § 40:8-1 to 40:8-15–Airports;                      § 6:1-1 to 6:1-100–Regulation of Aerial Navigation.</p>	<p>Chapter 8 of Title 40 gives the governing body of any county or municipality, authority separately or jointly to acquire land for airport purposes, and allows them to maintain, operate, and regulate airports. Chapter 1 of Title 6 primarily governs the licensing of pilots and aircraft, but it also requires all airports to be licensed by the state aviation commission. It also includes provisions governing airport zoning.</p>
<p>New Mexico</p>	<p>N.M. Stat. Ann. § 64-1-11 to 64-1-19–Aviation Generally;                      § 64-2-1 to 64-2-2–Airports.                      § 3-39-1 to 3-39-27–Municipal Airports.</p>	<p>Article 1 creates an aviation division of the department of transportation and an aviation fund for state aviation needs. Article 2 allows political subdivisions to create joint zoning boards to govern airport zoning decisions. Article 39 of Chapter 3 enables municipalities to acquire and operate airports through their governing bodies. It allows municipalities to issue bonds for airport purposes. It also allows municipalities to adopt zoning regulations</p>
<p>New York</p>	<p>N.Y. Gen. Mun. Law § 350 to 357–Airports and Landing Fields;                      N.Y. Unconsol. Law § 6631 to 6647–Air Terminals.</p>	<p>Article 14 of Chapter 24 (sections 350 to 357) authorizes a city, county, village, or town, by resolution, to construct, maintain, and operate airports. Chapter 6 of Title 17 (sections 6631 to 6647) declares that the states of New York and New Jersey agree that each air terminal within the Port of New York district is to</p>

State	Statutes	Summary
		<p>serve the entire district and that both states shall encourage the integration of the air terminals. Bonds may be issued for airport expenses and the Port Authority's general revenue fund may be pledged as security for bonds or used to repay bonds.</p>
<p>North Carolina</p>	<p>N.C. Gen Stat. § 63-1 to 63-9—Municipal Airports; § 63-29 to 63-37.1—Model Airport Zoning Act; § 63-48 to 63-58—Public Airports and Related Facilities; § 63-65 to 63-73—State and Federal Aid; Authority of Department of Transportation; § 63-78 to 63-89—North Carolina Special Airport Districts Act.</p>	<p>Article 1 (sections 63-1 to 63-9) governs municipal airports. It authorizes cities, towns, and counties to establish and operate airports. Article 4 (sections 63-29 to 63-37) governs airport zoning and authorizes every political subdivision to adopt, administer, and enforce airport zoning regulations. Article 6 (section 63-48 to 63-58) authorizes every municipality to acquire property for the purpose of establishing, constructing, and enlarging airports. It also grants specific powers to municipalities operating airports and allows joint operation of airports by multiple municipalities. Article 7 (sections 63-65 to 63-73) authorizes the department of transportation to give state aid to airports and defines the types of aid that can be given. Article 8 (sections 63-78 to 63-89) authorizes any unit of local government to create an airport district and defines the general powers of the authority.</p>
<p>North Dakota</p>	<p>N.D. Cent. Code § 2-02-01 to 2-02-09—Airports and Landing Fields; § 2-04-01 to 2-04-14—Airport Zoning; § 2-06-01 to 2-06-23—Airport Authorities Act.</p>	<p>Chapter 2-02 authorizes the North Dakota Aeronautics Commission and all counties, cities, park districts, and townships to acquire, establish, and operate airports and sets out the standards to do so. Chapter 2-04 governs airport zoning and authorizes all political subdivisions with an airport to adopt, administer, and enforce airport zoning regulations. Chapter 2-06 states that the aeronautics commission shall have all the powers of an airport authority (except the power to issue bonds or to levy taxes). It also authorizes any municipality to create a municipal airport authority and sets out the general powers of the authority. It also allows the authority to borrow and issue bonds for any of its corporate purposes.</p>

State	Statutes	Summary
Ohio	Ohio Rev. Code Ann. § 308.01 to 308.17–Airport Authorities; § 4561.01 to 4561.10–Aeronautics; § 4563.01 to 4563.99–Airports.	Chapter 308 creates a regional airport authority for the purposes of acquiring, constructing, operating, and maintaining airports. It sets out the authority's basic powers, including the ability to issue bonds for airport purposes. Chapter 4561 creates the office of aviation within the department of transportation and authorizes the department of transportation to develop rules and regulation for the administration of aviation. Chapter 4563 governs airport zoning. It sets out airport zoning provisions and creates airport zoning boards, an airport zoning commission, and an airport zoning board of appeals and allows the board to adopt, administer and enforce zoning regulations.
Oklahoma	Okla. Stat. Ann. tit. 3, § 61 to 62–Municipal Airports; § 65.1 to 65.22–Municipal Airports Act of 1947; § 81 to 93–Oklahoma Aeronautics Commission Act; § 100 to 116–Airport zoning.	Sections 61 and 62 authorize municipalities to acquire, own, and operate airports, to use their eminent domain power to acquire land for airports, and to issue bonds to pay for airport expenses. Sections 65.1 through 65.22 expand upon the authorization of section 61 and 62. Municipalities are authorized to acquire, own, operate, and regulate airports. They may issue bonds and may enter into joint agreements with other municipalities to govern airports. Sections 81 to 93 create the Aeronautics Commission, which will be a separate agency from the department of transportation. It is directed to encourage, foster, and assist in the development of aeronautics and encourage the establishment of airports. The general powers and duties of the commission are also set out. Sections 100 to 116 govern airport zoning.
Oregon	Or. Rev. Stat. Ann. § 835.005 to 835.210–Aviation Administration; § 836.005 to 836.642–Airports and Landing Fields; § 838.005 to 838.075–Airport Districts.	Chapter 835 establishes and sets out the general mandates and powers for the state aviation board and the department of aviation. Chapter 836 allows state financial assistance for airport development. It also gives municipalities the authority to establish and operate airports. It allows the director of the department of aviation to adopt rules and standards to regulate airports, and local

