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2/27/76

APPROVED
FEB 27 1976

THE WHITE HOUSE
WASHINGTON

ACTION

February 26, 1976

Last Day: March 2

MEMORANDUM FOR

THE PRESIDENT

FROM:

JIM CANNON *JC*

SUBJECT:

Enrolled Bill S. 270 - Removal
of restrictions on airport
property in Elkhart, Kansas

Attached for your consideration is S. 270, sponsored by Representative Pearson, which authorizes the Secretary of Transportation to release the city of Elkhart, Kansas from the restriction specifying that Federal property conveyed to the City for airport purposes shall automatically revert to the Federal Government if the property ceases to be used for such purposes. This would allow part of the airport property to be used for economic development.

Additional information is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign S. 270 at Tab B.

*Posted
4/28
To Archives
3/1*





EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

FEB 25 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 270 - Removal of restrictions on
airport property in Elkhart, Kansas
Sponsor - Sen. Pearson (R) Kansas

Last Day for Action

March 2, 1976 - Tuesday

Purpose

To authorize the Secretary of Transportation to remove restrictions on the use of Federal land conveyed to Elkhart, Kansas, for airport purposes.

Agency Recommendations

| | |
|---------------------------------|----------|
| Office of Management and Budget | Approval |
| Department of Transportation | Approval |

Discussion

S. 270 would authorize the Secretary of Transportation to release the city of Elkhart, Kansas, from the restriction specifying that Federal property conveyed to the city for airport purposes shall automatically revert to the Federal government if the property ceases to be used for such purposes. This would allow part of the airport property to be used for economic development.

This property was conveyed to Elkhart in March 1958 under the provisions of the Federal Airport Act. That Act provided that any property so conveyed would revert to the United States if it



were not developed as an airport or were no longer exclusively used for airport purposes. Similar conveyances of airport property under the Surplus Property Act or under the Airport and Airway Development Act of 1970 (the successor to the Federal Airport Act) contained provisions allowing the Secretary to grant releases from such restrictions on use of the land. The Federal Airport Act contains no such release provision, however. S. 270 would provide the authority to grant releases for the Elkhart property. The bill would also authorize the Administrator of the Federal Aviation Administration to put such conditions on the release of the use of the property as is deemed necessary to protect the interests of the U.S. in civil aviation.

The enrolled bill would also place further conditions on the removal of any restrictions on the use of this property. It would require that the city receive fair market value for any portion of the property which it sells and that any money received in such a sale would be used by the city only for the development, improvement, operation, or maintenance of a public airport. While these requirements are generally consistent with Department of Transportation policy in such releases, they are more restrictive than the Department's conditions. They would require DOT to issue regulations to define fair market value and would not permit the city any flexibility in the event that the revenues received exceeded airport needs. However, while the provisions are not desirable, DOT states in its views letter on the enrolled bill that "We do not believe that these provisions warrant objection to the enactment of this bill."

James M. Frey
Assistant Director for
Legislative Reference

Enclosures



THE WHITE HOUSE
WASHINGTON

Date

2/26/76

MEMORANDUM FOR:

FROM

:

JUDITH RICHARDS HOPE

Judith Johnson

ok by me

JRH

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: February 25

Time: 800pm

FOR ACTION: Judy Hope *JH*
 Max Friedersdorf *MF* cc (for information): Jack Marsh
 Ken Lazarus Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: February 26

Time: 300pm

SUBJECT:

S. 270 - Removal of restrictions on airport
 property in Elkhart, Kansas

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

x

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
 For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: February 25

Time: 800pm

FOR ACTION: Judy Hope
Max Friedersdorf
Ken Lazarus

cc (for information): Jack Marsh
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: February 26

Time: 300pm

SUBJECT:

S. 270 - Removal of restrictions on airport
property in Elkhart, Kansas

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

x

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

No objection -- Ken Lazarus 2/26/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

THE WHITE HOUSE

WASHINGTON

February 26, 1976

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *M.L.*
SUBJECT: S.270 - Removal of restrictions on airport
property in Elkhart, Kansas

The Office of Legislative Affairs concurs with the agencies
that the subject bill be signed.

Attachments



OFFICE OF THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

FEB 20 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

You have asked for our views on S. 270, an enrolled bill,

"To authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the city of Elkhart, Kansas, for airport purposes."

