Airport Governance and Ownership

November 14, 2012
Fall 2012 ACRP Webinar Series

• Oct. 10 – *Greenhouse Gas Reduction and Sustainable Construction Strategies for Airports*

• Nov. 14 – *Airport Governance and Ownership*

• Dec. 6 – *Airport Terminal Planning and Design: A Focus on Wayfinding and Roadways*
Today’s Speakers

Moderated by Randall Fiertz, Director of Airport Compliance and Management Analysis, FAA

1) Overview of *Legal Research Digest 7: Airport Governance and Ownership*
   • Daniel Reimer of Kaplan Kirsch & Rockwell LLP

2) Overview of *Legal Research Digest 15: Compilation of State Airport Authorizing Legislation*
   • Jodi Howick of Durham, Jones & Pinegar

3) Overview of *ACRP Report 66: Considering and Evaluating Airport Privatization*
   • Sheri Ernico of LeighFisher
What is the Airport Cooperative Research Program (ACRP)?

- Industry-driven, applied research program that develops near-term, practical solutions to problems airport operators face
- Began in 2006, authorized by Congress
- Managed by the Transportation Research Board (TRB) of the National Academies
- Sponsored by the Federal Aviation Administration
- Research is conducted by you—individuals and firms selected on the basis of competitive proposals
Ways to Get Involved in ACRP

• Submit a research idea, also called a Problem Statement
• Prepare a proposal to conduct research
• Volunteer to participate on a project panel; Travel expenses are reimbursed
• Apply to be an ACRP Ambassador or member of the ACRP Speakers Bureau
• Use our research results
For More Information

- [www.TRB.org/ACRP](http://www.TRB.org/ACRP)
- Regular news and updates on:
  - Upcoming and ongoing research projects
  - New publications
  - Success stories
  - Announcements
- Find ACRP on Facebook and LinkedIn
Airport Governance and Ownership

Daniel S. Reimer
Kaplan Kirsch & Rockwell LLP

November 14, 2012
Agenda

1. Airport Governance Today
2. Legal Principles Affecting Airport Governance
3. Transfer and Delegation of Power
4. The Effects of Governance Form on Airport Performance
13,451 Airports

4,880 Public-Use Airports
3,280 NPIAS Airports
499 Commercial Service Airports
139 Hub Airports
Airport Governance Today

- Airport Authorities
- States
- Counties
- Cities
- Port Authorities
- Joint Powers Agencies
- Special Districts
- Joint Use
- Universities
Airport Governance Today

Commercial Service Hub Airports

- 53% Single Purpose Entity
- 47% General Purpose Entity
Airport Governance Today

Commercial Service Hub Airports, General Purpose Governments

- State: 14%
- City: 65%
- County: 18%
- City and County: 3%
Legal Principles Affecting Airport Governance

• **State law confers power**
  o E.g., State enabling acts

• **Federal law constrains power**
  o E.g., Grant Assurances

• **Neither state law nor federal law materially limits flexibility and options for airport governance and ownership**
Transfer and Delegation of Power

- Limited number of examples
  - General purpose to single purpose
  - Privatization

- Motivations vary; often based on widely recognized deficiency

- Federal law controls or influences the process and terms of transfer

- Amendment to state law may be required
The Effects of Governance Form on Airport Performance

• Multiple performance metrics
  o Operational
  o Financial
  o Customer satisfaction

• Some evidence that airport authorities are more efficient

• No evidence that any model is superior across the range of performance goals and metrics
Concluding Thoughts

• **Keys to Success**
  - Candidly evaluate performance and objectives
  - Thoroughly research case studies and models
  - Identify full range of options
  - Carefully consider implementation steps
  - Be realistic about probability of success
  - Find appropriate time and place for discussion
Questions

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Compilation of State Airport Authorizing Legislation

Jodi L. Howick, Durham Jones & Pinegar

November 14, 2012
The Role of State Regulation

1. The Basic Balance of Powers
2. Administering the State’s Role
3. Concerns for Uniformity
4. State Empowerment
5. State Constraints
6. Determining Local Rights
## Basic Powers

<table>
<thead>
<tr>
<th>Federal Laws and Contracts</th>
<th>State Airport and General Government Law</th>
<th>Local Airport Rules for a Specific Airport</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Constrain Airport Powers</td>
<td>• State-Wide Policy</td>
<td>• Operates by Implementing State Law</td>
</tr>
<tr>
<td>• Establish Rights in Federal Matters</td>
<td>• Source of Airport Powers</td>
<td>• Creates Rules Consistent with State and Federal Law</td>
</tr>
<tr>
<td></td>
<td>• Local Protections and Prohibitions</td>
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</table>
State’s Role

State concerns include:

• Resource Allocation
• Uniformity
• General State Aviation Policy
• Governmental Laws
Typical State Aeronautics Agencies

- Airport Oversight Functions
- Planning Functions
- State Financial Programs
- General State Policy
- Involvement in Federal Financial Programs
# Common Areas of Airport Empowerment