State	Statutes	Summary
		governments to regulate airports and airport zoning. Chapter 838 allows counties and cities to establish airport authorities.
Pennsylvania	Pa. Cons. Stat. Ann. § 1500 to 1502–Public Airports and Facilities; § 5101 to 5103–Aviation–Preliminary Provisions; § 5301 to 5302–Aviation–Authority of Department of Aviation; § 5901 to 5920–Airport Operation and Zoning; § 6101 to 6169–Aviation Development.	Chapter 5 (sections 1500 to 1502) authorizes towns to acquire land for the purpose of establishing municipal airports. Chapter 51 (sections 5101 to 5103) sets out the definitions for the Aviation Code. Chapter 53 (sections 5301 to 5302) grants the department of transportation the power to administer aviation and sets out its specific powers. Chapter 59 (sections 5901 to 5920) governs airport zoning. Chapter 61 (sections 6101 to 6169) directs the department of transportation to promulgate rules and regulations to regulate aviation and airports. It also includes provisions governing taxes, aviation development loans, and bonds.
Rhode Island	R.I. Gen. Laws § 1-2-1 to 1-2-21–Airports and Landing Fields; § 1-3-1 to 1-3-33–Airport Zoning.	Chapter 2 gives the Rhode Island Airport Corporation the power to acquire land for the establishment of airports (with the approval of the governor), and gives it jurisdiction over state airports. It authorizes the department of transportation to enter into contracts to develop, operate, and maintain any state airport. Chapter 3 governs airport zoning.
South Carolina	S.C. Code Ann. § 55-9-10–Uniform Airports Act; § 55-11-10 to 55-11-730–Particular Airports; § 55-13-10 to 55-13-40–Protection of Airports and Airport Property; § 55-17-10 to 55-17-30–Regional Airport Districts.	Chapter 9 authorizes municipalities, counties, and other political subdivisions to acquire, establish, operate, and regulate airports. Chapter 11 sets out specific provisions governing Clemson University, Greenville and Spartanburg Counties, Lexington and Richland Counties, the State Funding of Air Carrier Hub Terminal Facilities, and Florence, Marion, and Dillon Counties. Chapter 13 authorizes any county where there is an USAF base or airfield to make rules and regulations prohibiting certain buildings and land uses. It also prohibits trespassing, parking, driving, or drag racing on airport property without authority. Chapter 17 creates regional airport districts and allows the districts to issue general obligation bonds.

State	Statutes	Summary
South Dakota	<p>S.D. Codified Laws § 50-2-1.1 to 50-2-30—Aeronautics Commission;                      § 50-4-1 to 50-4-17—Planning and Development of Aviation Facilities;                      § 50-5-1 to 50-5-10—Certified Airports, Schools, and Navigation Facilities;                      § 50-6-1 to 50-6-17—City Airport Boards;                      § 50-6A-1 to 50-6A-55—Regional Airport Authorities;                      § 50-7-1 to 50-7-19—Publicly Owned Airports;                      § 50-8-1 to 50-8-13—Airport Revenue Bonds;                      § 50-10-1 to 50-10-35—Airport Zoning.</p>	<p>Chapter 50-2 directs that the aeronautics commission will be part of the department of transportation and that the commission may adopt rules. Chapter 50-4 sets out the duties and powers of the transportation commission with regard to aviation. Chapter 50-5 requires a public airport owner or operator to apply to the Aeronautics Commission for approval prior to use of the airport and sets out the process for approval, denial, and penalties for operating a public airport without commission approval. Chapter 50-6 gives municipalities the authority to create an airport board and authorizes the board to establish, regulate, and manage any municipal airport. Chapter 50-6A authorizes two or more political subdivisions to create a regional airport authority and directs them to appoint an airport authority board of commissioners. Authorities may plan, establish, acquire, operate, and regulate airports and may establish comprehensive airport zoning regulations. Authorities also have the power to issue bonds for airport expenses and to adopt, amend, and repeal rules and regulations for the management, government, and use of a regional airport. Chapter 50-7 authorizes counties and municipalities to acquire, establish, operate, and regulate public airports. Chapter 50-8 authorizes any municipality or county that owns or operates an approved public airport to issue bonds to pay for airport expenses. Chapter 50-10 governs airport zoning.</p>
Tennessee	<p>Tenn. Code Ann. § 42-2-101 to 42-2-227—Aeronautics—State Administration;                      § 42-3-101 to 42-3-205—Airport Authorities;                      § 42-4-101 to 42-4-117—Metropolitan Airport Authorities;                      § 42-5-101 to 42-5-204—County and Municipal Airport Authorities;                      42-6-101 to 42-6-116—Airport Zoning.</p>	<p>Chapter 2 gives the department of transportation the authority to administer aviation and to establish and operate state airports. Chapter 3 authorizes all municipalities to create a municipal airport authority. Two or more municipalities may also jointly create a regional airport authority. It sets forth the authorities' general powers and duties and gives the authorities the power to borrow money and issue bonds. Chapter 4 authorizes any city with a population of more than 100,000 to create a metropolitan airport authority and sets out its general duties and authority.</p>