This bill would authorize the Secretary of Transportation to remove the condition contained in the March 11, 1958 deed to the city of Elkhart required by the then effective Federal Airport Act (60 Stat. 179, repealed May 21, 1970, 84 Stat. 235), specifying that Federal property conveyed for airport purposes shall automatically revert to the United States if it ceases to be used for those purposes. The bill further provides that any release from a condition contained in the deed will be subject to section 4 of the Act of October 1, 1949 (50 App. U.S.C. 1622c) which authorizes the Administrator of the Federal Aviation Administration to impose upon a release such conditions as he deems necessary to protect the interests of the United States in civil aviation, and also requires that the proceeds of any sale of property to a third party within five years be devoted exclusively to public airport purposes. Under the authority of this bill, the Secretary could release the property for other than airport purposes. Revenues derived from such nonaviation uses would then be applied to airport purposes to make the airport more self-sufficient.

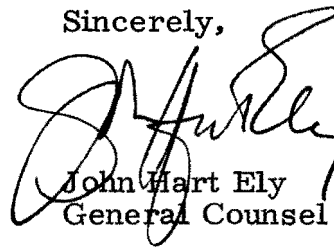
We believe that the release authority provided by this bill to permit the use of portions of this airport property for industrial or other nonairport uses is not inconsistent with the needs of the Department of Transportation. Accordingly, we endorse the granting of this release authority to the Secretary.

We note that as passed by the Congress, the bill contains two provisions not contained in the bill when introduced. The bill now requires that the city obtain fair market value for any interest it conveys in the property conveyed to it by the United States in the deed dated March 11, 1958. Additionally, the bill requires that any amount received by the city shall be used by the city for development, improvement, operation, or maintenance of a public airport.

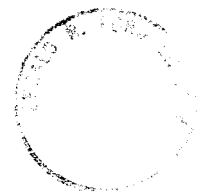
These two provisions are consistent with the general policy followed by this Department in granting releases. However, the first provision cited would require the Secretary to issue regulations to determine that fair market value would be received for the property prior to issuing any releases on this property. The second would not permit any flexibility in the use of funds received by the city if the funds received exceed airport needs. We do not believe that these provisions warrant objection to the enactment of this bill.

We recommend that the President sign the enrolled bill.

Sincerely,



John Hart Ely
General Counsel



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

FEB 25 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 270 - Removal of restrictions on
airport property in Elkhart, Kansas
Sponsor - Sen. Pearson (R) Kansas

Last Day for Action

March 2, 1976 - Tuesday

Purpose

To authorize the Secretary of Transportation to remove restrictions on the use of Federal land conveyed to Elkhart, Kansas, for airport purposes.

Agency Recommendations

Office of Management and Budget

Approval

Department of Transportation

Approval

Discussion

S. 270 would authorize the Secretary of Transportation to release the city of Elkhart, Kansas, from the restriction specifying that Federal property conveyed to the city for airport purposes shall automatically revert to the Federal government if the property ceases to be used for such purposes. This would allow part of the airport property to be used for economic development.

This property was conveyed to Elkhart in March 1958 under the provisions of the Federal Airport Act. That Act provided that any property so conveyed would revert to the United States if it

To
J. Casper
2-25-76
3:45 p.m.

**AUTHORIZING THE SECRETARY OF TRANSPORTATION TO RELEASE
RESTRICTIONS ON THE USE OF CERTAIN PROPERTY CONVEYED TO
THE CITY OF ELKHART, KANSAS, FOR AIRPORT PURPOSES**

JUNE 26 (legislative day, JUNE 6), 1975.—Ordered to be printed

Mr. PEARSON, from the Committee on Commerce,
submitted the following

REPORT

[To accompany S. 270]

The Committee on Commerce, to which was referred the bill (S. 270) to authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the city of Elkhart, Kansas, for airport purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

SUMMARY AND PURPOSE

S. 270 would remove the restrictive conditions imposed by section 16 of the Federal Airport Act (60 Stat. 179, repealed May 21, 1970, 84 Stat. 235), as they appear in the Deed of Conveyance dated March 11, 1958, under which the then Acting Secretary of Agriculture transferred to the City of Elkhart, Kansas approximately 151.7 acres to be used as a public airport. Such a release would allow part of the airport property to be used for economic development.

BACKGROUND AND NEED

At the time of the above-mentioned conveyance, the U.S. Department of Agriculture was unable to convey non-airport surplus property for airport purposes without a reverter clause because of the conveyance authority contained in section 16 of the Federal Airport Act. Section 16 of the Federal Airport Act states, in part, ". . . each such conveyance shall be on the condition that the property interest conveyed shall automatically be reverted to the United States in the event that the lands in question are not developed, or cease to be used, for airport purposes."

Section 52(a) of the Airport and Airway Development Act of 1970 (49 U.S.C. 1701 et seq.) repealed the Federal Airport Act effective

June 30, 1970. However, section 52(c) contained a saving provision concerning such conveyances under the Federal Airport Act, giving rise to the need for S. 270.