<table>
<thead>
<tr>
<th>Creation</th>
<th>Day to Day</th>
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<tbody>
<tr>
<td>Source of power to organize and operate (as implemented by local communities)</td>
<td>Authorizing and facilitating the governmental, commercial, and industry roles of the airport</td>
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</table>

<table>
<thead>
<tr>
<th>Conflicts</th>
<th>Development</th>
</tr>
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<tbody>
<tr>
<td>Some protection against liability and business loss</td>
<td>Funding and taxing measures</td>
</tr>
<tr>
<td>Protective rules for administering claims and lawsuits</td>
<td>Ability to borrow money</td>
</tr>
<tr>
<td></td>
<td>Land use powers</td>
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<td></td>
<td>Aviation incentive programs</td>
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</table>
Common State Constraints

Airport-Specific Measures: to balance the interests of an airport with other local policy (less common). (Ex: some land use requirements, environmental requirements, health concerns.)

Governmental Measures: to control governmental power by defining and limiting government’s authority to act. (Ex: government procurement, employment, ethics, contracts, etc.)
Determining Local Airport Rights

Airport

State Law
Fundamental Authority

Federal Law
Rights in the National System
(Trumps State Law)

Local Law
Rules for Operating a Given Airport in Compliance with State and Federal Law
For additional information:

ACRP Legal Research Digest 15: Compilation of State Airport Authorizing Legislation

http://www.trb.org/Main/Blurbs/167625.aspx

- Jodi L. Howick
  JHowick@djplaw.com
Agenda

2. What is airport privatization?
3. What makes the U.S. business model different?
   - Funding
   - Regulations
   - Airline relationship
4. U.S. case studies
5. Q & A
6. Close
Report 66 Contents

1. Executive Summary
2. The U.S. Context and Generic Privatization Models
3. Service Contracts
4. Management Contracts
5. Developer Financing and Operation
6. Full Privatization
7. Other Examples
8. Decision Tree Matrix, Evaluation Checklist, Process
9. Summary of Case Studies
Report 66 Appendices

A. Abbreviations and Acronyms
B. Glossary
C. International Airport Privatization
D. Non-Airport Privatization in the U.S. Transport Sector
E. Emerging Domestic Issues Influencing Airport Privatization
F. U.S. Regulatory and Policy Framework
G. Key Stakeholder Interests and Concerns
H. Detailed Case Studies
U.S. Airport Privatization Can Take Many Forms

- **Partial Privatization**
  - Contracting services
  - Management contract
  - Developer/project finance & operation
  - Long-term lease or concession agreement (including Airport Privatization Pilot Program)
  - Private airport development

- **Full Privatization**

- **Private Development**

- **Least Privatization**

- **Most Privatization**

Overview of Governance at Airports

The U.S. governance model is very different than the rest of the world

- U.S. – public owners

- Canada – independent ‘not-for-profit’

- Europe – ‘corporatization’ (i.e., 100% wholly owned public corporation)

Sources: U.S. Governance: LeighFisher for top 100 U.S. airports based on enplaned passengers.
25-Year History for Worldwide Airport Privatization

Stewart was the only airport in the U.S. that was fully privatized.
U.S. Airport Privatization Continuum

Contracting Services
- Manchester
- SFO TEC
- Pittsburgh

Project Financing
- JFK-IAT Terminal 4
- BOSFuel
- Austin rental car

Management Contract
- Burbank
- Albany
- Atlantic City
- LA County airports

Long-Term Lease or Sale
- Chicago Midway
- Stewart
- Morristown

<table>
<thead>
<tr>
<th>Cost Reduction Specialized Expertise</th>
<th>Capital Investment</th>
<th>Management Expertise</th>
<th>Upfront Payment Exit Airport Business</th>
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</thead>
<tbody>
<tr>
<td>Cleaning and janitorial</td>
<td>Terminal development</td>
<td>Terminal operation</td>
<td>Airport Privatization Pilot Program</td>
</tr>
<tr>
<td>Conveyance systems</td>
<td>Fuel systems</td>
<td>Airport-wide management</td>
<td>Long-term lease for full operation and development</td>
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<tr>
<td>Aircraft rescue firefighting</td>
<td>Cargo</td>
<td></td>
<td></td>
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<tr>
<td>Police, security guards</td>
<td>Rental car</td>
<td></td>
<td></td>
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<tr>
<td>Common use equipment</td>
<td>General aviation</td>
<td></td>
<td></td>
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<tr>
<td>Parking operations</td>
<td>Solar</td>
<td></td>
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<tr>
<td>Terminal concessions</td>
<td></td>
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<tr>
<td>Commercial land development</td>
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Disincentives to Privatization in U.S.

