



34<sup>th</sup> Annual Basics of Airport Law Workshop and 2018 Legal Update

Session #8

# BASICS OF AIRPORT FINANCE

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# OVERVIEW

- Where do airports get funds for operations, capital projects, and other airport purposes?
- What are the statutory and regulatory issues about which one needs to be concerned?
- What federal funding sources exist?
- What private sources of funds exist?
- What are permissible and non-permissible uses of airport revenue?
- What are the regulatory requirements applicable to each source of funds?

# SOURCES AND USES OF AIRPORT FUNDS

- Airport generated funding
- Hybrid – Passenger Facility Charges; shared FAA and local control
- Grant funds
- The strings – Federal Grant Assurances and other legal impediments
- Revenue use requirements

# USES OF AIRPORT FUNDS

- Operational Costs and Debt Service
  - Importance of indenture or trust agreement
- Capital Projects
  - Airfield improvement and maintenance
  - Terminal projects
  - Air cargo facilities
  - GA facilities
  - Parking
  - Rental cars
  - Access projects
  - Non-aeronautical development

# SOURCES OF AIRPORT GENERATED FUNDS

- Aeronautical rates and charges
  - Airline rates and charges
  - FBO rents
  - Fuel flowage fees
  - General Aviation (GA) rents
- Non-aeronautical revenues
  - Concession fees
  - Parking revenues
- Development rents
- Taxes and related charges

# PASSENGER FACILITY CHARGES

- The Anti-Head Tax Act – 49 U.S.C. 40116
- PFCs – a per passenger fee – 49 U.S.C. 40117
- FAA oversight of PFC collection and use
- Limitations on use of PFCs
  - Enhance safety, security, or capacity
  - Reduce noise
  - Increase air carrier competition

# GRANT FUNDS AVAILABLE TO AIRPORTS

- FAA's Airport Improvement Program (AIP)
- TSA Other Transaction Agreements (OTA)
- State and local grant programs and contributions

# THE HAVES AND THE HAVE-NOTS

- Large and Medium Hub Airports
  - Higher cash flow
    - Operational revenues
    - Passenger-generated revenues
  - Significant PFC revenue
  - More self-sufficient
- Small and GA Airports
  - Cash flow challenged
  - Funding for major capital improvements difficult without grants
  - Often important to local economy



# A FEW WORDS ABOUT BONDS

- Airport bonds
  - General airport revenue bonds
  - Special facility bonds
- Local government bonds
- Local agency bonds
- Tax issues
- Securities law issues

# BOND DOCUMENTS

- The Bond Indenture – covenants and more!
- The Official Statement – materiality and due diligence
- Bond purchase agreement
- Tax certificate
- Why all the certifications?

# BONDS – THE PARTICIPANTS

- The Airport Attorney's role – you know your airport best
- Working with your finance colleagues
- Bond counsel
- Disclosure counsel
- Underwriters and their counsel
- Financial advisor
- The trustee
- Feasibility consultants and other professionals
- Rating agencies

# AIP GRANTS AND ASSURANCES

- Overview of AIP program
- Grant assurances
- Revenue use requirements

# AIP STATUTE DEFINES...

1. Who can get a grant –  
Eligible sponsorship
2. What types of projects get funded –  
General rules for AIP grants
3. What is required for a grant project –  
Pre-Grant requirements checklist  
Procurement rules  
Grant administration  
Post-Grant assurances
4. How to allocate AIP funds

# SPONSORS

- NPIAS – National Plan of Integrated Airport Systems
- State/local government or Indian tribes owning airports
- Private owners of designated relievers or airports with more than 2,500 enplanements
- State/local government not owning airports – for planning and noise mitigation
- (Federal government may never be sponsor)

# GENERALLY ELIGIBLE

- Safety and standards
- Airfield/airport security
- Airport planning
- Airport development
- Environmental mitigation
- Public use facilities
- Things that communicate with pilots

# GENERALLY NOT ELIGIBLE

- Things that make money at larger airports (revenue producing facilities)
- Things that add to aesthetics
- Things that communicate with air traffic
- Other federal agency facilities
- Day-to-day operational and maintenance costs