The purpose of this bill is to authorize the Secretary of Transportation to grant a release from the reversionary clause contained in the Deed of Conveyance so that the City of Elkhart may proceed with the development of portions of the property for non-airport purposes. The bill contains a safeguard against abuse in that the Secretary's authority is made subject to the provisions of section 4 of the Act of October 1, 1949 (50 App. U.S.C. 1622c).

Section 4 of the Act of October 1, 1949, requires that before property is released for non-airport purposes it must be determined that the property is no longer necessary to accomplish the purpose for which it was originally conveyed and is not necessary to protect or advance U.S. civil aviation. It further provides that the Secretary may impose such conditions on the conveyance as he deems necessary so as to insure that any proceeds arising from non-airport use of the property will be used for the development and maintenance of the airport.

Comparable legislation was approved by the 89th Congress in connection with airport property in Clarinda, Iowa, in 1966 (P.L. 89-649), approved October 13, 1966.

The Committee believes that enactment of S. 270 will provide the City of Elkhart with needed flexibility in developing airport properties so as to provide revenues for use by the City in maintaining the airport.

COST ESTIMATE

Pursuant to section 252 of the Legislative Reorganization Act of 1970, the Committee estimates that the enactment of S. 270 will not result in any additional costs to the United States. The Committee knows of no cost estimates by any Federal agency which are at variance with its estimates.

CHANGES IN EXISTING LAW

S. 270 does not change existing law.

AGENCY COMMENT

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., June 20, 1975.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to a request for the views of the Department of Transportation concerning S. 270, a bill to authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the city of Elkhart, Kansas, for airport purposes.

This bill would authorize the Secretary of Transportation to remove the condition contained in the March 11, 1958 deed to the city of Elkhart required by the then effective Federal Airport Act (60 Stat. 179, repealed May 21, 1970, 84 Stat. 235), specifying that Federal prop-

erty conveyed for airport purposes shall automatically revert to the United States if it ceases to be used for those purposes. The bill further provides that any release from a condition contained in the deed will be subject to section 4 of the Act of October 1, 1949 (50 App. U.S.C. 1622c) which authorizes the Administrator of the Federal Aviation Administration to impose upon a release such conditions as he deems necessary to protect the interests of the United States in civil aviation, and also requires that the proceeds of any sale of property to a third party within five years be devoted exclusively to public airport purposes.

Unlike restrictions on conveyances pursuant to the Federal Airport Act such as the conveyance which is the subject of this bill, restrictions placed on transfers under the Surplus Property Act of 1944 may be released by the Secretary in accordance with certain conditions stated in the Act of October 1, 1949 (50 U.S.C. App. 1622c). Similarly, restrictions on conveyances under section 23 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1723(b)), the successor to the Federal Airport Act, may also be released at the option of the Secretary.

This bill therefore, would give the Secretary the same authority to release the restrictions on the Federal Airport Act conveyance to Elkhart that he now has on conveyances made under the current statutes, subject to the conditions of section 4 of the Act of October 1, 1949.

It has been our consistent position that the vesting of this authority in the Secretary is in the best interests of civil aviation. Consequently, we support the enactment of this bill.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this report for the consideration of the Committee.

Sincerely,

RODNEY E. EYSTER,
General Counsel.

RELEASE OF RESTRICTIONS—ELKHART, KANS.

FEBRUARY 11, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. JONES of Alabama, from the Committee on Public Works and Transportation, submitted the following

REPORT

[To accompany H.R. 2740]

The Committee on Public Works and Transportation, to whom was referred the bill (H.R. 2740) to authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the city of Elkhart, Kansas, for airport purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause and inserts in lieu thereof a substitute text which appears in italic type in the reported bill.

PURPOSE OF THE BILL

The purpose of H.R. 2740, as reported, is to authorize the Secretary of Transportation to release the City of Elkhart, Kansas, from any of the terms, conditions, reservations and restrictions contained in the deed of conveyance, dated March 11, 1958, from the United States to the City of Elkhart, Kansas, made pursuant to section 16 of the Federal Airport Act (60 Stat. 179), of property for airport purposes.

BACKGROUND AND NEED FOR THE LEGISLATION

Following World War II various agencies of the United States conveyed surplus property to communities to be used for airport purposes. Initially these conveyances were made under authority of the Surplus Property Act of 1944 (58 Stat. 765), but following passage of the Federal Airport Act, conveyances were made pursuant to that authority. Today, by FAA estimate, there are approximately 638 surplus property airports in the United States, 170 of which were conveyed pursuant to section 16 of the Federal Airport Act. The deeds of conveyances under both the Surplus Property Act and Federal Airport Act were made on the condition that the property interest conveyed reverted to the United States in the event that the lands

in question were not developed or ceased to be used for airport purposes.