State	Statutes	Summary
		<p>Chapter 5 authorizes every municipality, separately or jointly, to acquire, establish, operate, and regulate airports. Chapter 6 governs airport zoning.</p>
Texas	<p>Tex. Transp. Code Ann. § 21.001 to 21.157–Administration of Aeronautics;                      § 22.001 to 22.901–County and Municipal Airports;                      § 241.001 to 241.903–Airport Zoning Act.</p>	<p>Chapter 21 sets out the powers and duties of the aviation division of the department of transportation to administer aeronautics. Chapter 22 authorizes any local government to plan, establish, operate, and regulate an airport, and to finance airport facilities either wholly or partially through the issuance of bonds and through taxation. Chapter 241 governs airport zoning.</p>
Utah	<p>Utah Code Ann. § 72-10-201 to 72-10-214–Uniform Airports Act;                      § 72-10-301 to 72-10-309–Federal Airports Funds Act;                      § 72-10-401 to 72-10-415–Airport Zoning Act.</p>	<p>Chapter 10, Part 2 authorizes the division of aviation to cooperate with counties and municipalities and the federal government to develop and construct airports. It also authorizes the department of transportation and political subdivisions to acquire, establish, maintain, and operate airports. Part 3 sets out the duties of the division of aviation with regard to airport funding. Part 4 governs airport zoning.</p>
Vermont	<p>Vt. Stat. Ann. tit. 5, § 601 to 809–Airports and Air Navigation Facilities;                      § 1001 to 1020–Airport Zoning.</p>	<p>Chapter 15 (sections 601 to 809) governs state and municipal airports. It allows municipalities to acquire, establish, and operate airports and authorizes the state to grant aid to municipalities for land acquisition and the development of airport facilities. It also authorizes the state to acquire, own, and operate airports through the secretary of transportation. Chapter 17 (section 1001 to 1020) governs airport zoning.</p>
Virginia	<p>Va. Code Ann. § 5.1-1 to 5.1-12–Aircraft, Airmen and Airports Generally;                      § 5.1-30.1 to 5.1-30.10–Virginia Airports Revolving Fund;                      § 5.1-31 to 5.1-47–Municipal and County Airports and Other Air Navigation Facilities;                      § 5.1-88.7 to 5.1-88.10–Financial Responsibility of Owners of Airports and Landing Areas Required to be Licensed;                      § 15.2-2294–Airport safety zoning.</p>	<p>Chapter 1 (section 5.1-1 to 5.1-12) sets out the general powers of the department of transportation when establishing and regulating airports. It creates the Virginia Aviation Board as a political subdivision within the department of transportation and sets forth the powers and duties of the board. Chapter 2.1 (section 5.1-30.1 to 5.1-30.10) creates the Virginia Airports Revolving Fund to manage</p>

State	Statutes	Summary
		<p>funds and costs related to airport expenses. Chapter 3 (sections 5.1-31 to 5.1-47) gives cities, towns, and counties the authority to acquire, establish, operate, and regulate airports and governs how airports and airport costs should be regulated. Chapter 8.2 (sections 5.1-88.7 to 5.1-88.10) requires all airports to furnish proof of financial responsibility before they can be licensed by the department of transportation. Section 15.2-2294 requires every municipality containing a licensed airport to provide for the regulation of airport zoning.</p>
<p>Washington</p>	<p>Wash. Rev. Code § 14.07.010 to 14.07.040–Municipal Airports–1941 Act;                      § 14.08.010 to 14.08.370–Municipal Airports–1945 Act;                      § 14.12.010 to 14.12.910–Airport Zoning Act.</p>	<p>Chapter 14.07 authorizes any city, town, county, or port division to acquire, maintain, and operate airports. Chapter 14.08 sets forth the methods by which a municipality can acquire land and authorizes the issuance of bonds for airport expenses. It also describes the specific powers of municipalities operating airports and allows an airport operator to adopt and enforce regulations. The establishment of county airport districts is also authorized. Chapter 14.12 governs airport zoning.</p>
<p>West Virginia</p>	<p>W. Va. Code Ann. § 8-28-1 to 8-28-9–Intergovernmental Relations–Airports and Avigation;                      § 8-29-1 to 8-29-20–Intergovernmental Relations–Regional Airports;                      § 8-29A-1 to 8-29A-11–County Airport Authorities; § 8-29B-1 to 8-29B-6–Airport Security.</p>	<p>Article 28 authorizes any municipality or county, separately or jointly, to acquire, establish, and operate airports. Chapter 29 allows two or more municipalities or counties to establish regional airport authorities, which are empowered to acquire, establish, and operate a regional airport. The general powers of authorities are also set out, and the authorities are permitted to incur indebtedness and issue bonds. Chapter 29A authorizes counties to create and establish airport authorities as public agencies, and sets out the general powers of the authorities. Chapter 29B governs airport security.</p>
<p>Wisconsin</p>	<p>Wis. Stat. Ann. § 114.001 to 114.375–Air Transportation;                      § 114.60 to 114.78–Wisconsin Aerospace Authority.</p>	<p>Chapter 114, subchapter 1 (sections 114.001 to 114.375) governs aviation generally. It directs the department of transportation to create a state system of airports to meet the aeronautical needs of the state. Political subdivisions of the</p>