# PRE-GRANT REQUIREMENTS CHECKLIST

- Airport in National Plan of Integrated Airport Systems
- Appropriate airport sponsorship
- Local share – with state, private contributions
- Airport has Airport Layout Plan, local and area planning
- Capacity Projects >\$10 million discretionary must have benefit-cost
- Environmental finding and good land title
- Project meets aviation standards – justified based on established aeronautical demand

# GRANT PROCUREMENT RULES

- Full and open competition
- Most costs must be incurred after a grant has been issued
- Must follow required federal provisions
  - Brooks Act for professional services
  - DBE
  - Veterans preference

# GRANT ADMINISTRATION

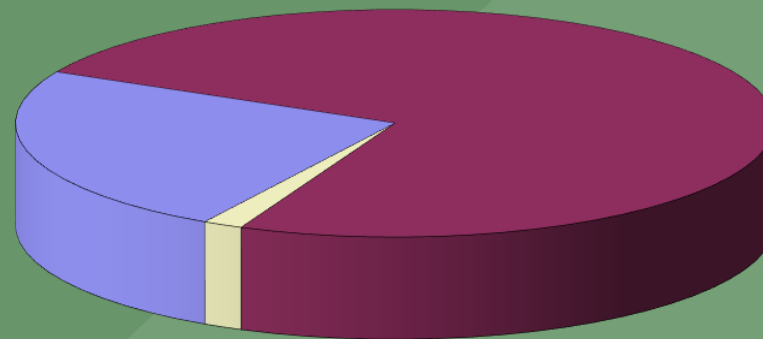
- Design must use FAA-approved plans and specifications
- Davis-Bacon Act for construction wages
- Must follow published FAA requirements
  - Project inspection
  - Record keeping
  - Financial grants management

# AIP HISTORICAL FUNDING

- Majority of funding goes to smaller airports
    - Large/medium = approx. 24%
    - Small/other = approx. 76%
- (FY2017)

■ Large Airports  
(Large and  
Medium Hubs)

■ Small Airports



■ Airport System  
Planning

■ Large Airports (Large and  
Medium Hubs)

# POST-GRANT REQUIREMENTS – GRANT ASSURANCES

- Grant Assurances
- Part 16

# POLICY STATEMENT ON REVENUE USE

- Airport revenue
  - Aeronautical fees – reasonable
  - Non-aeronautical fees – fair market value
- Permitted uses
- Unlawful diversion

# AERONAUTICAL RATES

- Grant Assurance requirements
  - Reasonable fees
  - Not unjustly discriminatory
- Anti-Head Tax Act requirements
  - Prohibits state or political subdivision from charging aeronautical fees except “reasonable rental charges, landing fees and other service charges”

# REVENUE DIVERSION

- Airport revenue—virtually all funds generated for use of the airport from any source—includes aviation fuel taxes
- Key dates: September 2, 1982 and December 30, 1987
- Airport revenue must be used for the capital and operating costs of
  - The airport
  - The local airport system
  - Other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property



# CONSEQUENCES OF REVENUE DIVERSION

- Loss of AIP Grants
- Loss of PFCs
- Penalties?
- Hearing?

# OVERVIEW OF THE PFC PROGRAM

- The PFC program is a federally-regulated, locally-managed program authorized in 1990.
- A PFC is a charge collected by air carriers from air carrier passengers. The charge can be \$1, \$2, \$3, \$4, to a maximum of \$4.50. Most airports charge \$3 or \$4.50.
- A passenger can be charged a maximum of two PFCs on a one-way itinerary and four PFCs on a roundtrip itinerary.
- Participation in the PFC program is limited to public agencies that own and control a commercial service airport and is not mandatory.

# OVERVIEW OF THE PFC PROGRAM

- Airlines must be consulted but have no right to approve or veto collection or use of PFCs.
- FAA approves individual projects for PFC funding and total amount of PFCs the airport may collect.
- Streamlined process for non-hub airports, extended to all airport under 2018 FAA Reauthorization.
- Despite federal approval, PFCs are considered local funds; AIP requirements and assurances do not apply.

# OVERVIEW OF THE PFC PROGRAM

- PFC eligibility generally follows AIP eligibility except:
  - PFCs may be used as local share for AIP projects
  - Slight difference for noise projects – Part 150 approval not needed
  - Additional eligibility for terminal projects—gates and related areas—can be revenue generating
  - Can pay for debt service costs
  - Can pay for PFC administrative costs

# PFCS FOR NOISE MITIGATION PROJECTS

- Public agencies can use PFC funds for noise mitigation projects even if they are not in a Part 150 plan.
- The projects must meet the criteria for approval under Part 150 – but they don't have to have been in a Part 150.
- Public agencies must supply a local planning document and noise exposure map similar to a Part 150.