A problem exists with respect to the authority of the Secretary of Transportation to grant releases from restrictions contained in these conveyances. The Secretary has authority to grant releases from any of the terms, conditions, reservations, and restrictions contained in conveyances made pursuant to the Surplus Property Act of 1944 as amended by the Act of October 1, 1949 (50 App. U.S.C. 1622c). Under that authority the Secretary may grant such a release, subject to such terms and conditions he deems necessary, "if he determines that the property transferred . . . no longer serves the purposes for which it was transferred, or that such release . . . will not prevent accomplishment of the purpose for which the property was transferred and is necessary to protect or advance the interests of the United States in civil aviation." However, the Secretary does not have authority to grant such a release from any of the terms, conditions, reservations, and restrictions contained in conveyances made pursuant to section 16 of the Federal Airport Act.

This inability of the Secretary to release certain of the lands conveyed pursuant to section 16 of the Federal Airport Act has in many instances been detrimental to the interests of civil aviation. In these instances more property was conveyed than was reasonably necessary for continued operation of the airport. The land not actually needed for airport purposes cannot be put to beneficial use due to existing restrictions. A release by the Secretary would allow the City of Elkhart, Kansas, to use a portion of the acreage originally conveyed for purposes other than for which the land was originally conveyed. The City of Elkhart proposes to request the Secretary to release approximately 35 acres for public recreational use.

EXPLANATION OF THE BILL

As reported, the bill would authorize the Secretary to grant releases from any of the terms, conditions, reservations, and restrictions contained in section 16 conveyances under the same conditions as he is presently authorized to grant such releases from conveyances made pursuant to the Surplus Property Act of 1944, as amended. The bill contains the same safeguards to protect the continued operation of the Elkhart, Kansas Airport, and thus to protect civil aviation, as exist with respect to airports conveyed pursuant to the Surplus Property Act of 1944, as amended. In addition to these safeguards, section 2 of the bill requires the Secretary of Transportation to grant such a release only when the City of Elkhart, Kansas agrees to: (1) Receive fair and market value, as determined under regulations issued by the Secretary, for any interest conveyed in the property so released; and (2) use the proceeds from the sale or lease of released property for the development, improvement, operation or maintenance of the airport.

COST OF THE LEGISLATION

In accordance with rule XIII(7) of the rules of the House of Representatives, the following information is furnished.

No additional costs to the United States would be incurred in carrying out H.R. 2740, as reported, in the current fiscal year or in any of the 5 fiscal years following.

COMPLIANCE WITH CLAUSE 2(1) OF RULE XI OF THE RULES OF THE HOUSE OF REPRESENTATIVES

(1) With reference to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, no separate hearings were held on the subject matter of this legislation by the Subcommittee on Investigations and Review. However, the Subcommittee on Aviation held hearings on this subject matter which resulted in the reported bill.

(2) With respect to clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives the bill, as reported, does not provide new budget authority or increased tax expenditures. Accordingly, a statement pursuant to section 308(a) of the Congressional Budget Act is not required.

(3) With reference to clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee has not received an estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act.

(4) With reference to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has not received a report from the Committee on Government Operations pertaining to this subject matter.

(5) With reference to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, H.R. 2740, as reported, will not affect prices and costs since it does not authorize additional funds. Therefore, H.R. 2740, as reported, would not have an inflationary impact on the national economy.

VOTE

The Committee ordered the bill reported by voice vote.

○

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

To authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the city of Elkhart, Kansas, for airport purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding section 16 of the Federal Airport Act (as in effect on March 11, 1958), the Secretary of Transportation is authorized, subject to the provisions of section 4 of the Act of October 1, 1949 (50 App. U.S.C. 1622c), and the provisions of section 2 of this Act, to grant releases from any of the terms, conditions, reservations, and restrictions contained in the deed of conveyance dated March 11, 1958, under which the United States conveyed certain property to the city of Elkhart, Kansas, for airport purposes.

SEC. 2. Any release granted by the Secretary of Transportation under the first section of this Act shall be subject to the following conditions:

(1) The city of Elkhart, Kansas, shall agree that in conveying any interest in the property which the United States conveyed to the city by deed dated March 11, 1958, the city will receive an amount for such interest which is equal to the fair market value (as determined pursuant to regulations issued by such Secretary).

(2) Any such amount so received by the city shall be used by the city for the development, improvement, operation, or maintenance of a public airport.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*