State	Statutes	Summary
		<p>state are authorized to acquire, establish, and operate airports and adopt regulation for the use of airports. Subchapter II (sections 114.60 to 114.78) creates the Wisconsin Aerospace Authority and sets forth the powers and duties of the Authority.</p>
<p>Wyoming</p>	<p>Wyo. Stat. Ann. § 10-1-101–Aeronautics, In General, Definitions;                      § 10-3-101 to 10-3-602–Wyoming Aeronautics Commission;                      § 10-5-101 to 10-5-302–Municipal and County Airports.</p>	<p>Chapter 1, section 101 sets out the definitions used in the airport governance statutes. Chapter 3 creates the Wyoming Aeronautics Commission and sets out the powers and duties of the Commission. Chapter 5 authorizes municipalities and counties to acquire, establish, and operate airports and to adopt and enforce regulations governing airports. It also allows for the creation of an airport board and authorizes municipalities and counties to regulate airport zoning.</p>

## APPENDIX C. INDEX OF FEDERAL AND STATE CASE LAW ON AIRPORT GOVERNANCE

*A & E Parking v. Detroit Metro. Wayne County Airport Auth.*, 271 Mich. App. 641, 723 N.W.2d 223 (2006) (holding that commercial access fees were legal taxes and were not in violation of the airport authority's own regulations).

*In re Advisory Opinion to the Governor (R.I. Airport Corp.)*, 627 A.2d 1246 (R.I. 1993) (holding the DOT had authority to lease and transfer airport property to the airport authority, and to delegate operational, managerial, and regulatory power to the airport authority).

*Aircraft Owners & Pilots Ass'n v. Hinson*, 102 F.3d 1421 (7th Cir. 1996) (finding that federal law did not require the FAA to force the city to acquire the leased airport property and continue operation of Miegs Field).

*Air Transport Ass'n of Am. v. U.S. Dept. of Transp. ("DOT")*, 119 F.3d 38, 326 U.S. App. 239 (D.C. Cir. 1997, amended by 129 F.3d 625 (D.C. Cir. 1997), vacating in part FAA Policy Regarding Airport Rates and Charges, 61 Fed. Reg. 31,994 (1996).

*Am. Airlines v. DOT.*, 202 F.3d 788 (5th Cir. 2000) (holding the DOT was reasonable in concluding that the Airline Deregulation Act preempted a city ordinance restricting airline passenger service routes because the restrictions did not fall within the city's proprietary powers, and that requiring commuter planes to stop in the state when providing through service did not violate the prohibition on interstate service from the airport).

*Anderson v. Jackson Mun. Airport Auth.*, 419 So. 2d 1010 (Miss. 1982) (finding airport authority did not have the same immunity as counties and cities for the operation of an airport, by legislative design).

*Aviation Servs., Inc. v. Bd. of Adjustment of the Twp. of Hanover*, 20 N.J. 275, 119 A.2d 761 (1956) (finding township's zoning ordinance inapplicable to the airport, even though municipality's airport was located within the boundaries of the township).

*Bailey v. Evansville-Vanderburgh Airport Auth. Dist.*, 240 Ind. 401, 166 N.E.2d 520 (1960) (holding that statute authorizing creation of airport authority was not a local or special act merely because it only applied to one city at the time of its enactment, that creation of airport authority was not an unconstitutional delegation of power, and that city need not include debts of airport authority when determining whether it has exceeded the municipal debt limitation).

*Berry v. Milliken*, 234 S.C. 518, 109 S.E.2d 354 (1959) (determining that legislature could create a special purpose district for the purpose of establishing and maintaining a public airport).

*Biddle v. BAA Indianapolis, L.L.C.*, 860 N.E.2d 570 (Ind. 2007) (finding that airport authority's promises, made at public meeting to airport neighbors, were enforceable against the authority, but were narrowly tailored to the operation of the authority's land use programs and therefore did not apply to the settlement of any future litigation).

*Birkett v. City of Chicago*, 202 Ill. 2d 36, 779 N.E.2d 875 (Ill. 2002) (holding that city's planned airport terminal and ground transportation improvements did not require Illinois DOT approval, where improvements would not materially alter runways or interfere with aircraft approach).

*Bd. of County Comm'rs v. Fixed Base Operators, Inc.*, 939 P.2d 464 (Colo. Ct. App. 1997) (discussing county's exercise of its reserved right to further develop the commercial passenger operations and airport facilities as not inconsistent with its lease agreement with commercial airport terminal operator).

*British Airways Bd. v. Port Auth. of N.Y. & N.J.*, 558 F.2d 75 (2d Cir. 1977) (recognizing an airport proprietor's authority under the "proprietor's exception" to establish reasonable restrictions on the operation of particular types of aircraft, in the interest of reducing noise).

*Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360 (9th Cir. 1998), *cert. denied*, 525 U.S. 873 (1998) (holding that airport authority, as political subdivision of State of California, lacked standing under federal law to challenge constitutionality of state statute).

*Burbank-Glendale-Pasadena Airport Auth. v. Hensler*, 83 Cal. App. 4th 556, 99 Cal. Rptr. 2d 729 (2000) (holding that cities could delegate their eminent domain powers to airport authority, in order for authority to expand airport).

*Burchfiel v. Gatlinburg Airport Auth.*, No. E2005-02023-COA-R3-6V, 2006 Tenn. App. LEXIS 747, 2006 WL 3421282 (Nov. 28, 2006) (finding that airport authority was not immune from nuisance suit where the claimants sought injunctive relief instead of damages).

*Burnham v. Mayor & Aldermen of Beverly*, 309 Mass. 388, 35 N.E.2d 242 (1941) (holding that statutes authorizing the expenditure of municipal funds for the establishment of airports were valid as legislative sanctions of such activity and as serving a public purpose, and therefore city's acquisition of property for airport was a proper exercise of eminent domain).

*Capital Region Airport Auth. v. Charter Township of DeWitt*, 236 Mich. App. 576, 601 N.W.2d 141 (1999) (finding airport authority exempt from local land use regulation for aeronautical uses, but not for authority's proposed development of airport lands for nonaeronautical uses).