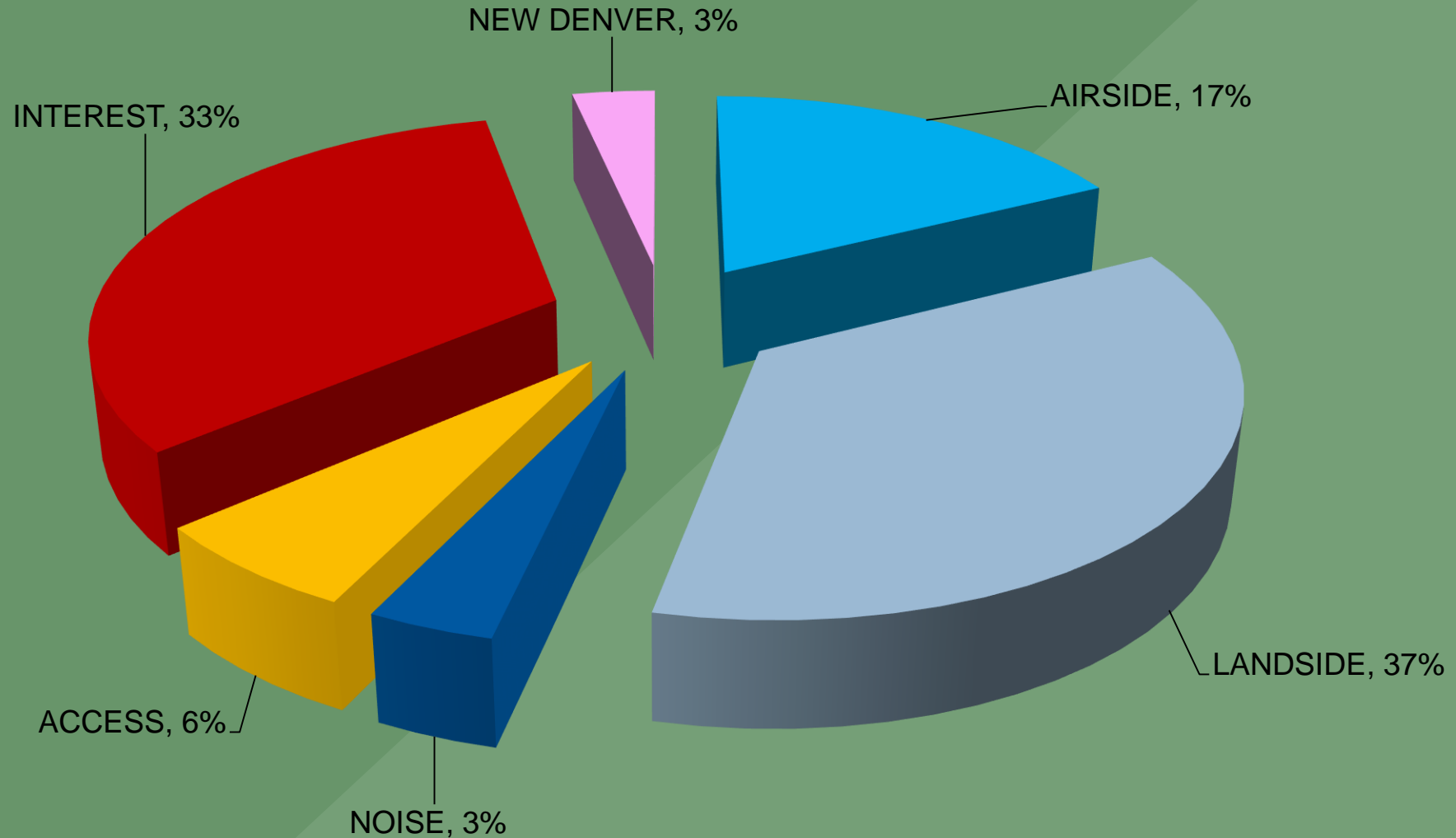
# PFCs FOR TERMINAL PROJECTS

- Broader eligibility than AIP discretionary grants
- Eligible components
- Ineligible components
- For Large- and Medium-hub airports:
  - Airside needs must be met first before seeking to put PFCs above \$3.00 into the terminal and landside.