1. Capital funding: AIP, PFCs, tax-exempt debt
2. Financial: repay grants, debt burden
3. Federal/state regulations: airline rates, revenue diversion, property taxes
4. Contractual constraints: airline and labor agreements
5. Control
The U.S. Experiment – Airport Privatization Pilot Program (APPP)

- Long-term lease or sale (GA airports only)
- 10 slots (at least one GA, no more than one large hub)
- Use of proceeds
- Airline rates
- AIP grant eligibility, PFC eligibility
## Status of the APPP

*Interest in the APPP remains limited -- only 3 airports remain active*

<table>
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<tr>
<th>Active</th>
<th>Inactive</th>
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<tbody>
<tr>
<td><strong>Large-Hub:</strong></td>
<td>1. <strong>Stewart International Airport, Newburgh, NY</strong> by National Express Group (approved 2000-2007, no longer in program - Port Authority of New York/New Jersey now operates)</td>
</tr>
<tr>
<td><strong>Medium/Small Hubs:</strong></td>
<td>3. <strong>Niagara Falls International Airport</strong> (application withdrawn 2001)</td>
</tr>
<tr>
<td><strong>GA Airports:</strong></td>
<td>5. <strong>New Orleans Lakefront Airport</strong> (application terminated 2008)</td>
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<tr>
<td>3. Hendry County Airglades Airport, Florida (preliminary approval October 2010)</td>
<td>6. <strong>Louis Armstrong New Orleans International Airport</strong> (application withdrawn October 2010)</td>
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<td></td>
<td>7. <strong>Gwinnett County Briscoe Field Airport, Georgia</strong> (application withdrawn July 2012)</td>
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</tbody>
</table>
## Case Studies

<table>
<thead>
<tr>
<th>Form of Privatization</th>
<th>Case Studies</th>
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<tbody>
<tr>
<td>Management Contract</td>
<td>• Indianapolis Airport Authority</td>
</tr>
<tr>
<td>Developer Financing/Operation</td>
<td>• John F. Kennedy International, JFKIAT Terminal 4</td>
</tr>
<tr>
<td></td>
<td>• Boston Logan International Airport Terminal A</td>
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<td>APPP Applicants</td>
<td>• Chicago Midway International Airport</td>
</tr>
<tr>
<td></td>
<td>• Stewart International Airport</td>
</tr>
<tr>
<td>Full Privatization Outside the APPP</td>
<td>• Morristown Municipal Airport</td>
</tr>
<tr>
<td>International Airports</td>
<td>• Sydney Airport or Kingsford Smith Airport</td>
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<td></td>
<td>• London Gatwick Airport International Airport</td>
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Indianapolis

Airport-wide management contract (IND and 5 general aviation airports)

- Compensation
- Tracking compliance
- Ongoing improvements and efficiencies
- Multiple firms for outsourcing
- No ‘magic solutions’

<table>
<thead>
<tr>
<th>Year</th>
<th>Airline payments per enplaned passenger (nominal dollars) (a)</th>
<th>Airline payments per enplaned passenger (1995 dollars) (b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>$5.58</td>
<td>$5.58</td>
</tr>
<tr>
<td>1996</td>
<td>3.87</td>
<td>3.75</td>
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<tr>
<td>1997</td>
<td>3.84</td>
<td>3.65</td>
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<tr>
<td>1998</td>
<td>3.78</td>
<td>3.54</td>
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<td>1999</td>
<td>5.02</td>
<td>4.57</td>
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<td>2000</td>
<td>5.06</td>
<td>4.47</td>
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<td>2001</td>
<td>6.18</td>
<td>5.33</td>
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<tr>
<td>2002</td>
<td>6.13</td>
<td>5.20</td>
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<tr>
<td>2003</td>
<td>7.15</td>
<td>5.93</td>
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<tr>
<td>2004</td>
<td>7.09</td>
<td>5.71</td>
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<tr>
<td>2005</td>
<td>6.44</td>
<td>5.00</td>
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<tr>
<td>2006</td>
<td>6.87</td>
<td>5.19</td>
</tr>
<tr>
<td>2007</td>
<td>7.38</td>
<td>5.41</td>
</tr>
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</table>

(a) Comprehensive Annual Financial Reports, Indianapolis Airport Authority.

(b) Adjusted to 1995 dollars using the U.S. Department of Labor Consumer Price Index for All Urban Consumers.
JFKIAT Terminal 4

Developer financing and operation of multi-tenant terminal

- Tax-exempt financing
- Equity investment
- “Real” risk for JFKIAT
- Market-based pricing
- Transferability
- Tradeoff of cost overruns for on-time completion
- Structure of the financial returns
- Mitigating risk
- Delta and JFKIAT
Chicago Midway

*Only large hub airport accepted into APPP process, financing fell through in credit crunch*

- Political support
- APPP process
- City goals
- Net proceeds
- Stakeholder support
- Property tax exemptions
- Oversight and performance standards
- Length of lease
- No tax-exempt financing
Main Take-Aways

1. U.S. airports have significant degree of private sector involvement today
2. Long-term lease or sale is the predominant model outside the U.S.
3. Unique factors in U.S.
   - Financial structure for airport development
   - Regulatory environment
   - Special relationship between airport owners and airlines
4. Future of the federal airport program and budget politics...can privatization fill the void?
Questions?

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