*Christensen v. Carson*, 533 N.W.2d 712 (S.D. 1995), (regarding a citizen petition to delay activities related to the acquisition, establishment, and construction of a new airport facility).

*City of Burbank v. Burbank-Glendale-Pasadena Airport Auth.*, 113 Cal. App. 4th 465, 6 Cal. Rptr. 3d 367 (2003) (finding invalid a voter-approved initiative imposing numerous restrictions and conditions on airport development because it addressed a matter of statewide, instead of local, concern, and because it exclusively delegated power over airport expansion to city or county boards).

*City of Burbank v. Burbank-Glendale-Pasadena Airport Auth.*, 72 Cal. App. 4th 366, 85 Cal. Rptr. 2d 28 (1999) (finding invalid a voter-approved initiative imposing numerous restrictions and conditions on airport development).

*City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624, 93 S. Ct. 1854, 36 L. Ed. 2d 547 (1973) (holding that a local government that is not the airport proprietor is expressly preempted from restricting aircraft operations through the exercise of its police power).

*City of Chicago v. Vill. of Elk Grove*, 354 Ill. App. 3d 423, 820 N.E.2d 1158 (2004) (holding that village ordinance was invalid with regards to its regulation on the disconnection of property for airport use).

*City of Dallas v. Sw. Airlines Co.*, 371 F. Supp. 1015 (D.C. Tex. 1973) (finding invalid the exclusion and transfer of intrastate carrier from city airport).

*City of Geneva v. Du Page Airport Auth.*, 193 Ill. App. 3d 613, 550 N.E.2d 261 (1990) (holding that special legislative treatment of one of four reliever airports did not violate equal protection and that runway extension project did not require approval from village where land was located entirely within the county).

*City of Heath v. Licking County Reg. Airport Auth.*, 16 Ohio Misc. 69, 237 N.E.2d 173 (1967) (finding city zoning ordinance regarding commercial aviation fields did not prevent county regional airport authority from enlarging airport within city boundaries).

*City of Irving v. Dallas/Fort Worth Int'l Airport Bd.*, 894 S.W.2d 456 (Tex. App. 1995) (holding the legislature was not irrational in concluding that jointly-operated airports are regional in nature and thus more susceptible to local conflicts).

*City of Reno v. County of Washoe*, 94 Nev. 327, 580 P.2d 460 (1978) (holding that legislative act transferring ownership and administration of airport to county airport authority, instead of to city, was not an unconstitutional taking of property).

*In re City of Rochester*, 530 N.E.2d 202, 72 N.Y.2d 338 (1988) (holding, as a matter of public interest, that airport expansion with accessory uses was not subject to city site plan approval requirements when county owned and operated the airport).

*City of St. Louis v. City of Bridgeton*, 705 S.W.2d 524 (Mo. Ct. App. E.D. 1985) (finding that parking lot, owned and operated by airport owner in connection with international airport but located within neighboring municipality, was exempt from local zoning regulations because it served a statewide public purpose).

*City of Wichita v. Clapp*, 263 P.12 (Kan. 1928) (determining that airport was legitimate use of public park).

*City of York v. York County Bd. of Equalization*, 266 Neb. 297, 664 N.W.2d 445 (2003) (holding that city's lease of airport land to agricultural user was incidental to the land's purpose as a buffer zone for the airport, and therefore leased property was exempt from taxation).

*Clayton County Airport Auth. v. State*, 265 Ga. 24, 453 S.E.2d 8 (1995) (finding that county could pledge its airport revenue to the airport authority as part of an intergovernmental contract for consideration of payment of the airport bonds).

*Coleman v. Windham Aviation, Inc.*, No. KC 2004-0985, 2006 R. I. Super. LEXIS 143, 2006 WL 3004071 (R.I. Super. Ct. Oct. 19, 2006) (holding that a corporate subsidiary of the port authority was a state agency, and its power to "sue and be sued" did not waive the public duty doctrine or place the corporation outside the state Tort Claims Act, but that the corporation was not entitled to immunity under the public duty doctrine nor subject to the tort damages cap because its operation of the airport was proprietary and not governmental).

*Commonwealth v. Susquehanna Reg'l Airport Auth.*, 423 F. Supp. 2d 472 (M.D. Pa. 2006) (holding that airport authority could exercise eminent domain powers, even when such exercise may have anticompetitive effects, and further that airport authority was immune from federal antitrust laws under the state action doctrine).

*Concordia-Arrow Flying Serv. Corp. v. City of Concordia*, 131 Kan. 247, 289 P. 955 (1930) (holding that the city lacked authority to sublet the airport authority for purely managerial purpose).

*Du Page Aviation Corp. v. Du Page Aviation Auth.*, 229 Ill. App. 3d 793, 594 N.E.2d 1334, 1339-40 (1992) (holding that municipal airport authority was immune from antitrust liability action).

*Du Page County Airport Auth. v. Dep't of Revenue*, 358 Ill. App. 3d 476, 831 N.E.2d 30 (2005) (holding that airport properties leased to third parties for proprietary purposes, unrelated to purpose of airport authority, were not exempt from taxation).

*Dysart v. St. Louis*, 321 Mo. 514, 11 S.W.2d 1045 (1928) (holding that airport was legitimate purpose for use of bonding and taxing authority, where statute authorized municipalities to establish airports).

*Falco Lime, Inc. v. Mayor & Aldermen of Vicksburg*, 836 So. 2d 711 (Miss. 2002) (holding that city airport owner could close airport when it had not previously dedicated the land solely for public airport use, and that city could enter into a joint operating agreement without forming a separate airport authority).