# RELATIONSHIP OF PFC AND AIRPORT FUNDING

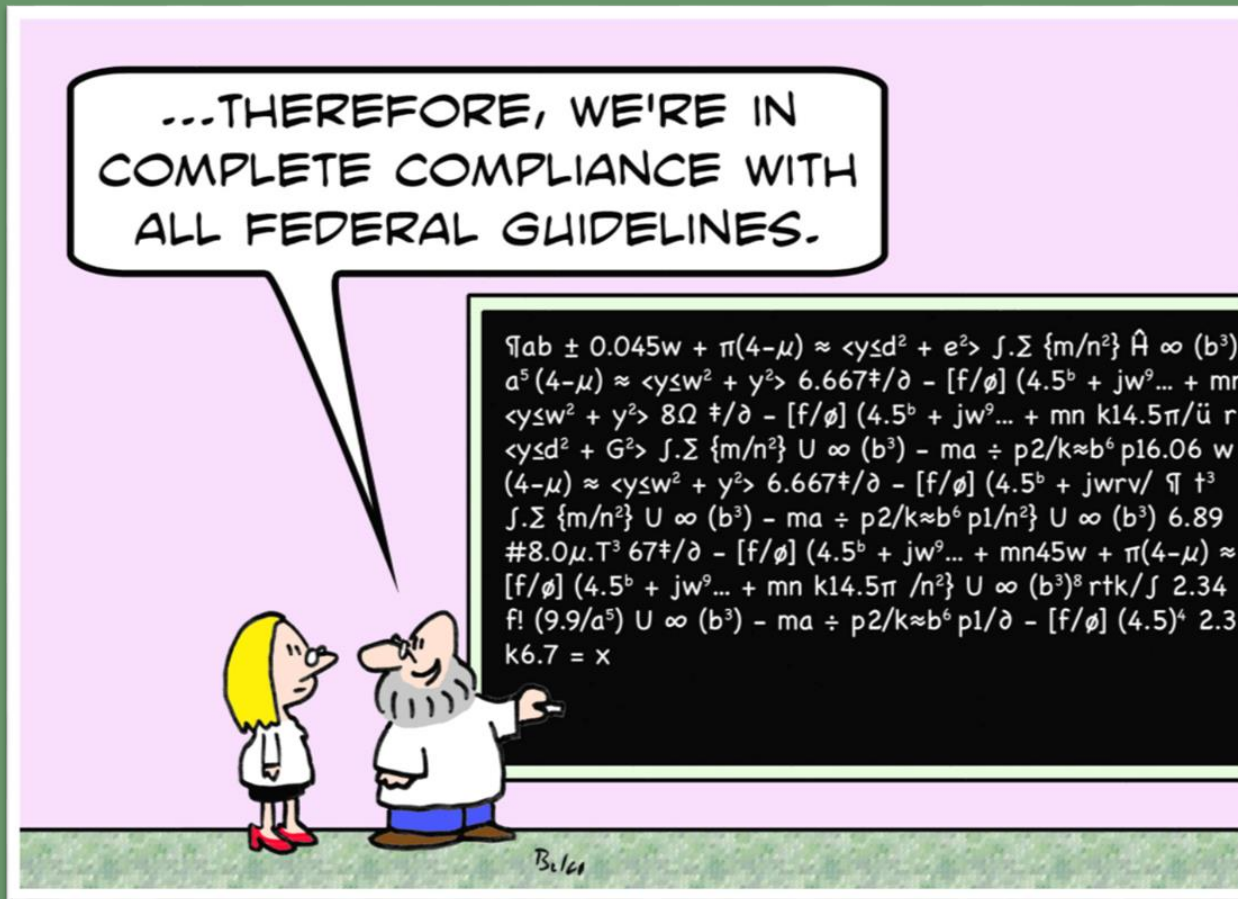
- PFCs complement AIP.
- Smaller airports often use PFCs to finance local matching requirements.
- Larger airports use PFCs to finance terminal and airport access projects that receive little AIP funding.

# WHAT HAVE PFCS BEEN APPROVED TO FUND?





# WRAP-UP / QUESTIONS



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