*Faux-Burhans v. County Comm'rs of Frederick County*, 674 F. Supp. 1172 (D. Md. 1987) (holding that federal law did not preempt application of county zoning ordinances regarding operation of private airfield, and did not amount to an unconstitutional taking of property requiring just compensation).

*Fed. Firefighters Ass'n, Local 1 v. United States ("Fed. Firefighters Ass'n I")*, 723 F. Supp. 821 (D.D.C. 1989) (finding that lease to transfer airport operation from the FAA to the local airport authority included a continuation of the rights and restrictions of the existing collective bargaining agreements).

*Fed. Firefighters Ass'n, Local 1 v. United States ("Fed. Firefighters Ass'n II")*, 723 F. Supp. 825 (D.D.C. 1989), (finding that, following transfer of airport operations from the FAA to airport authority, terms of transfer required airport authority to provide comparable terms in its promulgated labor code to the one that existed prior to the transfer of operation).

*Fine Airport Parking, Inc. v. City of Tulsa*, 2003 OK 27, 71 P.3d 5, 12 (Okla. 2003) (holding that municipality was immune from antitrust action regarding its operation of an airport, even though it engaged in certain anti-competitive behaviors).

*Gaines v. Huntsville-Madison County Airport Auth.*, 581 So. 2d 444 (Ala. 1991) (holding that statute granting sovereign immunity against tort actions to only larger, but not smaller, airport authorities violated equal protection).

*Gen. Aviation, Inc. v. Capital Reg. Airport Auth.*, 224 Mich. App. 710, 569 N.W.2d 883, 884 (1997) (finding airport authority was immune from tort action because it performed a governmental, rather than a proprietary, function through its operation of an airport).

*Gibbs v. Gordon*, 138 Fla. 312, 189 So. 437 (1939) (discussing assumption that airports serve public, rather than private, purposes).

*Goswick v. City of Durham*, 211 N.C. 687, 191 S.E. 728 (1937) (holding that city could use taxpayer funds to purchase and maintain land for municipal airport without prior voter approval).

*Gray v. Virginia Sec'y of Transp.*, 276 Va. 93, 662 S.E.2d 66 (2008) (finding the commonwealth could delegate to airport commission the authority to supervise a public airport toll road, where commonwealth had waived its sovereign immunity through certain self-executing constitutional provisions).

*Greening v. Bartholf*, 388 Ill. 445, 58 N.E.2d 172 (1944) (discussing assumption that airports serve public, rather than private, purposes, and holding that municipality may confer certain powers upon airport authority, such as the powers to assess and collect taxes).

*Hanover Twp. v. Town of Morrison*, 4 N.J. Super. 22, 66 A.2d 187 (1979) (upholding municipality's right to establish airport outside its boundaries and holding that airport, by serving a public purpose, is not subject to taxation).

*Hechinger v. Metro. Wash. Airports Auth.*, 308 U.S. App. D.C. 283, 36 F.3d 97 (D.C. Cir. 1994), (holding that airport authority board of review was an agent of Congress rather than an independent entity, which exercised federal power in violation of the separation of powers).

*Hesse v. Rath*, 249 N. Y. 436, 164 N.E. 342 (1928) (finding municipal airport projects to be "governmental" or "public" with regards to public financing issues).

*Houston v. FAA*, 679 F.2d 1184 (5th Cir. 1982) (discussing an airport proprietor's authority to restrict or prohibit particular types of aircraft operations in the interest of addressing congestion).

*Krenwinkle v. City of Los Angeles*, 4 Cal. 2d 611, 51 P.2d 1098 (1935) (holding that airport was a public purpose).

*Lake v. Lake County*, 233 Mont. 126, 759 P.2d 161 (1988) (holding that formation of airport board did not preclude city's independent ability to exercise its eminent domain power for airport purposes).

*Lehigh v. Pittston Co.*, 456 A.2d 355 (Me. 1983) (finding that option agreement between city and private investor for sale of airport was void as against public policy, when the city had expressly dedicated the airport for the use and benefit of the public).

*Ludwig v. Learjet, Inc.*, 830 F. Supp. 995, 998 (E.D. Mich. 1993) (holding that city was immune from liability regarding its operation of an airport because such operation constituted a governmental, rather than a proprietary, function).

*Magee v. Mallett*, 178 Miss. 629, 174 So. 246 (1937) (holding that statute authorizing municipality to own and operate airports included authority to contract and pay for any engineering work necessary for airport construction).

*McClintock v. City of Roseburg*, 127 Ore. 698, 273 P. 331 (1929) (holding that airport was a public purpose).

*McLaughlin v. City of Chattanooga*, 180 Tenn. 638, 177 S.W.2d 823 (1944) (upholding municipality's right to establish airport outside its boundaries, including within an adjoining state, but finding this authority an exercise of the municipality's corporate or proprietary, rather than governmental, capacity, thereby preventing the municipality from exercising its power of eminent domain or police power, and disallowing its usual exemption from taxation).

*McMahon Helicopter Servs., Inc. v. United States*, No. 04-74133, 2006 WL 2130625, at \*8 (E.D. Mich. July 28, 2006) (discussing airport authority's liability regarding an aircraft accident).

*Meisel v. Tri-State Airport Auth.*, 135 W. Va. 528, 64 S.E.2d 32 (1951) (finding the newly created airport authority a public corporation, to which the legislature properly delegated the authority to issue revenue bonds).

*Metro. Wash. Airports Auth. v. Citizens for Abatement of Aircraft Noise*, 501 U.S. 252, 111 S. Ct. 2298, 115 L. Ed. 2d 236 (1991) (holding that congressional creation of a board of review for D.C. area airports, composed of congressmen with veto power over the local airport authority's decisions, violated the separation of powers).

*Mineta v. Bd. of County Comm'rs*, No. 05-CV-0297-CVE-PJC, 2006 WL 2711559 (N.D. Okla. 2006) (holding that: 1) the FAA has authority to ensure that local airport authorities properly spend federal funds, and therefore the FAA has the right to claim its proportionate share of funds from the sale of airport property if the property will no longer be used for airport purposes; 2) the FAA may intervene where the airport authority has leased and later transferred airport property without prior approval; and 3) the FAA may sue the county, as a co-signor to the airport grant agreement, for the violations of the agreement by the airport trust).

*Monaghan v. Armatage*, 218 Minn. 108, 15 N.W.2d 241 (1944) (Minnesota Airports Commission) (holding that act creating airport authority was not invalid special legislation, and that legislative transfer of airport management from municipality to airport authority did not result in a taking because the airport is public property).

*Monterey Peninsula Airport Dist. v. Mason*, 19 Cal. 2d 446, 121 P.2d 727 (1942) (finding that creation of airport district was not special legislation).

*Nat'l Helicopter Corp. v. City of N.Y.*, 137 F.3d 81 (2d Cir. 1998) (holding that city could impose curfew on airport facility operations, under the proprietor exception to federal preemption of aircraft and airspace regulation, but could not impose conditions restricting certain helicopter sightseeing routes).

*Nolte v. Paris Air, Inc.*, 975 So. 2d 627 (Fla. Dist. Ct. App. 2008) (finding that municipal airport property was exempt from county taxation because lessee-fixed base operators provided goods and services to the general public, serving a municipal, governmental, or public purpose).

*Nicoletti v. Alagheny County Airport Auth.*, 841 A.2d 156 (Pa. Cmwlth. 2004) (holding the county was a necessary party to airport authority's condemnation action against owner of mineral interests in airport land, where county expressly and specifically retained a reversionary interest in all property leased to airport authority).

*Oxley v. Tulsa Airport Auth.*, 1989 OK 166, 794 P.2d 742 (Okla. 1989) (holding that airport authority's plan to acquire property, as demonstrated by purchase offer and airport noise compatibility and land use study, did not rise to the level of a de facto taking).

*People ex rel. Greening v. Bartholf*, 388 Ill. 445, 58 N.E.2d 172 (Ill. 1944) (holding that airports generally serve public, rather than private, purposes).

*Piroli v. City of Clearwater*, 711 F.2d 1006 (11th Cir. 1983) (finding that federal law preempted the state from using its regulatory authority to compel restrictions on aircraft operations by airport proprietor).

*Ragsdale v. Hargraves*, 198 Ark. 614, 129 S.W.2d 967 (1939) (holding that two cities could jointly finance and develop airport, and own the airport property as tenants in common).

*Reid v. City of Fulton*, 181 Misc. 711, 47 N.Y.S.2d 185 (N.Y. Sup. 1944) (holding that city could not acquire property for a public airport and then lease the property for private purposes for a term of 10 years, that city

had no proprietary rights in the airport distinct from the public purpose, and that city could not appropriate airport for nonpublic use absent statutory authority).

*Richmond, Fredericksburg & Potomac Rail Co. v. Metro. Wash. Airports Auth.*, 251 Va. 201, 468 S.E.2d 90 (1996), (determining that airport authority's actions regarding the potential acquisition of property, or land use and aviation easement over property, did not constitute a taking requiring just compensation).

*St. Lucie County v. Town of St. Lucie Vill.*, 603 So. 2d 1289 (Fla. Dist. Ct. App. 1992) (finding valid the joint participation agreements between the airport authority and the DOT, and holding that town and individuals did not have standing to enjoin county and airport authority from expanding airport).

*San Diego Unified Port Dist. v. Gianturco*, 651 F.2d 1306 (9th Cir. 1981), (holding that federal law preempted the state from restricting aircraft operations through flight curfews in the interest of reducing noise).

*Schmoldt v. Okla. City*, 144 Okla. 208, 291 P. 119 (1930) (determining that airport was legitimate use of public park because it served a public purpose).

*Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238 (Fla. 2001) (holding that property leased by airport authority to private, proprietary party was not exempt from ad valorem taxation because the lessee's use of the property did not constitute a predominantly public purpose).

*Shell Oil Co. v. Bd. of Adjustment of the Twp. of Hanover*, 38 N.J. 403, 185 A.2d 201 (1962) (holding that proposed use of portion of municipal airport property for gasoline service station was not incidental or necessary for maintenance and operation of airport, and therefore was subject to township zoning ordinances).

*Sing v. City of Charlotte*, 213 N.C. 60, 195 S.E. 271 (1938) (finding the expenditure of funds for the operation, maintenance, and improvement of a municipally-owned airport was not a necessary expense of the city, and therefore the city could not appropriate and levy taxes for the airport without a vote by the people).

*Skydiving Ctr. of Greater Wash., D.C., Inc., v. St. Mary's County Airport Comm'n*, 823 F. Supp. 1273 (D. Md. 1993) (holding that county airport commission was not an executive agency covered by the state Administrative Procedures Act, volunteer commission members still had duty not to violate federal constitutional rights, and federal law preempted state law regarding whether skydiving activities were compatible with airport activity).

*S. Airways Co. v. De Kalb County*, 102 Ga. App. 850, 118 S.E.2d 234 (1960) (holding that county owner of airport could contract with private party for operation of airport).

*Spencer v. Greenwood / Leflore Airport Auth.*, 834 So. 2d 707 (Miss. 2003) (finding airport authority did not have the same immunity as counties and cities for the operation of an airport, by legislative design).

*State v. City of Coffeyville*, 127 Kan. 663, 274 P. 258 (1929) (holding that, although cities had general statutory authority to establish and operate airports, cities could not sublet the airport to a private entity in the absence of a specific statutory grant of such authority).

*State ex rel. Gibbs v. Gordon*, 138 Fla. 312, 189 So. 437 (1939) (holding that airports serve public, rather than private, purposes).

*State ex rel. Hile v. City of Cleveland*, 26 Ohio App. 265, 160 N.E. 241 (1927) (holding that airports serve a public purpose and therefore city could issue bonds without voter approval to finance the purchase of land for an airport, and that activity fit the definition of a public utility such that a statute allowing cities to purchase land and construct public utilities outside their boundaries applied to the acquisition and construction of the airport).

*State ex rel. McElroy v. Baron*, 169 Ohio St. 439, 160 N.E.2d 10 (1959) (determining that legislative act providing for the creation of airport authority and the building of port facilities was not an illegal delegation of legislative power).

*Town of Morristown v. Twp. of Hanover*, 168 N.J. Super. 292, 402 A.2d 983 (1979) (holding that airport, located in township but owned and maintained by town, was immune from township zoning regulations restricting the use and operations of the airport).

*Tri-County Pub. Auth. v. Bd. of County Comm'rs of Morris County*, 245 Kan. 301, 777 P.2d 843 (1989) (determining that portions of airport property were subject to taxation because the airport authority leased the property to private entities for commercial, revenue-generating purposes).

*Walker Field Pub. Airport Auth. v. Adams*, 606 F.2d 290 (10th Cir. 1979) (finding a delay in the reimbursement of federal funds to the airport authority could serve as a basis for damages under breach of contract, and the federal government could require the city and county to join as cosponsors for an airport authority program).

*Wayne County Bd. of Comm'rs v. Wayne County Airport Auth.*, 253 Mich. App. 144, 658 N.W.2d 804 (2002) (holding the transfer of airport management from the county to the newly created airport authority would not unconstitutionally impair the county's contractual obligations to bondholders, and that act authorizing the airport authority was not an unconstitutional exercise of legislative power).

*Wentz v. City of Philadelphia*, 301 Pa. 261, 151 A. 883 (1930) (holding operation of airport is a public purpose).

*W. Air Lines v. Port Auth. of N.Y. & N.J.*, 817 F.2d 222 (2d. Cir. 1987) (discussing an airport proprietor's authority to restrict or prohibit particular types of aircraft operations in the interest of addressing congestion).

*Zimomra v. Alamo Rent-a-Car, Inc.*, 111 F.3d 1495 (10th Cir. 1997) (holding that airport operator entitled to state action immunity for antitrust claims).

## APPENDIX D. BIBLIOGRAPHY

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## APPENDIX E. TECHNICAL DATA

Table 1: Comparison of General Airport Revenue Bond Ratings from Moody's

General Purpose	Rating	Rating	Authority
ATL	7	7	DFW
ATL (PFC/sub)	6	6	DTW
FLL	8	8	BOS
CLT	6	8	MWAA
MDW (senior)	6	7	MCO
MDW (sub)	5	4	Pittsburgh
ORD (1st lien)	8	7	PANYNJ
ORD (2d)	7	9	SEA (senior)
ORD (3d)	6	8	SEA (int.)
DEN	7	7	SEA (sub)
Hawaii	5	4	STL
HOU	7	7	TPA
LAS (3d Lien)	7	7	BUR
LAS (sub)	8	6	Columbus
LAS (senior)	9	7	Indianapolis
LAX	8	6	Jacksonville
BWI	6	6	Lee County
MIA	6	6	Louisville
PHL	5	6	Memphis
PHX	7	6	Nashville
PHX (junior)	6	5	Norfolk
SLC	7	7	OAK
SAN	7	7	Omaha
SFO	7	7	RDU
Alaska	7	6	RIAC
Albuquerque	8	7	Tucson
Albuquerque (sub)	7	6	Tucson (sub)
CLE	5	8	Puerto Rico
Dallas Love	3	5	CVG
BDL	6		
MCI	7		
MCI (sub)	6		

<b>General Purpose</b>	<b>Rating</b>	<b>Rating</b>	<b>Authority</b>
Manchester	6		
Milwaukee	7		
ONT	6		
Orange County	8		
Palm Beach	3		
Sacramento	7		
San Antonio	7		
San Jose	7		
Portland, ME	3		
<b>AVERAGE</b>	6.43902439	6.55172414	

Source: Jacobs Consulting, Credit Update Bond Ratings (Aug. 2007). Note Baa 3 rating is scored as 2, while Aal is scored as 10.

**Table 2: Comparison of 2008 JD Power Scores for Large and Medium Airports—Sum of Seven JD Power Categories**

	<b>General Purpose</b>	<b>Authority</b>	
CLT	25	21	DTW
ORD	21	20	DFW
DEN	17	26	JFK
IAH	29	14	MSP
ATL	24	24	EWR
LAX	22	31	MCO
LAS	31	14	SEA
MIA	27	20	BOS
PHL	30	28	LGA
PHX	28	21	STL
SFO	15	26	MEM
BWI	27	14	OAK
MDW	32	17	PDX
CLE	20	26	DCA
FLL	22	26	SAN
HNL	21	28	TPA
MCI	29	26	IAD
SMF	24	27	CVG
SLC	22		
SJC	16		
<b>AVERAGE</b>	24.1	22.7222222	

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